



Human Rights Committee
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Human Rights Committee Secretariat
United Nations OHCHR
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New York, NY 10017
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Re: Yemen - 104th session of the Committee (12-30 March 2012)

1 February 2012

Dear Distinguished Committee members:

We respectfully submit this letter in advance of the Human Rights Committee's (the Committee) review of Yemen at its 104th session from 12-30 March 2012. Equality Now, and the Yemen-based Yemeni Women Union, and the Arab Human Rights Foundation, non-governmental human rights organizations working to uphold the rights of women and girls, are writing to express our ongoing concern¹ about the discrimination and inequality faced by Yemeni women and girls. This letter will focus on continued violations against girls and women in Yemen, in particular the still legal practice of child marriage and discriminatory Personal Status laws relating to male guardianship, marriage, divorce, custody and alimony, in violation of Articles 2(1) (non-discrimination), 3 (equality between men and women), 8 (slavery), 23(3) (free and full consent to marriage), 24 (protection of minors) and 26 (equal protection under the law) of the International Covenant on Civil and Political Rights (the ICCPR).

Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of more than 35,000 individuals and organizations in 160 countries. Yemeni Women Union is an independent nonprofit organization with ECOSOC status working to empower and support female victims of violence by providing social, legal counseling and protection services. Arab Human Rights Foundation is a non-governmental organization that works on disability rights and children's rights.

Child Marriage legal and condoned

Yemen has no law requiring a minimum age of marriage,² resulting in numerous cases of girls forced into early and forced marriages. Such marriages have been widely documented to cause severe physical and psychological harms, including greater vulnerability to domestic violence and abuse, lesser likelihood to be able to complete even basic education, complications during pregnancy and at delivery, including higher prevalence of obstetric fistulas and maternal mortality.³ Child marriage, as concluded by an extensive UNICEF-commissioned study on child marriage laws, "often means for the girl a life of certain sexual and economic servitude" and constitutes both a cause and consequence of the "subordination of women" and girls.⁴

Equality Now, together with local civil society organizations around the world and in Yemen, including the Yemeni Women Union and the Arab Human Rights Foundation, have been working to end child marriage. Equality Now issued two Actions in 2010 calling on the Yemeni government to fulfill its obligations under international law and pass a law prohibiting child marriages and ensuring violators are prosecuted and punished. (Please see attached Actions.⁵)

We would like to draw the Committee's attention to the case of Wafa, an 11-year-old child bride from Amran governorate who was married off to a 40-year-old farmer in November 2009. Equality Now and Yemeni Women Union met with her in October and November 2010, while also meeting with government agencies and parliamentarians to discuss the passage of a minimum age of marriage law. Wafa told us she wanted to divorce her abusive husband, whom she said raped, beat and strangled her. Wishing to escape the abuse and continue her education, Wafa ran away from her husband's house after about eight months of marriage. With the aid of Equality Now's Adolescent Girls Legal Defense Fund and Yemeni Women Union, a court in Hija province agreed to grant her a divorce in 2011 on the condition that she pay back her dower (money paid to a woman in consideration of marriage)⁶.

The absence of a child marriage law in Yemen meant that Wafa was subjected to the divorce requirements for adults. She had to rely on a *khula*⁷ divorce, where a woman can only seek a unilateral divorce if she pays back her dower.⁸ Before he passed away, Wafa's father had spent her dower, rather than keeping it for her. Wafa's extended family was unable to pay it back – her mother's only source of income was from begging and there were eight children to support. Wafa sought to appeal this unreasonable condition attached to her divorce. Acting under duress and threats from Wafa's husband, a relative was forced to borrow money to pay back Wafa's dower. In early January 2012, Wafa ran away from home because the same relative tried to sexually abuse her and was pressuring her to marry him. He also forced her to drop out of school and to instead beg on the streets. Wafa has found temporary shelter in the Yemeni Women Union's shelter, and Equality Now is working to enable her to resume her education. It remains, however, that the judgment in Wafa's case reinforces the fact that girls remain chattels to be bought and sold in marriage and fails to clearly condemn early and forced marriages as human rights violations.

Equality Now has also been following the case of another child bride who was featured in the international media and whom Yemeni Women Union has been trying to assist. This child bride managed to obtain a divorce and was lauded in the international press as a heroine for her courage. However, she is facing tremendous hardships including being exploited in prostitution by her own relatives. Her situation likewise results from the failure of the Yemeni government to provide proper redress for victims of child marriage.

