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OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Report of the Special Rapporteur on the human rights aspects of the
victims of trafficking in persons, especially women and children,
Sigma Huda**

Summary

This report is submitted in accordance with Human Rights Council decision 1/102. It covers the period January-December 2006.

Section I of the report outlines the Special Rapporteur's activities, including participation at different conferences, the issuing of press releases and the sending of individual complaints to Governments on cases of trafficking in persons, especially women and children, during the reporting period.

Section II is devoted to a thematic study on forced marriages in the context of trafficking in persons. In this section, the Special Rapporteur defines what amounts to a forced marriage and lists different forms of existing forced marriages as reported to her in the different replies to a questionnaire on forced marriages that the Special Rapporteur sent to Governments, international organizations and non-governmental organizations.

The Special Rapporteur examines forced marriage as an act or an element of trafficking in persons, in accordance with article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and describes some of the consequences.

The Special Rapporteur further addresses the element of demand as a means to effectively combat trafficking in persons generally and, with reference to certain situations concerning marriage-brokering agencies, in the context of forced marriages specifically. Finally, section III contains the Special Rapporteur's conclusions and recommendations to States and non-State actors on ways to prevent trafficking in persons through or for the purpose of forced marriages, discourage the demand for such marriages, protect and assist the victims concerned, and establish legal and prosecutorial measures to combat forced marriages in the context of trafficking in persons, especially women and children.

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I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Country visits

1. This report is submitted in accordance with Commission on Human Rights Council decision 1/102. During the reporting period (January-December 2006) the Special Rapporteur visited Bahrain, Oman and Qatar from 29 October to 12 November 2006 at the invitation of the respective Governments. The report on these missions is contained in addendum 2.
2. Concerned by reports of trafficking in persons, especially of migrant workers for forced labour, the Special Rapporteur reiterates her interest in carrying out visits to Kuwait, Saudi Arabia and the United Arab Emirates. Moreover, on the basis of information concerning trafficking in persons particularly for purposes of forced labour and sexual exploitation, the Special Rapporteur sent a second request to the Government of Nigeria for an invitation to visit in 2007. A request to the Government of Belarus for an invitation to visit in 2007 was also sent. The Special Rapporteur is currently in discussions with the Government of Thailand to carry out a visit, tentatively in September 2007, jointly with the Special Rapporteur on the sale of children, child pornography and child prostitution. In addition, she reiterates her interest in visiting Japan.

B. Participation in meetings, conferences and training courses

3. On 25 March 2006, the Special Rapporteur visited Bologna, Italy, at the invitation of Johns Hopkins University to attend and participate in the conference, "From the United Nations to the Council of Europe Convention against Trafficking in Human Beings: Recent Developments and New Challenges". She then travelled to London where she held meetings with representatives of non-governmental organizations (NGOs) and other stakeholders to discuss issues related to the implementation of her mandate. On 11 April 2006, she addressed the Westminster International Relations Forum at the University of Westminster. In May 2006, the Special Rapporteur attended a conference in London on "Micro-credit and Women's Empowerment" organized by the Centre for Study on Democracy at the University of Westminster, where she shared her views on the root causes of human trafficking and practical ways to combat this phenomenon.
4. On 9 June 2006, the Special Rapporteur attended a conference in Stockholm on "Regional Cooperation to Combat Trafficking in Human Beings" organized by the Swedish Ministry of Foreign Affairs. From 19 to 24 June 2006, the Special Rapporteur took part in the thirteenth meeting of special procedures mandate holders of the Human Rights Council in Geneva. On 23 June 2006, she attended a meeting organized by the World Organization against Torture (OMCT) on "Poverty, Inequality and Violence: Is There a Human Rights Response?" and shared her observations and comments on the conclusions and recommendations of the OMCT international conference held in October 2005.
5. From 12 to 15 August 2006, she visited Kathmandu at the invitation of the Office of the National Rapporteur on Trafficking at the National Human Rights Commission. In Nepal, she held numerous consultations with various public officials, NGOs and the media on issues concerning trafficking in persons, violence against women and gender-based violence, as well as on methodologies for documentation of and reporting on national data on trafficking in persons. At the invitation of the Coalition against Trafficking in Women (CATW)-Asia Pacific, the

Special Rapporteur visited Chiang Mai, Thailand, from 27 to 29 August 2006, where she attended the CATW regional conference on “Addressing the Demand Side of Trafficking: Challenging States, Social Movements and the Media”. During this conference, Ms. Huda gave a presentation on the challenges and responses to the regional situation of human trafficking in the Asian-Pacific region. From 4 to 6 September 2006, the Special Rapporteur visited Seoul to attend an international conference on the “Linkages between Prostitution and Trafficking”, at the invitation of the Center for Women’s Human Rights. The Special Rapporteur gave a keynote presentation on “Unveiling the demand face of human trafficking: a critical overview of the United Nations definition and the role of States in addressing this issue”.

6. On 7 September 2006, the Special Rapporteur was in New York where she visited the Girls Education and Mentoring Society, an NGO working with survivors of prostitution. She also visited Sanctuary for Families, a legal aid, mentoring and counselling agency, where she met with survivors of domestic violence and victims of forced marriage. On 11 September 2006, the Special Rapporteur discussed her role and mandate during a meeting in Washington, DC with Congressman Chris Smith. She also met with the Secretary-General and other officers of the Organization of American States. She met with Dr. Lagon of the United States Department of State and other officers of the Office to Monitor and Combat Trafficking in Persons. The Special Rapporteur ended her visit in Washington, DC with a press statement in which she highlighted the steps taken to combat trafficking and the gaps that still exist. On 13 September 2006, the Special Rapporteur gave a presentation at the University of Iowa, United States of America, on the scope of her mandate. She then held meetings with activists and lawyers and visited shelters for rescued women and girls. On 16 September 2006, the Special Rapporteur addressed a rule of law seminar organized by the American Bar Association and the International Bar Association on women and child trafficking.

