

Mandates of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Independent Expert on the enjoyment of human rights by persons with albinism; 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 extreme poverty and human rights; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on discrimination against women and girls

REFERENCE:
AL KEN 4/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Independent Expert on the enjoyment of human rights by persons with albinism; 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 extreme poverty and human rights; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/22, 37/5, 44/3, 42/16, 44/13, 42/10, 43/20, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **annual child marriage ceremonies, the most recent ones having reportedly taken place in March and September 2020, in Bunisa, Marsabit region of Kenya, where reportedly hundreds of underage couples have been married in traditional ceremonies.**

According to the information received:

Annually, underage girls and boys from pastoral communities are forced to marry in mass child marriage ceremonies taking place twice a year in rural northern Kenya. It is reported that in addition to the customary traditions, social and familial pressure, the practice of child marriage is believed to be influenced by the opportunity of obtaining a better bride price to alleviate existing hardship and poverty in the region. The latter has reportedly been hit by the frequent droughts and the locusts plague resulting in the depletion of water, grazeland, and livestock which are known to be the economic backbone of pastoralist communities in northern Kenya. To cope with the dire economic consequences caused by droughts, families in precarious socioeconomic situation are reportedly increasingly resorting to child marriages in exchange for dowries, which usually include clothes, drums of fresh milk and livestock.

Without prejudging the accuracy of the information made available to us, we note with concern the alleged child marriage ceremonies among the impoverished

communities in the northern Kenya. If proved accurate, these allegations would contravene Kenya's international and regional human rights obligations. Kenya has ratified the UN Convention on the Rights of the Child on 30 July 1990, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 9 March 1984. It has also acceded to the African Charter on the Rights and Welfare of the Child, including Article 21 regarding the prohibition of child marriage, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. All above mentioned instruments set a minimum age of marriage of 18.

According to UNICEF global database,¹ between 2013 and 2019, the percentage of women and men aged 20 to 24 years who were first married or in union before ages 15, amounted to 4%, and the percentage of those married before age 18, to 23% of all registered marriages in Kenya. While these figures demonstrate a significant drop from 34% in 1994 to 23% in 2019, they may not include data on customary marriages due to the lack of data on marriages registered in the rural areas. According to the 2017 baseline study on Female Genital Mutilation and Child Marriage commissioned by UNICEF² among the Rendille, Maasai, Pokot, Samburu and Somali communities in Kenya, approximately 15% of girls aged 20–24 in Balambala, 28% in Kajiado Central, 58% in Habaswein, 44% in Laisamis, 64% in Sook and 22% in Wamba reported being married before reaching the age of 18. By ethnicity, 28% of the surveyed girls of Maasai origin, 38% of Somali origin, 17% of Samburu origin, 64% of Pokot origin and 54% of Rendille origin got married before reaching the age of 18. Approximately 30% of boys aged 20–24 in Balambala, 1% in Kajiado Central, 3% in Laisamis and 38% in Sook got married before reaching the age of 18. By ethnicity, 1% of the surveyed boys aged 20–24 of Maasai origin, 14% of Somali origin, 4% of Rendille origin and 38% of Pokot origin got married before reaching the age of 18.

The 2010 Constitution of Kenya stipulates the right of the child to have his or her best interests taken as a primary consideration (Constitution of Kenya (2010), part 3, para. 53). It further prohibits marriage of persons under the age of eighteen (18) years (CRC/C/KEN/3-5, para. 28). In addition, under the Marriage Act 2014, the Children's Act of 2001, the Sexual Offences Act of 2006 of Kenya, the minimum legal age of marriage is 18 years with no exceptions. The Marriage Act of 2014 also prohibits the marriage of children under 18 and criminalizes this practice. The National Plan of Action for Children in Kenya (2015-2022) acknowledges that child marriage leads to physical, sexual and emotional abuse of children and that public awareness targeting *barazas* (community meetings), families and children is important.

Furthermore, in 2017, Kenya became the 19th country to launch the African Union Campaign to End Child Marriage in Africa. Kenya is one of 20 countries which has committed to ending child marriage by the end of 2020 under the Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern Africa.

¹ <https://data.unicef.org/topic/child-protection/child-marriage/>.

