

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

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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 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 26/5, 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 persistence of legislation which directly or indirectly discriminates against women and girls, including provisions allowing for child marriage and polygamy, negatively impacting on the right of girls and women to the enjoyment of the highest attainable standards of physical and mental health, education and their well-being.**

According to the information received:

The 1929 Child Marriage Restraint Act distinguishes between minor and child, by setting two different levels of age in order to define both categories, depending on the sex: while "minor" is a person of either sex who is under 18 years of age, "child" is a person who, if a male, is under 18 years, and if a female, is under 16 years. In that order of ideas, given the definition of "child marriage" as a marriage to which either of the contracting parties is a child, marriage of girls is permitted at 16 years of age (art.2).

Under the 1872 Special Marriage Act, which governs nonreligious marriages, a girl as young as 14 years can get married with the consent of her father or

guardian; while the minimum age set for boys is 18 years old with the mentioned consent. No consent is required if the person, either male or female, has completed the age of 21 years (art.2).

The 1961 Muslim Family Laws Ordinance permits polygamy, by acknowledging the possibility for a man to marry more than one woman through the previous permission of the Arbitration Council (art.6).

While recognizing the efforts to address discrimination against women in Pakistan, including through the adoption of the Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, we would like to take this opportunity to express our concern regarding the aforementioned discriminatory legislation.

In particular, on the basis of the different ages for defining a minor and a child under the Child Marriage Restraint Act, the law permits girls as young as 16 years old, and as young as 14 years old under the Special Marriage Act governing nonreligious marriages, to get married. Marriage below 18 years of age is not legally permitted for boys. Permitting girls' marriage under the age of 18 is a discriminatory practice, rooted in prejudicial, customary or other practices based on stereotyped roles for men and women, and for boys and girls. Child marriage can lead to trafficking and sale of children for the purposes of child marriage, child slavery, including domestic and sexual slavery, forced labour, sexual violence, severe damage to the physical and mental health of young girls, and can prevent their access to or continuation of their education. Child marriage constitutes an obstacle to women's and girls' opportunities as it impacts on their education and employment opportunities. Moreover, there is no effective accountability where marriage is even lower than these permissible ages, as the Child Marriage Restraint Act contains only very lenient punishments for violators of the law: if found guilty, one would receive a sentence of up to just one month in prison, a fine of up to 1,000 rupees (US \$10), or both. Furthermore, the discriminatory setting of a higher minimum age of marriage for boys is additional discrimination on the basis of sex.

Other matters of concern are that, the Penal Code allegedly does not recognize marital rape as a specific crime and that there is no national law on domestic violence.

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

Since 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 legislation.

2. Please provide details of any measures taken by the Government of Pakistan to address forced and child marriages in conformity with its international human rights legal obligations.

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.

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Annex

Reference to international human rights law

Without implying any conclusion to what is illustrated in this letter, we also would like to remind your Excellency's Government of its obligations under the Convention on the Rights of the Child (hereinafter "CRC"), which was ratified by Pakistan on 12 November 1990. In accordance to the Convention, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". Child marriage undermines a number of guiding principles and rights guaranteed under the CRC, including the principle of the best interest of the child (article 3) and the right to be heard (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)) 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 its 2009 Concluding Observations (CRC/C/PAK/CO/3-4), the Committee on the Rights of the Child pointed out its concern about legal inconsistencies concerning the definition of a child and the difference between the minimum legal age for marriage of boys (18 years) and that of girls (16 years). The Committee recommended Pakistan to "ensure the full harmonization of its legislation as regards the definition of a child so as to define a child as every human being below the age of 18 years. It recommends in particular amending the Zina and Hadood Ordinances (1979) [which considers a girl as a child until she reaches 16 years of age or puberty] as well as the Child Marriages Restraint Act (1929) in order to align the age of marriage of boys and girls by raising the minimum age of marriage for girls to 18 years" (paras.26-27). Apart from the existence of early marriages, the Committee highlighted its concern at serious discrimination against women and girls in the State as attested, inter alia, exchanges of girls for debt settlement, domestic violence and economic exploitation (para.28). Further, the Committee requested Pakistan to adopt affirmative action measures to overcome disadvantages faced by girls in obtaining an education, including combatting deep-rooted traditions which prioritize boys over girls (para.29(c)).

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 (hereinafter "CEDAW"), which was acceded to by the State 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 10, which requires the elimination of discrimination against women in the field of education; article 12, which requests the adoption of all appropriate measures to eliminate discrimination against women in the field of health care; 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). By ensuring compliance with the Convention, States Parties are required to establish: equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children (para.39). In paragraph 14 of this General Recommendation, the Committee, by noticing that some States parties, whose Constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law, has emphasized that “polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents”. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.

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. Especially, child and forced marriages, stove burning and acid throwing, marriage to the Quran, polygamy, “karo-kari” and other honour killings have been highlighted. The Committee expressed its concern at the high prevalence of domestic violence and marital rape and at the absence of clear legislation criminalizing such acts (para.21). It recommended the State to ensure the proper implementation of the 2011 Prevention of Anti-Women Practices Act and other relevant legislation, as well as uniformity in the application of the law (para.22 a). The fact that the minimum age of marriage for girls is 16 and that polygamy is permitted under certain circumstances have 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). With this regard, recommendations have 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, as well as take the necessary legislative measures to prohibit polygamy (para.38 d-e). The Committee also stressed the potential link between trafficking in girls and child marriage, urging the State to conduct research in this regard (paras.23-24). Finally, the Committee requested the State to take measures to improve literacy and to reduce dropout rates among women and girls, and to formulate measures to allow for the reintroduction of girls to school and post-secondary education following pregnancy or premature withdrawals (para.28).

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 ICESCR and article 16 of CEDAW. Article 1 of 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, 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)). The Convention implicitly prohibits forced early marriage. Under article 1 (d), States parties are required to abolish any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

We wish to emphasize that the health implications associated with the practice of child marriage are devastating, in terms of, inter alia, sexually transmitted infections, including HIV, complications of pregnancy, obstetric fistula, amongst others. 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 stated that this practice also has a negative impact on the rights to education and work (E/1999/22, para.73).

It is also relevant to recall the domestic legal framework and particularly article 25 (2) of the Pakistani Constitution which states that “There shall be no discrimination on the basis of sex”; article 25 (3) which stipulates that “Nothing in this Article shall prevent the State from making any special provision for the protection of women and children”; article 4 which recognizes the inalienable right of everyone enjoy the protection of law and to be treated in accordance with law; article 35 that, by stating “The state shall protect the marriage, the family, the mother and the child”, offer special protection to them.

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 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.”

Finally, we would like to bring to the attention of your Excellency's Government article 4 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.