7. From 18 September to 6 October 2006, the Special Rapporteur visited Geneva to present her thematic report on the relationship between trafficking and the demand for commercial sexual exploitation (E/CN.4/2006/62) to the Human Rights Council as well as her reports on the missions to Lebanon (E/CN.4/2006/62/Add.3) and Bosnia and Herzegovina (E/CN.4/2006/62/Add.2). In her statement to the Council, she reiterated that the issue of demand is of crucial importance in addressing trafficking in persons, especially women and children, from a human rights perspective. She held several meetings with government delegations, NGOs and intergovernmental organizations. From 25 to 27 October 2006, the Special Rapporteur visited Minsk to attend a conference organized by the International Organization for Migration (IOM), the Belarus Ministry of International Affairs, the United Nations Children’s Fund (UNICEF) and the Organization for Security and Cooperation in Europe (OSCE) on “Cooperation between Source and Destination Countries in Combating Trafficking in Human Beings”. She made an opening statement on “International standard-setting and law enforcement in combating trafficking in persons: cooperation between source and destination countries”. While in Minsk, the Special Rapporteur met with government officials to discuss her possible official visit to Belarus in 2007 and also held discussions with NGOs on her mandate. In addition, she met with members of a delegation from Qatar and discussed with them the situation of human trafficking in Qatar prior to her visit there the following week.

8. On 22 November 2006, the Special Rapporteur attended an international conference organized by the City Council of Madrid on “Human Rights and Prostitution”, where she delivered an opening speech highlighting the main observations and conclusions of her report to the Human Rights Council. She also underscored that prostitution is a profitable form of trafficking and emphasized the need to develop prevention, protection and prosecution mechanisms. She also spoke at the Madrid City Hall on 24 November to mark the International Day for the Elimination of Violence against Women, and then proceeded to Norway. In Oslo, the Special Rapporteur attended a conference on trafficking of and violence against women organized by FOKUS - Forum for Women and Development, where she gave a presentation on her role and responsibilities as Special Rapporteur. She also met with public officials of the Ministry of Foreign Affairs and representatives of NGOs. The Special Rapporteur attended the Inter-parliamentary Conference on Human Rights and Religious Freedom in Rome from 27 to 29 November 2006 organized by the Institute of Religion and Public Policy, where she gave a presentation emphasizing the importance of such dialogues in better understanding religion in the perspective of human rights and participated as a panellist.

C. Communications to Governments and other actors

9. Since the presentation of her last report on communications (E/CN.4/2006/62/Add.1) the Special Rapporteur has sent 29 communications to Governments and, at the time this report was finalized, had received 13 replies. The report on communications sent during the period under review is in addendum 1.

10. The Special Rapporteur also sent a letter to the Secretariat of the South Asian Association for Regional Cooperation (SAARC) in connection with a ministerial meeting that was held on 11 May 2006 in Dhaka to discuss issues of trafficking. The Special Rapporteur recalled that any action aimed at combating trafficking in persons should be based on human rights principles and requested that the SAARC Secretariat share with member States the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1).

D. Press statements and publications

11. On the occasion of the International Day for the Elimination of Violence against Women, on 25 November 2006 the Special Rapporteur issued a public statement which highlighted various forms of violence against women, including trafficking in human beings, and expressed particular concern about online pornography. She called upon concerned citizens, organizations, Governments and international bodies to work effectively towards combating the crime of violence against women, especially in the context of human trafficking.

12. On Human Rights Day, 10 December 2006, all special procedures mandate holders, including the Special Rapporteur, issued a joint press release on poverty and human rights stressing their deep concern that millions of people are still systematically deprived of fundamental human rights simply because they are poor.

II. FORCED MARRIAGE IN THE CONTEXT OF TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

13. The Special Rapporteur chose for her annual thematic report to gather information on forced marriage in the context of trafficking in persons. To this end she sent a questionnaire to all Member States, regional bodies and intergovernmental and non-governmental organizations working on issues related to forced marriage and trafficking in persons. The Special Rapporteur wishes to express her sincere and heartfelt thanks to all those who have provided information for this report.

14. The following Governments responded to the questionnaire: Algeria, Argentina, Austria, Bulgaria, Cambodia, Canada, Croatia, Estonia, Finland, Germany, Ghana, Guatemala, Guinea, Israel, Jamaica, Lebanon, Lichtenstein, Lithuania, Mauritius, Mexico, Philippines, Sweden, The former Yugoslav Republic of Macedonia, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela. The UNICEF offices in Belarus, Nigeria, Switzerland, the United Republic of Tanzania and Uruguay, the United Nations Office on Drugs and Crime (UNODC) and the OSCE Missions to Bosnia and Herzegovina and to Moldova also responded to the questionnaire. Other replies were also received from the IOM field offices in Afghanistan, Belarus, Colombia, Egypt, Germany, Guatemala, Guinea-Bissau, Hungary, Italy, Moldova, Norway, Viet Nam and Zambia as well as the IOM Regional Mission for Central and South-Eastern Europe.¹