² https://www.unicef.org/kenya/media/856/file/Baseline%20Study%20Report%20on%20Female%20Genital%20Mutilation_Cutting%20and%20Child%20Marriage.pdf

Kenya has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals, however in its subsequent reports, the Government has not yet provided an update on progress towards this target. At the Girl Summit in July 2014, the Government signed a Charter also committing to end child marriage by 2020. Finally, Kenya co-sponsored the 2013, 2014 and 2016 UN General Assembly resolutions on child, early and forced marriage, and the 2013 Human Rights Council resolution on child, early and forced marriage. In 2014, Kenya signed a joint statement at the Human Rights Council calling for a resolution on child marriage. During its 2020 Universal Periodic Review, the delegation of Kenya supported the recommendations to strengthen efforts to eliminate child marriage (A/HRC/33/9, para. 10).

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.

As 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 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. In particular, please provide information on the circumstances of the reported annual child marriage ceremonies, the most recent ones having reportedly taken place in March and September, 2020, the number of children affected and measures taken to prevent these ceremonies in the future.
2. Please provide information on child marriage cases reported, investigated and prosecuted. Please provide information on the availability of accessible, confidential and child-friendly complaint mechanisms, as well as availability of well-equipped child-friendly facilities, emergency shelters and services designed for victims of child marriage. Please provide information on the measures undertaken or foreseen to alleviate the impact of the reoccurring droughts and the ensuing poverty on groups and communities in vulnerable situation in the northern Kenya.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the relevant recommendations by UN human rights mechanisms, referred to in the Annex, to enforce effectively the prohibition of child marriage, and continue undertaking efforts to address the root causes of such practices and implement human rights compliant and culturally appropriate measures to eliminate them and to ensure that victims could file complaints without fear of retribution or stigma and had access to effective remedies and victim support.

4. Please provide further information on appropriate redress mechanisms available to victims of child marriage and of sexual and gender-based violence including rehabilitation, counselling and reintegration, ensuring access of girls to free and universal education, and awareness raising campaigns, with the involvement of men and women, boys and girls, parents, and community and religious leaders, to prevent and eliminate these violations.
5. Please provide information on the measures envisaged or undertaken to train judiciary, law enforcement officials and medical personnel on responding to allegations of sexual and gender based violence, including within marriage and on the strict application of criminal law provisions related to the prohibition of child marriage.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We would therefore like to offer our assistance and expertise and encourage the Government of the Republic of Kenya to accelerate its efforts to strengthen the law enforcement strategies to end child marriages and other harmful practices, including by stepping up its efforts to end poverty and to create livelihood opportunities also for the most marginalized sectors of society.

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

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Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to bring to the attention of your Excellency's Government article 16, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women, which Kenya acceded to on 9 March 1984. The article provides that "the betrothal and the marriage of a child shall have no legal effect." We wish to further refer to the African Charter on the Rights and Welfare of the Child which also prohibits both child marriage and the betrothal of girls and boys and requires that legislative and other measures be taken to protect their rights.³

Furthermore, the Committee on the Rights of the Child has noted that a number of the provisions of the Convention on the Rights of the Child should be considered applicable to the issue of child marriage, including article 24, paragraph 3, which provides that States parties should "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."⁴ The Committee on the Elimination of Discrimination against Women and the Committee against Torture have also identified child marriage as a harmful practice which leads to the infliction of physical, mental or sexual harm or suffering, with both short- and long-term consequences, and negatively impacts on the capacity of victims to realize the full range of their rights.⁵

In this connection, we would like to bring the attention of your Excellency's Government to Article 12 of the International Covenant on Economic, Social and Cultural rights, which Kenya acceded to on 1 May 1972. This article protects the right to the highest attainable standard of physical and mental health. In particular, Article 12.2 (a) outlines the need for States parties to take measures to reduce infant mortality and promote the healthy development of infants and children. This, according to the Committee on Economic, Social and Cultural Rights (General Comment 14), include the adoption of effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage and female genital mutilation, among others.⁶

³ African Charter on the Rights and Welfare of the Child (1999), art. 2.

