

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues; 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

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PAK 2/2016

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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; Special Rapporteur on freedom of religion or belief; Special Rapporteur on minority issues; 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, 22/20, 25/5, 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 reported **abduction and subsequent forced conversion and marriage of 15 year old Hindu** [REDACTED].

~~According to the information received:~~

On 19 April 2015, 15 year old Hindu [REDACTED] was reportedly kidnapped by six men in her home at 1 p.m. in front of her parents Manthar Mal Oad and Heeran Oad, in Allah Dino Magsi Village, Qambar Shahdadkot, Sindh province. Thereafter, her parents went to the police station to register a First Information Report but the police allegedly refused to process it. On 21 April 2015, the parents of Ms. Oad attempted to file again an application to register a First Information Report. From 22 to 30 April 2015, the application was allegedly forwarded to different police stations, namely those of Qambar Shahdadkot, Miro Khan and Larkana, and finally rejected.

The perpetrators were identified and are allegedly [REDACTED] and [REDACTED]. In parallel to attempting to report events to the Police, Mr. and Ms. Oad purportedly contacted Mr. [REDACTED], a member of the Provincial Assembly of Sindh and relative of the alleged abductors, to seek his

assistance. Over several meetings Mr. [REDACTED] reportedly said that he would help the parents and told them not to lodge a First Information Report. On 21 April 2015, Mr. [REDACTED] allegedly informed Mr. and Ms. Oad that he could not help them.

On 25 April 2015, a statement from [REDACTED] was reportedly published in the Kawish newspaper in which she declared that she was 22 years old, had converted to Islam, changed her name to [REDACTED] and had married a boy called [REDACTED].

Mr. and Ms. Oad reportedly filed an application under section 491 of the Criminal Procedure Code on 6 May 2015 with the Session Court of Qambar Shahdadkot, Larkana. The case was accepted and the judge purportedly ordered the police to bring [REDACTED] before the court. On 27 May 2015, the lawyer of the defence allegedly submitted to the Court a free will marriage certificate and acceptance of Islam by [REDACTED]. On 2 June 2015, and after several hearings [REDACTED] was present in Court for the first time and purportedly confirmed the abovementioned declarations and called her parents infidels.

The lawyer of the Oad family reportedly argued that [REDACTED] was underage. The judge decided to have her placed in a shelter called Dar-ul-Aman and have her age determined. While she was in the shelter, Mr. and Ms. Oad allegedly had to pay 2500 PKR on three different occasions to be able to see their daughter for five minutes, whilst at the same time the defence purportedly had unlimited access.

In parallel to the court proceedings, [REDACTED], one of the alleged perpetrators, filed an application before the High Court Sindh, Circuit Court, Larkana to challenge the decision of the judge from the Session Court. On 24 June 2015, [REDACTED] reportedly stated before the High Court that she had converted to Islam, was an adult and wished to live with her husband. During the hearing the requested medical certificate was presented and confirmed that [REDACTED] was 15 years old. The High Court judge allegedly invoked Sharia law to consider her as an adult and decided that she should live with her husband, thus dissenting from the decision of the Session Court.

[REDACTED] was reportedly released from the shelter and the application by her parents in front of the Session Court rejected in view of the decision of the High Court. Mr. and Ms. Oad purportedly sought to bring their case to the Supreme Court but abandoned these proceedings following the sudden death of Mr. Oad and the grandfather of [REDACTED].

While we do not wish to prejudice the accuracy of the information received, we would like to take this opportunity to express our grave concerns to your Excellency's Government regarding the aforementioned alleged abduction of a 15 year old Hindu girl and subsequent forced conversion and marriage. During the several weeks between her reported abduction and her first appearance in court, [REDACTED] was vulnerable to several types of abuse, including multiple forms of psychological and physical harm.

Moreover, the recognition of her marriage by a Court despite a medical certificate confirming that she was a minor amounts to an early and forced marriage.

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, as well as their long-term prospects for education or economic and social opportunities. Furthermore, child and forced marriages constitute gender based 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 and can create severe vulnerability to other forms of slavery-like practices, including domestic servitude and sexual slavery.

We are further seriously concerned by the reported refusal by the police to register a First Information Report. The failure to act with due diligence is a serious violation of the right to just and effective remedies. What is more, the reported court proceedings do not seem to have been in compliance with due process given the apparent lack of effort to attest if [REDACTED] had been influenced or coerced in any of her decisions, which further undermines her right to access justice.