15. The following national and international NGOs also replied to the questionnaire: Action for Children Campaign/Institute for Modern Rights Studies (United Kingdom); Afghan Independent Human Rights Commission (Afghanistan); Association guinéenne de femmes enseignantes de l'élémentaire (AGFE) (Guinea); Ashiana Network (United Kingdom); ASTRA-Anti-Trafficking Action (Serbia); Bangladesh National Women Lawyers Association (Bangladesh); Christian Children's Fund (Afghanistan); The CRADLE - Children's Foundation (Kenya); Deutsche Staatborgerinnen Verband (Germany); European Roma Rights Centre, Human Rights Information and Documentation Centre (Georgia); Institute of the Indigenous Peoples of the North (Russian Federation); Istituto Suore Buon Pastore (Italy); Lilith Project, Eaves Housing for Women (United Kingdom); Maasai Aid Association (Kenya); Minority and Indigenous Rights Advocacy of Nigeria (Nigeria); Mouvement français pour le planning familial (France); Nomadic Integrated Development Research Agency (NIDRA) (Kenya); SOITM Foundation (Iraq); Solwodi (Germany); Sisters of the Good Shepherd (Ethiopia); Suzanne Mubarak Women's International Peace Movement (Egypt); Women in Need Development Consortium (WINIDECO) (Kenya); World Vision International; and Yayasan Mitra kesehatan dan Kemanusiaan (The Health and Humanity Foundation) (Indonesia). Finally, the Special Rapporteur also conducted personal interviews with victims of forced marriage from several countries including Bangladesh, Côte d'Ivoire, Pakistan, the Russian Federation, and Sri Lanka.²

¹ Replies from Bulgaria, Thailand, Sweden, Tunisia and the United States of America were received too late to be able to be analysed for the purposes of this report.

² For example, during a visit on 9 September 2006 to Sanctuary for Families, an NGO based in New York City, that primarily serves immigrant victims of domestic violence.

A. Introduction

16. Forced marriages take place in many social, political, cultural, economic and legal contexts around the world. In this report, the Special Rapporteur aims to identify when such forced marriages exist and when they have been carried out in the context of trafficking in persons, especially women and children. The Special Rapporteur also examines the possible causes and consequences of forced marriage in the context of human trafficking and addresses the demand for forced marriage. Finally, she offers recommendations to States and non-State actors on ways to prevent trafficking in persons through or for the purpose of forced marriages, discourage the demand for such marriages, protect and assist the victims, and establish legal and prosecutorial measures to combat forced marriages in the context of trafficking in persons, especially women and children.

B. Definition of trafficking in persons, especially women and children

17. In 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) set out minimum international standards for the prevention and combat of trafficking in persons for different forms of exploitation. According to article 3:

“(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

“(b) The consent of a victim of trafficking in persons to the intended exploitation ... shall be irrelevant where any of the means set forth in paragraph (a) have been used;

“(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in paragraph (a);

“(d) ‘Child’ shall mean any person under 18 years of age.”

18. UNODC stated in its response to the questionnaire that a case of forced marriage is a case of trafficking in persons when the elements of the crime of trafficking - act, means, and purpose of exploitation - as described in article 3 of the Palermo Protocol are present.

C. Nature and forms of forced marriage

19. Before considering these elements, it is necessary to define what amounts to a forced marriage. The 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Convention on Consent to Marriage) provides that “[n]o marriage

shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law” (art. 1 (1)). Moreover, the 1995 Beijing Platform for Action urges Governments to “[e]nact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses” (para. 274 (e)). Emphasis is on the full and free consent of the parties to the marriage, as also reflected in, inter alia, article 23 of the International Covenant on Civil and Political Rights and article 16 (2) of the Universal Declaration of Human Rights.

20. Moreover, national legislation on marriages also focuses on the equal rights of men and women to marry and to do so legally and of their own free will. Absence of such full and free consent will, in many jurisdictions, constitute a ground to have the marriage declared null and void. In addition, in many jurisdictions, including Afghanistan, Austria, Ghana, Norway and Serbia, forced marriage is considered by the respective criminal codes as a crime in its own right. In other countries, including Algeria, Belarus, Canada, Colombia, Estonia, Finland, Germany, Guatemala, Israel, Italy, Lithuania, Mauritius, Moldova and the United Kingdom, despite not having a specific provision criminalizing a forced marriage, an act of forced marriage may be subject to criminal proceedings under other related crimes including trafficking in human beings, sexual exploitation, abduction, prostitution and rape.

21. Article 16 (2) of the Convention on the Elimination of All Forms of Discrimination against Women sets out parameters for national prohibitions of child marriage by recognizing that a marriage of a child should not be permitted nor have legal effect. The Convention on the Rights of the Child contains several articles that are pertinent to the marriage of a child. According to article 3, States parties have a positive obligation to ensure that the best interests of a child are always a primary consideration - beyond the mere protection against discrimination of the girl child. Since children are, by definition, incapable of consent or of exercising the right of refusal, child marriage is forced marriage, and as such violates fundamental human rights standards and must therefore be strictly prohibited.

22. The practice of child marriage of girls is, according to many observers, the socially legitimized institutionalization of sexual abuse and marital rape, sometimes of very young girls,³ which has serious physical, psychological and health consequences for the girls involved. These marriages result in a high incidence of sexually transmitted diseases, including HIV/AIDS, disabilities such as fistulas, and death as a result of premature childbirth.

23. The 1990 African Charter on the Rights and Welfare of the Child requires States parties to prohibit child marriage and to adopt legislation “to specify the minimum age of marriage to be 18 years” (art. 21 (2)).

³ Mariam Ouattara, Purna Sen and Marilyn Thomson, “Forced marriage, forced sex: the perils of childhood for girls”, *Gender and Development*, vol. 6, No. 3, 1 November 1998, pp. 27-33.