⁴ See in particular article 2 on non-discrimination, article 3 on the best interests of the child, article 12 on the right of the child to be heard in accordance with her/his age and maturity, article 19 on essential measures to be taken to protect the child from all forms of violence, article 34 on protecting children from all forms of sexual exploitation and sexual abuse, article 35 on measures to prevent the abduction of, sale of or traffic in children and article 36 on protecting the child against all other forms of exploitation which may cause harm to the child.

⁵ See, for example, the concluding observations of the Committee on the Elimination of Discrimination against Women on Montenegro (CEDAW/C/MNE/CO/1), Mauritania (CRC/C/MRT/CO/2), Togo (CRC/C/TGO/CO/3-4), Zambia (CEDAW/C/ZMB/CO/5-6) and the concluding observations of the Committee against Torture on Bulgaria (CAT/C/BGR/CO/4-5).

⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), para. 22.

Furthermore, the Human Rights Committee has indicated that the age for marriage should be such as to enable each spouse to give her/his free and full personal consent under conditions prescribed by law⁷ and that States should ensure that the minimum age complies with international standards and adopt active measures to prevent early marriage of girls.⁸ The Committee against Torture has recognized that child marriage may constitute cruel, inhuman or degrading treatment, particularly where governments have failed to establish a minimum age of marriage that complies with international standards.⁹ Several regional human rights instruments have similarly placed the obligation on States to undertake legislative and other measures to establish a minimum age of marriage of 18 years.¹⁰

In addition, the Committee on the Elimination of Discrimination against Women and other treaty bodies require States to register births and marriages as a means to facilitate monitoring of the age of marriage and to support the effective implementation and enforcement of laws on the minimum age of marriage.¹¹

In 2017, the Committee on the Elimination of Discrimination against Women expressed concern about harmful practices in Kenya, such as child and forced marriage, female genital mutilation, polygamy, bride price and was particularly alarmed by the practice of raping girls, known as “beading”. The Committee recommended that Kenya, inter alia, develop and implement a comprehensive strategy to eliminate harmful practices and stereotypes, take immediate measures to eliminate the harmful practice of child rape (“beading”), and ensure that victims could file complaints without fear of retribution or stigma and had access to effective remedies and victim support (CEDAW/C/KEN/CO/8, paras. 18-19). Similarly, in 2016, the Committee on the Rights of the Child recommended Kenya to enforce effectively the prohibition of child marriage, and other forms of harmful practices and continue undertaking efforts to address the root causes of such practices and implement culturally appropriate measures to eliminate them (CRC/C/KEN/CO/3-5, para. 36(a)).

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), has also recommended in its concluding recommendations that the State Party take measures to ensure that sexual offenders are prosecuted with the full might of the law to ensure the deterrence of other potential offenders and reduce forced child marriage. It has also urged the State Party to take measures to combat the practice of

⁷ Human Rights Committee general comment No. 19 (1990) on protection of the family, the right to marriage and equality of the spouses, para. 4. See also general comment No. 28 (2000) on equality of rights between men and women, para. 23.

⁸ Concluding observations of the Human Rights Council on Uruguay (CCPR/C/URY/CO/5), Kuwait (CCPR/C/KWT/CO/2), Yemen (CCPR/CO/75/YEM), United Republic of Tanzania (CCPR/C/TZA/CO/4/Add.1), Islamic Republic of Iran (CCPR/C/IRN/CO/3).

⁹ See the concluding observations of the Committee against Torture on Bulgaria (CAT/C/BGR/CO/4-5) and on Yemen (CAT/C/YEM/CO/2/Rev.1).

¹⁰ African Charter on the Rights and Welfare of the Child (1999), art. 21 (2); Council of Europe Parliamentary Assembly Resolution 1468 (2005), para. 14.2.1; SADC Protocol on Gender and Development, art. 8 (2) (a).

¹¹ See concluding observations of the Committees against Torture, on the Rights of the Child and on the Elimination of Discrimination against Women, including on Yemen (CAT/C/YEM/CO/2/Rev.1), Afghanistan (CRC/C/AFG/CO/1) and Peru (A/57/38(SUPP)). See also recommendations made in the context of the universal periodic review, and Commission on the Status of Women (CSW) resolution 51/3, para. 1 (b).

forced marriage to perpetrators of sexual violence (See Concluding recommendations by the ACERWC on Kenya's 1st periodic report on the status of implementation of the African Charter on the rights and welfare of the child. November 2009, paras. 18 and 47).

