

Mandates of 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 Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
OL BGD 8/2016

23 December 2016

Excellency,

We have the honour to address you in our capacities as 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 Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/9, 25/6, 24/3, and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recently tabled **revision bill of the Child Marriage Restraint Act 1929 which contains provisions which would violate the rights of the child, and particularly the rights of the girl child.**

The serious concerns regarding this legislative reform have already been the subject of a communication dated 18 June 2015 (see A/HRC/31/79; case no. BGD 4/2015) to which no substantive reply was given by your Excellency's Government.

According to the information received:

During its December 2016 session, the Cabinet Division of Bangladesh endorsed a revision bill of the Child Marriage Restraint Act 1929. It has reportedly been referred to the relevant Parliamentary Standing Committee which will review it during its session in January 2017.

The revision bill of the Child Marriage Restraint Act 1929 reportedly contains a "Special Clause" which would not consider a child marriage to be an offence "under special circumstances, in the best interest of any underage woman, with a Court Order and with the consent of the father/mother, if a marriage is conducted in keeping with legal processes".

Furthermore, it is alleged that under the revised bill "under-aged women or men", which in the context of marriage means a man under 21 and a woman under 18, could be punished with imprisonment, of not more than 15 days, or be fined, not more than BDT 5,000, if they get married. They may reportedly avoid being

charged if the perpetrators or accomplices, namely parents, guardians or any other person with legal jurisdiction or without jurisdiction, are prosecuted.

According to the information received, under a clause of the revised bill, there is a statute of limitations of two years after the date of the wedding to receive any complaint against a child marriage.

Lastly, it is reported that child marriage is an endemic phenomenon in Bangladesh with more than half of women having been married before the age of 18. This is allegedly due to poverty, the practice of dowries, and multiple cultural factors which lead to compounded forms of discrimination, in particular against girls.

We would like to take this opportunity to express our serious concern to your Excellency's Government regarding the aforementioned clause in the revision bill of the Child Marriage Restraint Act 1929 which could in effect condone and legitimize child and forced marriages in certain cases. Indeed, the "Special Clause" through its lack of definition of special circumstances and its exclusive application to girls or "under-age women" without any requirement for their consent will not prevent child and forced marriages and is likely to facilitate such violations of children's rights. The absence of consent of the "under-aged women or men" will in particular enable forced marriages irrespective of judicial oversight.

Moreover, the wording of another clause raises grave concerns over the possibility of "under-aged women or men" being considered as perpetrators and thus may lead to their criminalization and imprisonment. The detention of children must be used as a measure of last resort under international norms and standards.

Lastly, we are further dismayed by the proposed inclusion of a statute of limitations which would prevent countless victims of child and forced marriages from obtaining redress.

Child and forced marriages are harmful practices which violate many of the fundamental human rights of children, including their right to physical and mental health and well-being, as well as severely undermining their safety and long-term prospects for education and/or economic and social opportunities. Furthermore, child and forced marriages constitute discrimination against women and girls since girls are predominantly affected by the phenomena, which are rooted in prejudicial, customary or other practices based on stereotyped and patriarchal roles for men and women, and for boys and girls. This gender-based discrimination is all the more apparent with the existence in the bill of a different minimum age of marriage for boys and girls, as well as the application of special circumstances to "under-age women" only.

Child and forced marriages violate the right to enter a marriage freely due to the absence of consent. This is illustrated by the lack of a requirement of consent of "under-aged women and men" in the context of the "Special Clause" of the revision bill.

Children have a right to be heard in any judicial and administrative proceedings affecting them.

Linked to the right of the child to be heard is the core principle of the best interests of the child which risks being misused under the “Special Clause”. As indicated by the Committee on the Rights of the Child, the best interests of the child cannot be correctly applied if the requirements of the child’s right to be heard are not met.

Such harmful practices have serious long-lasting effects on the physical and mental health and well-being of the child, and constitute a violation of the right of the child to the enjoyment of the highest attainable standard of physical and mental health.

Lastly, child and forced marriages constitute the infringement of children’s right to physical integrity and human dignity by exposing girls and women in particular to physical, sexual and psychological abuse and violence within the marriage. Child marriage also greatly exposes girls to early pregnancies, which increase health risks such as maternal mortality and obstetric fistula. Moreover, child and forced marriages constitute a slavery-like practice.