24. In his 2006 in-depth study on all forms of violence against women, the Secretary-General stated that “[a] forced marriage is one that lacks the free and valid consent of at least one of the parties. In its most extreme form, forced marriage can involve threatening behaviour, abduction, imprisonment, physical violence, rape, and, in some cases, murder” (A/61/122/Add.1, para. 122).

25. The Governments of, for example, Austria, Canada, Germany, Norway and the United Kingdom distinguish arranged marriages from forced marriages in that in an arranged marriage the parents/families take a leading role in arranging the marriage, but the decision whether to consent to the arrangement remains with the individuals getting married. The distinction is said to rest in the right to choose a partner, the ability to say no, and the supposition that the marriage is not entered into under duress. In addition, several Governments, including the United Kingdom, describe arranged marriage as a tradition existing within many communities and many countries for a long time.⁴

26. The Special Rapporteur is concerned that in some cases the difference between an arranged and a forced marriage is tenuous. Arranged marriages have been defined as “a form of social construction that informs the girl from a young age of her expected familial duties and her understanding of what constitutes bringing ‘shame’ upon the family. If a young woman is bodily kidnapped the force is obvious but when a marriage is ‘arranged’ by her relatives’ trickery and stealth, she does not realize, often until it is too late, that an arranged and forced marriage amounts to much the same thing”.⁵ A marriage imposed on a woman not by explicit force, but by subjecting her to relentless pressure and/or manipulation, often by telling her that her refusal of a suitor will harm her family’s standing in the community, can also be understood as forced.

27. The responses to the questionnaire on forced marriage, informed the Special Rapporteur that the main victims of forced marriages are women and girls. The French NGO, Mouvement français pour le planning familial stated in its response that boys are also concerned by forced marriages, but that this is rare. Other respondents, such as the Serbian NGO, ASTRA-Anti-Trafficking Action, mentioned that child marriages in some rare cases also may involve male children. Also, the United Kingdom Forced Marriage Unit stated in its 2005 report that “there is evidence to suggest that as many as 15 per cent of victims are male”.⁶

⁴ United Kingdom Foreign and Commonwealth Office and Home Office, “Forced Marriage: A Wrong Not a Right”, 2005, page numbers not specified. Available at: <http://www.fco.gov.uk/Files/KFile/forcedmarriageconsultation%20doc.pdf> accessed 20 November 2006.

⁵ Carole Olive Moschetti, *Conjugal Wrongs Don’t Make Rights: International Feminist Activism, Child Marriage And Sexual Relativism*, Ph.D. Thesis, University of Melbourne, Political Science Dept., Faculty of Arts, 2006.

⁶ United Kingdom Foreign and Commonwealth Office, Forced Marriage Unit, *Dealing with Cases of Forced Marriage: Guidance for Education Professionals* (1st ed.), 2005, p. 3.

UNICEF concluded in a recent report that while boys under 18 years of age are affected by early marriage, this is an issue that impacts upon girls in far larger numbers and with more intensity.⁷

28. The different kinds of forced marriage listed include: to settle debt (Afghanistan); to receive dowry payment (Tanzania); to further cultural/economic interests, e.g. forced marriages initiated by landlords or local commanders who overrule girls/women and parents (Afghanistan); to gain control over daughters' lives by sending daughters back to the home country to marry local men (United Kingdom, United States of America, France, Austria and Switzerland); of girls to men from overseas in order for them to obtain residence permits as husbands (United Kingdom, Germany); to display status, e.g. bride wealth (Kenya); as inheritance when a widow is forced to marry a dead husband's brother, or a widower marries a dead wife's younger sister without her consent (Africa); in *trokosi* or *devadasi*, when young girls are forcibly married to a local god, represented by a priest (Ghana and India); after abduction or kidnapping (Afghanistan, Ghana, Serbia among the Roma people); to any willing groom, often men with disability or of lower class, to a girl who is impregnated while living at home by a male relative (Kenya); to "protect" a girl's virginity and counteract promiscuity (Kenya); as compensation when men of one extended family have killed a man of another extended family (Afghanistan); to relieve poverty and for economic gain (Zambia); and to facilitate female genital mutilation (Ethiopia). Moreover, polygamous marriages were also described as constituting forced marriages. Furthermore, the Special Rapporteur was also informed about cases of trafficking in girls to fill the gap caused by the practice of female foeticide in certain parts of India, including Punjab, Gujarat, Rajasthan and Haryana.⁷

29. The often criminal and hidden nature of forced marriages, combined with the fact that most forced marriages take place in closed families, groups, communities or societies, makes it particularly difficult to compile reliable statistics on how many women and girls are subjected to forced marriages of any kind every year. The Government of The former Yugoslav Republic of Macedonia and the IOM office in Afghanistan, for example, concluded in their responses that although forced marriages are common in these countries, no specific data are available.

30. Some statistics do exist, however. The Government of the United Kingdom reported that its Forced Marriage Unit handles about 250-300 cases a year of British nationals, mostly involving girls and women between 13 and 30 years of age, forced into marriage.⁸ Likewise, the Government of Austria noted that in 2005, a total of 46 persons were affected or threatened by forced marriage in Austria. The Ashiana Network reported that a growing number of young women, especially 16 to 24-year-olds, are threatened with physical, emotional and sexual violence before being forced to marry mainly strangers in their parents' homelands. From April 2005 to March 2006 the organization advised 79 women who were threatened with forced marriage.

⁷ UNICEF, "Early Marriage: Child Spouses", *Innocenti Digest*, vol. 7 (March 2001), Innocenti Research Centre, Florence, Italy, pp. 11-12.

⁸ See note 6 above.