The alleged forced conversion is an additional source of serious concern as it violates the fundamental right of the child to freedom of thought, conscience and religion. There have been several joint allegations letters (i.e. PAK 14/2014 and PAK 1/2015) on cases of forcible conversion indicating a grave pattern of such human rights violations.

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 details of any measures taken by the Government to ensure the physical integrity and wellbeing of Ms. [REDACTED] including details on any investigations aiming to determine whether she had been influenced or coerced in any of her decisions to marry and convert.

3. Please provide detailed information about the actions undertaken by your Excellency's Government to ensure the protection of underage girls belonging to religious minority communities, including the Hindu community, from abduction, child

marriage, slavery like practices and forced conversion to Islam, in line with Pakistan's international human rights obligations.

4. Please indicate which measures have been taken to guarantee that victims of abductions, forced marriage slavery like practices and religious conversions as well as their relatives have access to just remedies.

5. Please provide information on any investigation into the refusal of the police to file a First Information Report and on general measures taken to ensure the duty of due diligence in the investigation of crimes by law enforcement forces. If these measures have not been adopted please explain why.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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.

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

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Rita Izsák-Ndiaye
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Maud De Boer-Buquicchio
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Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Annex
Reference to international human rights law

The above-mentioned alleged facts indicate prima facie violations 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 Pakistan on 23 June 2010.

Child and forced marriages undermine a number of rights and principles guaranteed under the Convention on the Rights of the Child (CRC), ratified by Pakistan on 12 November 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, ratified by Pakistan on 5 July 2011.

In addition we would like to remind your Excellency’s Government of its obligations under the Convention on the Elimination of all forms of discrimination against women (CEDAW), which was acceded to by Pakistan on 12 March 1996. In particular: 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 the prejudices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women; article 16, which requires the adoption of all appropriate measures to eliminate discrimination against women in all matters

relating to marriage and family relations including vis à vis the rights and responsibilities as parents.

The CEDAW Committee, in its general recommendation No. 21 (1994) on Equality in marriage and family relations, specified that “the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act” (para. 36).

Furthermore, we would like to emphasize the fact that child marriage can be considered as a form of slavery, taking into consideration the lack of the requirement of free and full consent of both parties to enter into a marriage, as required by international human rights treaties, including article 23 of ICCPR, article 10 of the International Covenant on Economic, Social and Cultural Rights and article 16 of CEDAW. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which was acceded to by Pakistan on 20 March 1958, implicitly prohibits forced early marriage (articles 1 and 2).

The CEDAW Committee in its 2013 Concluding Observations on Pakistan (CEDAW/C/PAK/CO/4) was deeply concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women’s roles, their discrimination and subordination within the family and society. The fact that the minimum age of marriage for girls is 16 has been stressed as a matter of serious concern, as well as the abduction of women and girls belonging to religious minorities for the purpose of forced conversion and forced marriages (para.37). In this regard, a recommendation has been addressed to your Excellency’s Government in order to conduct research on the extent of the phenomenon of abduction of girls for the said purposes and develop a comprehensive strategy to address this phenomenon (para.38 d).

We would like to bring to the attention of your Excellency’s Government 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. 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.

On the issue of forced conversion, articles 18 of the Universal Declaration of Human Rights and ICCPR provides for the right to freedom of thought, conscience and religion. Article 18 (2) of the ICCPR specifically bars coercion that would impair the right to have or adopt a religion or belief or to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Art. 1 (2) of the 1981 Declaration of the General Assembly provides that “[n]o one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”

Moreover, the CRC provides under article 14 that the State shall respect the right of the child to freedom of thought, conscience and religion and shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

We would like to refer to your Excellency's Government to the international standards in relation to the protection of the rights to persons belonging to religious minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities). Article 1 of the Declaration establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end, and article 2 states that persons belonging to religious minorities have the right to profess and practise their own religion without discrimination. Furthermore, States are required to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

We also would like to draw your Excellency's Government attention to the recommendations of the fourth session of the Forum on Minority Issues on "Guaranteeing the rights of minority women and girls" (2011), in particular recommendation number 30, which states that minority women and girls may be particularly vulnerable to other contemporary forms of slavery, including forced and early marriage, and that Governments should put in place systematic measures to identify such practices and take robust action to eradicate violations.