Furthermore, 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 the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and of article 35 of the Convention on the Rights of the Child.¹² The Special Rapporteur has underlined that child marriage may amount to the sale of children for the purpose of forced labour when the marriage agreement includes a transaction in the form of financial payment or in-kind benefits (A/71/261, para. 33). In such transactions, children are treated as commodities and exchanged for goods or money, or to settle debts or disputes. In most instances, this has led children to be sold for the purpose of forced labour under the cover of marriage. In some cases, such practices may amount to contemporary forms of slavery (A/74/179, paras. 12–13).

The Special Rapporteur on contemporary form of slavery has drawn links between child marriage and slavery, pointing out that States are obliged to prohibit and eliminate slavery as a non-derogable and fundamental principle of international law.¹³ Furthermore, as indicated by the Special Rapporteur on contemporary forms of slavery in report A/74/179, the presumed inability of a child to consent to a marriage creates a forced marriage in all cases. Child marriage exists where at least one of the parties is below the age of majority¹⁴ and article 16 (2) of the Convention on the Elimination of All Forms of Discrimination against Women declares marriage and betrothal of children void, although it does not obligate States to punish the practice. The Committee on the Elimination of Discrimination against Women and the Committee against Torture have noted that child marriage inhibits the realization of the full range of victims' rights, and leads to physical, mental, and/or sexual harm or suffering with immediate and long-term repercussions.¹⁵ The Committee on the Rights of the Child has further identified several provisions of the Convention on the Rights of the Child as applicable to child marriage, including article 24 (3) concerning traditional practices prejudicial to the health of children.

The Special Rapporteur on contemporary forms of slavery has further identified the close relationship between child marriage, exploitation and slavery,

¹² Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/66/228), p. 8. See also the Supplementary Convention on the Abolition of Slavery, art. 1 (c) (i)-(iii) and (d). This was also highlighted by the Pan-African Forum against the Sexual Exploitation of Children: see UNICEF, *Early Marriage – A harmful traditional practice: A statistical exploration* (New York, 2005).

¹³ See thematic report on servile marriage (A/HRC/21/41); see also the report on the mission to Madagascar of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (A/HRC/24/43/Add.2), especially para. 125 and the thematic report on challenges and lessons in combating contemporary forms of slavery (A/HRC/24/43).

¹⁴ Convention on the Rights of the Child, article 1: a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

¹⁵ See [A/HRC/26/22](#), para. 10.

noting that domestic servitude is inherent in child marriage while sexual slavery often results from servile marriage.¹⁶ These connections do not necessarily make all child marriages slavery. Like other practices, child marriage becomes slavery where control tantamount to possession exists, while other forms of exploitation might exist at a lower threshold (A/74/179 para 12).

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has explained that child marriage and forced marriage can inflict lasting harm, including severe psychological, emotional and physical suffering, marital rape and other forms of sexual abuse, servitude and life-threatening early pregnancies or unwanted pregnancies. These consequences being predictable given the children's young age, the resulting infliction of suffering must be regarded as intentional and is generally rooted in profoundly discriminatory views of women and girls. The Special Rapporteur on Torture is, therefore, of the view that both the marriage of children (A/HRC/31/57, paras. 63–64; and CAT/C/YEM/CO/2, para. 31) and forced marriage (e.g. CAT/C/SEN/CO/3, para. 14; and A/HRC/31/57, paras. 58 and 63–64) amount to cruel, inhuman or degrading treatment and, where it involves the intentional and purposeful or discriminatory infliction of severe pain or suffering on a powerless person, to torture (A/74/148).

The Special Rapporteur on violence against women, its causes and consequences, has noted that in line with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, comprehensive awareness-raising campaigns to challenge cultural attitudes legitimizing early marriage and mechanisms to register all marriages, especially in rural and remote should be developed (A/HRC/41/42. Add. 2, para. 79 (a)).

The Working Group on discrimination against women and girls recommended states to eliminate 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 marriage. In its 2015 thematic report to the Human Rights Council (A/HRC/29/40), the Working Group 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

¹⁶ See, [A/HRC/21/41](#).

adolescent pregnancies and provide girls with comprehensive education based on scientific evidence on matters of health, including sexuality (para. 105, d, i).