D. Forced marriage as a reason for or as a result of trafficking in persons

31. Forced marriage has, in fact, been recognized as a form of human trafficking. Forced marriage can be used as a method of recruitment for the purpose of trafficking in persons,⁹ and may be a result of trafficking in persons.

32. At a regional level, for example, article 1 (5) of the 2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution states that “[p]ersons subjected to trafficking’ means women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means”.

33. The United Nations Working Group on Contemporary Forms of Slavery recognized forced marriage as a form of contemporary slavery, trafficking and sexual exploitation (see E/CN.4/Sub.2/2003/31). In addition, article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 states that States parties shall abolish or abandon:

“... ”

“(c) Any institution or practice whereby:

- (i) 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; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person;

“(d) 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.”

34. Various Governments and organizations provided the Special Rapporteur with examples of different cases of forced marriage which have been recognized as taking place in the context of trafficking in persons. The Government of Israel, for example, described how the Ministry of the Interior and the Police recently identified several isolated instances of procurers who had filed requests for family reunification with women from the former Soviet Union. The relationships were of very short or almost no duration and there was a significant age difference between the partners. It was suspected that the purpose behind such requests was to bring these

⁹ See the report of the Special Rapporteur on violence against women, its causes and consequences, to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/47).

women to Israel for the purpose of prostitution. The State of Israel is aware of approximately four or five such cases. Moreover, the Government reported that “Israeli men, often handicapped, marry women from poor countries in order to have them work as service providers. The women consent in the hope that this will enable them to break the cycle of poverty”.

35. In addition, the Government of Mexico reported that cases of forced marriages that led to trafficking in persons for the purpose of commercial sexual exploitation had been detected in several states/municipalities of the country. Data indicate that some families traffic their minor daughters to be married to older men with economic resources. The girls are too young to be able to make a decision, and in some cases the consent is given by the family. The Iraqi NGO, SOITM Foundation reported that owing to the current situation in Iraq, a large number of Iraqi women were being recruited by sex traffickers and that some who had been taken to the Gulf States as wives were later used in the local prostitution industry.

36. Moreover, there is evidence that adolescent females have been trafficked over international borders between polygamous communities in the United States and Canada to enter into arranged polygamous marriages.¹⁰ A 2005 Canadian report on polygamy challenged the idea that “women who participate in polygamy actively consent to this, given the social isolation and religious indoctrination to which they have been subjected throughout their lives”.¹¹ Polygamy could, therefore, be seen in certain contexts as akin to a forced marriage and thus akin to slavery and bondage, when women and girls are married without their free and full consent.

37. The NGO La Strada in Moldova informed the Special Rapporteur that in the years 2002-2004, it registered two cases of forced marriage for the purpose of trafficking in human beings: in one case the victim “married” a United States citizen, and the other case involved a Moldovan citizen in Germany. In addition, the Serbian NGO ASTRA-Anti-Trafficking Action reported that in its work it had come across women who had been forced into marriage with a pimp following their sexual exploitation. The marriages had been concluded to conceal a criminal offence, eliminate a potential witness or misrepresent the situation of the woman. The ASTRA legal team is currently seeking to annul the forced marriage of a victim to her trafficker. A Norwegian research report of 2004 concluded that a large number of women trafficked to Oslo for prostitution originally arrived in Norway through marriage with a Norwegian man.¹²

E. Forced marriage in the context of trafficking in persons, especially women and children

38. There is a clear recognition in United Nations and regional agreements, as well as in national legislation, that many women and girls around the world live under conditions where,

¹⁰ Angela Campbell, et al., *Polygamy in Canada: Legal and Social Implications for Women and Children - A Collection of Research Papers* (Ottawa, Canada: Status of Women, Canada, 2005).

¹¹ Ibid.

¹² Anette Brunovskis and Guri Tyldum, *Crossing Borders*, Oslo, Fafo-report 426, 2004.

owing to harmful patriarchal, traditional, customary and/or religious practices, they cannot fully exercise their human rights to marry or refuse marriage; to full sexual autonomy; to refuse childbearing; to leave partners, including abusive partners, while retaining custody of their children, and to do so safely and without legal, economic, social, political and cultural repercussions.

39. The Convention on the Rights of the Child recognizes the right of children to health and to be protected from all forms of physical and mental violence, including sexual abuse, sexual exploitation, harmful traditional practices, abduction, sale and trafficking for all forms of exploitation. Moreover, child marriages of girls also have a serious impact on their Convention right to education. Child marriage almost always brings an abrupt halt to the girl's education. Researchers conclude that "girls who marry young are more likely to be illiterate and to have no experience of formal education".¹³

40. Many countries, including Afghanistan, Estonia, Guatemala, Guinea-Bissau, Moldova, the United Republic of Tanzania and Zambia, still have national marriage legislation whereby one (generally the female) or both parties may be married before reaching 18 years of age, with parental/guardian consent, or with the consent of a public authority after suitability for marriage has been determined.

41. Another consequence of forced marriage in the context of trafficking in persons is that victims of forced marriages may also become victims of "honour crimes". Although both women and men can be the victims of forced marriage, the honour of a family is tied primarily to the status of the woman, leaving her much more vulnerable to persuasion and coercion into a union to which she objects.¹⁴ Many NGOs that work specifically to prevent and combat crimes of "honour" against women and girls, such as the Lilith Project of Eaves Housing for Women (United Kingdom), note that there are links between forced marriages and violence committed against women in the name of "honour". So-called "honour crimes", an ancient practice sanctioned by culture rather than religion, are rooted in a complex code that allows a man to kill or abuse a female relative or partner for suspected or actual "immoral behaviour".¹⁵ According to the response of the Government of the Philippines, the most common form of forced marriage takes place mainly in the provinces when a man impregnates or has sexual relations with a woman and her family forces the man to marry her to protect the dignity, honour and reputation of the woman and the family in the community.