Women's and children's rights organizations in Yemen have been working tirelessly to get a law banning child marriages, yet their efforts have yet to bear fruit. The conservative elements in the government have consistently blocked any efforts to introduce a minimum age of marriage law. A draft bill was submitted in 2009, as noted in the State party report (CCPR/C/YEM/5, paras. 290-91), with the backing of Yemeni women and children's rights organizations that fixed the minimum age of marriage for girls at age 17 (Id. at para. 7) and included penalties and punishment for violators. However, following a debate by the Parliamentary Sharia Committee, in October 2010 it issued 15 pages of recommendations against a minimum age of marriage, arguing in part that early child bearing prevents breast cancer.⁹ (Please see attached, available only in Arabic.) The draft bill is still pending but further discussion has been postponed as the Legislative Council has not convened.

We are encouraged to see that the Committee has included the issue of guardians allowed to marry off girls under 15 years of age in its questions to Yemen (CCPR/C/YEM/Q/5, para. 18) as Yemen's periodic report mentions the draft legislation described above but does not give any further details on how or when the legislation will be adopted (CCPR/C/YEM/5, para 7(c), 290-291).

In its last review of Yemen in 2005, this Committee noted with concern “that the Personal Status Act allows children aged 15 to marry, and that early marriage of girls, sometimes below the age fixed by the law, persists. It is also concerned about marriages of under-age children contracted by their guardians. This practice jeopardizes the effectiveness of the consent given by spouses, their right to education and, in the case of girls, their right to health (arts. 3, 23 and 24).” (CCPR/CO/84/YEM, para. 21). The ESCR Committee, in its June 2011 concluding observations on Yemen, called on Yemen to take “urgent steps ... with a view to ... (b) prohibiting forced marriages.” (E/C.12/YEM/CO/2, para. 18).

The absence of a law banning child marriage means that a girl is never safe from being viewed as a commodity and a sexual object, including in her own family. With no law banning child marriage and no remedy for child brides to get out of their marriages without the pay-back of their dower (over which they lack effective control), girls like Wafa remain at constant risk of exploitation. We hope the Committee will raise the urgent need for a law against child marriage as well as measures to protect child brides from continuing exploitation and abuse.

Sex-discriminatory marital and wife obedience laws persist

Yemen’s laws continue to explicitly discriminate against girls and women, particularly in regards to rights within marriage and perpetual male guardianship. For example, Article 40 of Yemen’s Personal Status Act¹⁰ grants a husband the right to be “obeyed” by his wife, including eliminating the wife’s ability to refuse intercourse and to leave the conjugal home, including for employment, absent spousal permission.

Article 40 of the Personal Status law, condones marital rape by making the wife’s consent to sexual relations irrelevant. The ESCR Committee has recently called on Yemen to “immediately promulgate the Domestic Violence Act No. 6 of 2008 and thereby criminalize domestic violence and marital rape.” (E/C.12/YEM/CO/2, para.17). We note this Committee’s request for Yemen to clarify its plans to “revisit its criminal definition of rape” to add marital rape, (CCPR/C/YEM/Q/5, para. 28) which will require the repeal or amendment of Article 40.

The Committee in its list of issues to the government of Yemen requested additional information on “the measures taken to amend the Personal Status Law of 1992 which allows polygamy, prohibits the marriage of women without guardianship, and does not require the consent of the woman in order for her guardian to conclude her marriage” (CCPR/C/YEM/Q/5, para.8). We hope this Committee will further emphasize that male guardianship over wives is a form of discrimination against women and girls and a violation of the ICCPR.¹¹

Suggested Questions to the State Party

We would respectfully urge the Committee to raise with the Yemeni government during its review the following questions with regard to issues raised in this letter:

- 1) What are the government’s plans to enact the draft bill setting a minimum age of marriage for girls and to then enforce the law to protect girls such as Wafa?
- 2) What are the government’s plans to introduce measures to ensure that child brides who wish to end their marriages must not be forced to pay back their dower (to which they lack access to in the first place) as required in a *khula* divorce?
- 3) What measures has the government explored to safeguard the rights of child brides who end their marriages and to provide them access to education and security?
- 4) What are the government’s plans to promulgate the Domestic Violence Act No. 6 of 2008 and to criminalize domestic violence and marital rape?