In light of the above, we would therefore urge your Excellency's Government to review the revision bill of the Child Marriage Restraint Act 1929, 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 every human being below the age of eighteen as a child.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 revision bill of the Child Marriage Restraint Act 1929.
3. Please provide further information on any measures which have been taken by Your Government to prevent child and forced marriages which discriminate women and girls and have negative impacts on their health and well-being, their protection from violence and their economic and social opportunities.

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.

While awaiting a reply, we would urge your Excellency's Government to forward a copy of the present letter to the Chairperson of the relevant Parliamentary Standing Committee.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable, warranting immediate attention by the public opinion. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Maud de Boer-Buquicchio

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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.

Furthermore, following its review of Bangladesh in 2015 (CRC/C/BGD/CO/5), the Committee on the Rights of the Child urged “the State party to refrain from taking

any legislative measure likely to reduce the age of 18 as the minimum age of marriage, as well as to prosecute violators who authorize the marriage of persons below 18 and those who forge official documents to raise the age of the child.”

In addition, the Committee expressed its deep concern “that although the minimum age for marriage is set at 21 for boys and 18 for girls, child marriage, especially of girls, remains highly prevalent in the State party”, and urged “the State party to ensure that the minimum age of marriage set in the Children Act is applied”.

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 Committee on the Elimination of Discrimination against Women, 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.” It also has recommended the prohibition and annulment of these marriages, which violate the dignity of women, and calls for safeguards and guarantees to protect the rights of women and girls living in such families (para. 14, 16, 36-39).

Moreover, following its review of Bangladesh in 2016 (CEDAW/C/BGD/CO/8), the Committee on the Elimination of Discrimination against Women expressed its concern “about a new proposed amendment to the law on child marriages which includes a clause that allows the marriage of girls at the age of 16 with the consent of the parents or the court, thus legalizing child marriage” and recommended that the State Party “Take immediate measures to end the harmful practices of child marriage by addressing the root causes, raising awareness among parents, teachers, community and religious leaders about the negative effect of child marriage on the health and well-being of a girl child, holding those responsible to account and by retaining the legal minimum age of marriage for girls at 18 years without any exceptions.”

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”.

The Human Rights Committee, in paragraph 23 of its General Comment No. 28 (2000) on The equality of rights between men and women, has also specified that “States are required to treat men and women equally in regard to marriage in accordance with article 23, which has been elaborated further by general comment No. 19 (1990). Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis.”

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.

Following the visit to Bangladesh in 2013 by the Special Rapporteur on violence against women, it was recommended in her report (A/HRC/26/38/Add.2) 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, in its 2015 thematic report to the Human Rights Council (A/HRC/29/40), the Working Group on the issue of discrimination against women in law and in practice, based on international legal standards, called on States for the non-recognition of forms of marriage that discriminate against women and/or fail to ensure equality and justice for women, whatever the legal system, religion, custom or tradition, including early and/or forced marriage (para. 26). It also recommended eliminating in law and in practice all forms of marriage that restrict and/or deny women and girls’ rights, well-being and dignity, including early and/or forced marriages (para.73, c, iii). In its 2016 thematic report to the Human Rights Council (A/HRC/32/44), the Working Group further highlighted that early marriage and adolescent pregnancy have a long-lasting impact on girls’ physical integrity and mental health. Pregnancy and childbirth are together the second leading cause of death among 15- to 19-year-old girls globally, putting them at the highest risk of dying or suffering serious lifelong injuries as a result of pregnancy. For example, up to 65 per cent of women with obstetric fistula, which is a severely disabling condition and often results in social exclusion, develop this condition as adolescents (para.34). Consequently, it recommended States to take effective measures to prevent child marriage and adolescent pregnancies and provide girls with comprehensive education based on scientific evidence on matters of health, including sexuality (para. 105, d, i).

The Committee on Economic, Social and Cultural Rights, 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.

Furthermore, 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).

As far as the detention of children is concerned, the Committee on the Rights of the Child states, in its General Comment No. 10 (2007) on Children's rights in juvenile justice, that the "arrest, detention or imprisonment of a child may be used only as a measure of last resort (art. 37 (b)). It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed."

Regarding the best interests of the child, the Committee provides, in its General comment No. 14 (2013) on the Right of the child to have his or her best interests taken as a primary consideration, that “an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.” Moreover, “the “best interests of the child” is a right, a principle and a rule of procedure based on an assessment of all elements of a child’s or children’s interests in a specific situation.” Lastly, such an assessment requires the participation of the child.