¹³ See note 3 above, p. 31.

¹⁴ Abdullahi An-Na'im, "Forced Marriage", 2000, available online at: <http://www.soas.ac.uk/honourcrimes/FMpaperAnNa'im.pdf>

¹⁵ Council of Europe Parliamentary Assembly Committee on Equal Opportunities for Women and Men, "So-called 'honour crimes'", doc. 9720, 7 March 2003, available at: <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc03/EDOC9720.htm>.

42. In its general recommendation No. 21 CEDAW states that “polygamy is practised in a number of countries. 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 that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention” (para. 14). Furthermore, paragraph 39 states that States parties should require registration of all marriages, inter alia to ensure the prohibition of polygamy.

43. Persons trafficked to be forced into marriage also often become victims of physical, sexual and psychological abuse not only by their husbands, but by relatives of their spouses, especially members of his household, and sometimes, if victims resist the marriage or attempt to flee once it has been formalized, they are subject to abuse, ostracism, or even lethal violence, by members of their own families.¹⁶ The power and control directed at victims of forced marriage by their in-laws reinforces the spouse’s domination and traps victims in conditions of domestic and sexual servitude, or even enslavement.

44. Trafficking for the purpose of forced marriage may also take place in situations of armed conflict where women are recruited, transported, and forced to act as “wives” of soldiers. In these contexts, and under conditions of extreme violence and deprivation, women and girls are subjected to, inter alia, ongoing rape and domestic servitude. In May 2004, the Special Court for Sierra Leone entered a new count of “Crimes against Humanity - Other Inhumane Acts (Forced Marriage)” into its statute. This amendment, which allows for the prosecution of “forced marriage”, followed the widespread coercing of women into forced marriages by men fighting on both sides of the armed conflict in Sierra Leone. The Sierra Leone Truth and Reconciliation Commission (TRC) identified forced marriage as sexual slavery, denounced certain aspects of customary marriage practised in Sierra Leone, and pointed out that the country was failing to comply with its international obligations in this regard. TRC further noted its agreement with scholars who argued that the extreme violence that women suffered during the conflict did not arise solely out of the conditions of the war, but was directly linked to the violence experienced by women during peacetime in Sierra Leone.¹⁷

45. Forced marriage, in itself a form of violence against women, further engenders gender-based violence, as described by CEDAW: forced marriages and other violent and coercive practices may “justify gender-based violence as a form of protection or control of

¹⁶ Interviews with victims of forced marriages at Sanctuary for Families. See note 2 above.

¹⁷ Karine Belair, “Unearthing the customary law foundations of ‘forced marriages’ during Sierra Leone’s civil war: the possible impact of international criminal law customary marriage and women’s rights in post-conflict Sierra Leone”, *Columbia Journal of Gender and Law*, vol. 15, No. 3.

women". This violence deprives women (and girls) of their equal enjoyment, exercise and knowledge of their human rights and fundamental freedoms, and keeps them in subordinate roles.¹⁸

F. Protection of victims of forced marriage in the context of trafficking in persons, especially women and children

46. Part II of the Palermo Protocol provides States with an obligation to provide assistance and protection to trafficked persons. Persons subject to forced marriage, when such marriage has taken place in a trafficking context, are entitled to this assistance in addition to any provided to them as victims of forced marriage. They should not be treated as criminals.

47. In accordance with the Palermo Protocol, such assistance should include protection of the privacy and identity of the victims, including, inter alia, by making legal proceedings relating to such trafficking confidential (art. 6 (1)). Trafficked persons must moreover be provided with information on relevant court and administrative proceedings (art. 6 (2) (a)) and assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence (art. 6 (2) (b)). States parties shall also consider implementing measures to provide for the physical, psychological and social recovery of victims, including in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of, inter alia, appropriate housing, education and care (art. 6 (3)). States parties shall ensure that their legislation provides victims the possibility of obtaining compensation for damage suffered (art. 6 (6)). Any measures to prevent and combat trafficking in persons, especially women and children, must safeguard the rights of victims under international law, in particular under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, including their right to protection against refoulement (art. 14 (1)).

48. The Special Rapporteur was informed that protection and assistance provided to women subjected to forced marriages was either provided to them directly as victims of forced marriage (in Germany, Norway and the United Kingdom) or, for example, also as victims of trafficking in persons when a forced marriage, having been carried out in a trafficking context, was found to have taken place (in Austria, Belarus, Bosnia and Herzegovina, Colombia, Germany, Indonesia, Italy and Serbia).

G. The demand for forced marriage in the context of trafficking in persons, especially women and children

49. In order to eradicate forced marriages in the context of trafficking in persons, especially women and girls, it is essential to target the demand for exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to

¹⁸ General recommendation No. 19, para. 11.

slavery, and servitude of mainly women and girls. A complete legal prohibition on the demand for forced marriages would function as a deterrent to those who acquire and use the most vulnerable and powerless women and girls for forced marriage.

50. The Palermo Protocol addresses demand in its article 9 (5), which provides that States parties “shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”.

51. Moreover, the 1995 Beijing Platform for Action encourages States to “[t]ake appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour in order to eliminate trafficking in women, including by strengthening existing legislation with a view to providing better protection of the rights of women and girls and to punishing the perpetrators, through both criminal and civil measures” (para. 131 (b)). Also, in resolution 49/2 of 11 March 2005, entitled “Eliminating demand for trafficked women and girls for all forms of exploitation”, the Commission on the Status of Women stated that it was “[c]onvinced that eliminating the demand for trafficked women and girls for all forms of exploitation, including for sexual exploitation, is a key element to combating trafficking”.