- 5) What are the government's plans to repeal or amend all sex discriminatory laws, for example, Article 40 of the Personal Status Act?

Proposed Recommendations

We also urge the Committee to consider the following recommendations to the Yemeni government:

- 1) Similar to the Committee on Economic, Social and Cultural Rights, recommend that Yemen: “(a) adopt and implement the Law on the minimum age of marriage and set it at 18 years of age in accordance with recommendations by relevant international bodies; (b) ensure access to effective remedies and other forms of necessary protection to victims of child marriages; and (c) undertake to raise awareness of the negative effects of child marriages.” (E/C.12/YEM/CO/2, para 19).
- 2) Ensure that child brides seeking to end their marriages do not have to repay their dower (to which they have no access).
- 3) Take measures to protect and promote the rights of girls who have ended or escaped child marriages, including to security and education.
- 4) Enact the Domestic Violence Act No. 6 of 2008, which criminalizes domestic violence and marital rape, and take effective steps to implement and enforce it.
- 5) Repeal or amend all sex-discriminatory laws, such as Article 40 of the Personal Status Act.

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information. We look forward to discussing this submission further with the Committee at its 104th session, in New York.

Sincerely,



Yasmeeen Hassan
Global Director
Equality Now



on behalf of Ramzia Abbas Aleryani
Chairwoman
Yemeni Women Union

/S/ Rajaa Almasabi

Rajaa Almasabi
Chairwoman
Arab Human Rights Foundation

Enclosures

¹ Equality Now highlighted these concerns in a report to the Committee on Economic, Social and Cultural Rights in advance of its review of Yemen's second periodic report in March 2011, available at http://www2.ohchr.org/english/bodies/cescr/docs/ngos/Equality_Now_Yemen_CESCR46.pdf

² To minimize the harms and discrimination flowing from child or early marriages, the CEDAW Committee states in General Recommendation No. 21- Equality in marriage and family relations that “the Committee considers that the minimum age for marriage should be 18 years for both man and woman.” (contained in A/49/38, para. 36)

³ International Planned Parenthood Federation and UNFPA, *Ending Child Marriage: A Guide for Global Policy*, pp. 11-15, available at http://www.unfpa.org/upload/lib_pub_file/662_filename_endchildmarriage.pdf (last accessed Jan. 30, 2012).

⁴ United Nations Children's Fund (UNICEF), *Child Marriage and the Law: Legislative Reform Initiative Paper Series*, p. 1 (2008) available at [http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law\(1\).pdf](http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law(1).pdf).

⁵ available at <http://www.equalitynow.org/node/436/> and <http://www.equalitynow.org/node/297>

⁶ See *Personal status law (20) of 1992*, Chapter 2, Art. 72 Ministry of Legal Affairs edition, December 4, 2006.

⁷ For an explanation of *khula* divorce as practiced in Yemen, see Freedom House, *Women's Rights in the Middle East and North Africa 2010 - Yemen*, (March 3, 2010), available at www.unhcr.org/refworld/docid/4b99011b1a.html (last accessed Jan. 26, 2012). A woman “may seek out a *khula* divorce, in which she ends the marriage in exchange for her financial rights. A husband's consent is necessary for *khula* to take effect. Nevertheless, this alternative is often used by women of greater economic means, who can afford its financial sacrifice. *Khula* is not a viable option for women who are entirely financially dependent on their husbands, namely the majority of Yemeni women.” *Id.*

⁸ If a woman can prove abuse or neglect, then generally a woman does not have to pay back her dower. *Id.* However, regardless, of whether she would have been able to prove abuse or neglect, as a child, Wafa should have been granted a divorce without having to pay back the dower.

⁹ Supplementary report of the Sharia Codification Committee on Article 15 of Law No. 20 of 1992, October 4, 2010 (available in Arabic only).

¹⁰ See Equality Now's report, *Words and Deeds – Holding Governments Accountable in the Beijing +15 Review Process* (February 2010) highlighting a sample of discriminatory laws from around the world, available at www.equalitynow.org/node/370.

¹¹ The ESCR Committee's 2011 review of Yemen urged the government “to abolish the requirement for the permission of a male relative for a woman's employment in the public sector” and to take “urgent steps ... with a view to ... (c) guaranteeing the right of women to enter into marriage without the consent of a guardian; (d) ensuring equal rights of women in divorce proceedings....” E/C.12/YEM/CO/2, paras. 10, 18.