52. Since the entering into force of the Palermo Protocol, several newly negotiated regional agreements and action plans have included articles focusing on measures to discourage the demand for the exploitation that promotes human trafficking, especially of women and children. For example, under article 6 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, States parties are obliged to adopt or strengthen legislative, administrative, educational, social, cultural or other measures, including research on best practices, methods and strategies; raising awareness of the responsibility and important role of media and civil society in identifying the demand; information campaigns involving, as appropriate, inter alia, public authorities and policymakers; and preventive measures, including educational programmes for boys and girls that stress the unacceptable nature of discrimination based on sex and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

53. In addition, the European Union draft action plan to fight trafficking in human beings states that all European Union institutions and member States “should promote gender-specific prevention strategies as a key element to combat trafficking in women and girls. This includes implementing gender equality principles and eliminating the demand for all forms of exploitation, including sexual exploitation and domestic labour exploitation”.¹⁹

¹⁹ See e.g. Communication from the Commission to the European Parliament and the Council, fighting trafficking in human beings - an integrated approach and proposals for an action plan, 18 October 2005, document COM (2005) 514 final.

54. Some countries have put in place awareness-raising or prosecution mechanisms that address demand. For example, in Sweden, as described in the 2004 and 2005 annual report of the Swedish National Rapporteur on Trafficking in Human Beings, legislation targeting the demand for women and girls for prostitution by prohibiting the purchase of sexual services “continues to function as a barrier against the establishment of traffickers in Sweden”. The Swedish legislation that prohibits the purchase of sexual services also functions as a deterrent for those men who would seek women and children for sexual exploitation. There is evidence that the number of buyers has decreased by 75-80 per cent since the coming into force of this legislation in 1999.²⁰

55. According to the NGO Women in Need Development Consortium (WINIDECO), perpetrators of forced marriage in Kenya are reported to the relevant authorities and charged in court. Also, in 2004 in Burkina Faso, where one in three girls is married before the age of 18, the Government has addressed the problem of child marriage through education programmes that include addressing the tradition of male demand for young brides.²¹

56. There is a high risk of trafficking of women and girls in cases where marriage-brokering agencies are involved. In this context, the Special Rapporteur refers to her first report, (E/CN.4/2005/71), in which she highlighted a concern about reports regarding marketing of women and children via the Internet or in the guise of marriage-brokering services and pen pal clubs as factors fostering the demand for the sexual exploitation that promotes human trafficking.

57. The marriage-marketing trade feeds on unrealistic and contradictory expectations about marital relationships.²² Moreover, as stated in paragraph 14 of CEDAW general recommendation No. 21, poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. There is an unequal balance of power that puts women at special risk of violence and abuse, particularly when it is the man who is paying money to marry the woman concerned.

58. Moreover, marriages instigated by the Internet and mail-order bride agencies often become forced marriages as women are not free to leave them because of their dependence on their husbands for legal immigration status, their isolation from their families and friends, their economic dependence on their husbands and their fear of their husbands especially since many

²⁰ Gunilla Ekberg, “The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings”, *Violence against Women*, vol. 10, No. 10 (2004), pp. 1187-1218.

²¹ “Burkina Faso: Government tackles tradition of girl brides”, IRIN News (23 March 2004).

²² See e.g. Marie-Claire Belleau, “Mail-order brides in a global world”, *Albany Law Review*, vol. 67, Issue 2 (Winter 2003), pp. 595-607.

men who seek marriage to women through these agencies have a history of violence against women. For example, the Indonesian NGO, the Health and Humanity Foundation reported that the most common forms of forced marriages in Indonesia are bride-order marriages and marriage with minors for debt bondage.

59. In her report, the Special Rapporteur also made reference to a case of a woman who was awarded compensatory and punitive damages in a lawsuit against an international marriage broker who had failed to inform her of a law that would have enabled her to escape her abusive marriage without fear of automatic deportation. The Special Rapporteur referred to that case as a victory for those trying to combat trafficking in persons. This case sheds light on the dangers involved in the use of such marriage agencies.

60. Countries such as the Philippines have adopted specific legislation in this regard. According to article 4 of the 2003 Philippines Anti-Trafficking Law, Republic Act 9208, it is unlawful for any person, natural or juridical, to “offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them [sic] to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage”.

III. CONCLUSIONS AND RECOMMENDATIONS

61. **The phenomenon of forced marriages of women and girls in the context of trafficking in persons is widespread, is devastating for its victims and has a serious impact on women’s status in those societies where it occurs.**

62. **To successfully combat forced marriages in the context of trafficking in persons, States must, in accordance with existing international agreements, put into place measures that prevent women and children from becoming victims of forced marriages, including measures that discourage the demand. States are obliged to ensure the safety of victims and their access to adequate and appropriate assistance. Finally, States are required to adopt legislation to criminalize forced marriages in the context of trafficking in persons and prosecute those responsible, while safeguarding the rights of the victims.**

63. **The Special Rapporteur recommends that:**

Prevention of forced marriage in the context of trafficking in persons, especially women and children

(a) Measures to prevent and combat forced marriages be included in national action plans that focus on trafficking in persons, especially women and children, and, similarly, in national action plans on violence against women and girls;

(b) States establish special units and/or working groups, such as the Forced Marriages Unit of the United Kingdom, within law enforcement agencies or other appropriate public authorities. These agencies should be responsible for investigating and/or prosecuting cases of forced marriage in the context of trafficking in persons. In collaboration with NGOs and organizations in civil society, these agencies could also be responsible for collecting and publicizing information on forced marriages;

(c) States adopt marriage legislation that stipulates a minimum statutory age for marriage of 18 years of age, and ensure that the legislation applies equally to women and men. Such legislation should be compatible with international human rights standards and the best interests of children must be a primary consideration;

(d) States amend their immigration legislation so that victims of forced marriages are not dependent upon their spouses for legal immigration status but can obtain residence permits independently of their continued relation to their husbands. Governments should recognize forced marriage, especially in the context of trafficking in persons, as a condition giving rise to a claim of asylum based on gender-related violence and other forms of human rights violations, and ensure that the women and girls concerned are not deported;

(e) States ensure that key actors such as law enforcement personnel, judges and prosecutors, diplomatic and consular staff and immigration authorities are trained in the legal, economic, cultural, social and other aspects of forced marriage in the context of trafficking in persons, in how to identify, assist and protect victims, and in rigorous prosecution of the perpetrators;

(f) States develop and conduct public awareness campaigns relating to the nature and harm of forced marriages in the context of trafficking in persons. Such campaigns could target the public, community leaders, teachers, health-care personnel and others, as well as women and girls vulnerable to forced marriages, and those who demand women and girls for the purpose of forced marriages;

(g) States ensure that persons holding dual nationality, who are more vulnerable to forced marriage in the name of “protecting their individual ethnicity and tradition”, are made aware of the laws on marriages of the countries in which they live and that forced marriage is a form of violence and may also be a means or an end to human trafficking in which the victim may be confined to a lifetime of exploitation;

(h) Traditional, religious or cultural practices or domestic laws and policies should not be used to justify violations of international human rights norms and standards. Thus, customs, whether religious, cultural or traditional, should not be invoked to legitimize forced marriages of any kind. Such marriages are inconsistent with international legal principles;

(i) States ensure that gender-disaggregated data on the incidence of forced marriages internationally, regionally and nationally are collected, reported and compared as part of crime, gender equality and migration statistics;

Measures that discourage the demand

(j) In order to deter those who provide the demand for women and girls under 18 years of age for forced marriages, States put into place different preventive measures as well as legislation that criminalizes the demand for forced marriages, especially in the context of trafficking in persons, including the demand for so-called mail-order or Internet brides;

(k) The marriage-marketing trade be closely monitored and rigorous protection mechanisms established for the persons concerned. The Special Rapporteur also urges States to draft, adopt and implement legislation such as the law in the Philippines that outlaws the activities of marriage brokers, and investigate networks and individuals that organize trafficking in women and girls for the purpose of forced marriages;

(l) States ensure that men who apply for visas for a foreign spouse undergo background and criminal-record checks, and that the issuing of such visas be monitored in order to identify men who have a history of serial forced or broker-facilitated marriages. In some countries, non-governmental organizations and immigration authorities have reported that a number of men who apply for visas for a foreign spouse have a long and documented history of violence against women. Also, they may have applied for more than one such visa. Women who entered the country as the spouses of these men have in many cases ended up in shelters for battered women, and in some cases been deported.²³

Protection and assistance of victims of forced marriage in the context of trafficking in persons, especially women and children

(m) States ensure that all girls are given equal access to education and educational institutions, and enforce their right to education through mandatory measures as well as through scholarships and tuition programmes, trust funds and other measures that facilitate their education. This move for literacy should include legal and economic literacy, which should be regarded as an important step in supporting not only the returning victims of forced marriage, but also act as a catalyst for preventing the offence of forced marriage;

(n) States consider simplifying the nullification process for a forced marriage, develop measures that enable victims of forced marriage, including in the context of trafficking in persons, to sue perpetrators under the civil law for damages and, where necessary, extend limitation periods for civil litigation and criminal prosecution of forced marriages;

(o) States support public authorities and non-governmental and community-based organizations that already assist victims of domestic violence and sexual assault, including immigrant women and children, and establish more facilities to protect and assist victims of trafficking, including safe shelters that provide services such as security, housing, legal advice, employment, education, health care, childcare and relocation assistance for women and girls fleeing actual or threatened forced marriages. These shelters should, together with appropriate consular and other authorities, assist in the safe repatriation of those who have undergone forced marriages abroad, if desired;

²³ Tove Smaadahl, Helene Hernes and Liv Langberg *Drømmen om det gode liv: En rapport om utenlandske kvinner gift med norske menn som måtte søke tilflukt på krisesentrene i 2001* (Oslo: Krisesentersekretariatet, 2002).

Legislation and prosecution of forced marriage in the context of trafficking in persons, especially women and children

(p) States include in their criminal-law provisions a specific offence of “forced marriage”, with penalties reflecting the seriousness of the crime. Such legal provisions should criminalize those who seek and procure women and girls for forced marriage, those who aid and abet the contracting of such marriages, as well as those who profit from the exploitation of the trafficked persons subjected to such marriages;

(q) Criminal provisions, such as those pertaining to rape, sexual abuse and battering, also be invoked when prosecuting perpetrators of forced marriages because victims of forced marriages often suffer regular sexual, physical and other bodily and psychological violations committed by their spouses;

(r) States must ensure that children under 18 years of age are not allowed to marry as this is inconsistent with international human rights norms and standards, that harmful traditional practices such as dowry and bride-price are made illegal, and that marriage by proxy, including over the telephone, and polygamy are strictly prohibited in law and policy.²⁴

²⁴ Dowries are for example, already prohibited in India (the Dowry Prohibition Act of 1961, amended in the 1980s) and Bangladesh (the Dowry Prohibition Act of 1980).