

Working Group on the issue of discrimination against women in law and in practice
Office of the High Commissioner for Human Rights (OHCHR)
CH-1211 Geneva 10
SWITZERLAND
Via Email: wgdiscriminationwomen@ohchr.org

1 October 2018

Re: Submission to the UN Working Group on the issue of discrimination against women in law and in practice for the thematic report on deprivation of liberty

Dear Working Group Members,

Equality Now makes this submission in response to the call for inputs by the Working Group on the issue of discrimination against women in law and in practice for the thematic report on deprivation of liberty being prepared for the 41st session of the Human Rights Council in June 2019. Equality Now is an international human rights organisation with ECOSOC status working to promote the rights of women and girls worldwide. This communication is in reference to the various forms of deprivation of liberty experienced by girls and women all over the world with specific examples from the United States, Sudan, Saudi Arabia and Paraguay in relation to child prostitution, male guardianship systems, human rights defenders and forced motherhood.

We welcome the initiative of the Working Group to undertake a comprehensive approach to the issue and fully agree that deprivation of liberty of women and girls manifests in a variety of contexts stemming from decisions taken by authorities, families, communities or other groups. In this light, we wish to highlight some forms of deprivation of liberty and concrete examples where women and girls have been subjected to forced confinement, often resulting in detention and imprisonment.

Criminalization of girls in prostitution in the United States

In the United States, many minor girls in prostitution are being criminalized and deprived of liberty, resulting in re-traumatization and a lifelong criminal record instead of being offered services and support, including support to exit. Prostitution is regulated individually by each state and this has led to different approaches in the general treatment and punishment of those in prostitution, including minors in prostitution (those under the age of 18). Only 12 states¹ have laws providing for a blanket prohibition of criminalization and

¹ California, Washington DC, Florida, Illinois, Indiana, Kentucky, Nebraska, New Hampshire, North Carolina, North Dakota, Tennessee, and Utah. A further two states, Connecticut and South Dakota, have laws eliminating criminal liability for those under the age of 16.

elimination of criminal liability for prostitution offenses committed by a minor (i.e. when such a person engages or agrees or offers to engage in sexual conduct with another person in return for a fee), which effectively means that minors in prostitution, regardless of age, could be recognized as child sex trafficking victims, whether under the law or under official law enforcement policy, in only these few states.

Federal trafficking law in the United States, under the Trafficking Victims Protection Act of 2000, defines a severe form of sex trafficking as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age”. Consequently, the federal definition of child sex trafficking includes any child, under 18, who is bought for sex, regardless of whether force, fraud, or coercion was used, regardless of whether a buyer exploited the youth without a trafficker’s or other third party’s involvement, and regardless of whether the victim identifies a trafficker. Therefore, all commercially sexually exploited children are identified as victims of sex trafficking under federal law. Effectively criminalizing any minors at the state level, including those aged 16 and 17, for any prostitution offenses is therefore in contravention of federal law.

In California from 2013 through 2016, prior to the California legislature changing the law to its current status, there were 612 juvenile arrests for prostitution, 582 of these were adolescent girls.² In Nevada, which allows for an affirmative defense assertion³, from 2013 to 2017 373 juveniles were arrested on prostitution charges and of these 326 were for arrests of girls,⁴ while in Illinois and Indiana, states that do not criminalize minors in prostitution, there is no data on arrests of juveniles, the implication being that in those states minors in prostitution are treated as victims rather than criminals. That minors in prostitution in different states could suffer such diverse consequences is troubling. States should ensure that minors in prostitution are offered full protection from punitive measures and deprivation of liberty, and instead seek practice, policy, and cultural reform to shift away from viewing and responding to commercially sexually exploited girls as delinquents rather than as survivors of child sex trafficking.

Male guardianship systems impeding women’s and girls’ right to liberty

The imposition of male guardianship systems by states, such as in the case of Sudan and Saudi Arabia, have the effect of limiting women and girls’ agency and ability to make fundamental decisions about their lives, restricts their personal liberty and constitutes sex discrimination. Such restrictive systems, which subject women’s and girls’ enjoyment of most of their rights under international law to authorization by a male guardian, can also lead to imprisonment, as is evidenced in the cases below.

² <https://oag.ca.gov/cjsc/pubs#juvenileJustice>

³ An affirmative defense assertion requires the victim to prove his or her victimization and/or the identification of a controlling third party. If the victim is unsuccessful they will face criminal charges as prescribed by the statute.

⁴ <http://rccd.nv.gov/About/UCR/Crime-In-Nevada/>

- *Sudan: consequences of male guardianship - forced marriage and sexual violence*

Provisions in the personal status legislation of Sudan legalize the harmful practice of child marriage by allowing male guardians to conclude the marriage of adolescent girls, effectively depriving them of the liberty to consent and choose a partner. Sections 25(c), 33, 34, 40(3), 51, 52, 91 and 92 of the Muslim Personal Law Act of Sudan of 1991 provide that the contract of marriage for a woman or girl shall be concluded by a male guardian, confer different rights in marriage for men and women and mandate wife obedience. Such laws which are sanctioned by the state and which grant male guardians with overarching power and control over women, thereby depriving women and girls of their liberty, serve to increase girls' risk of child marriage and further abuse, including early and forced pregnancy, domestic violence, poverty and limited education and career opportunities. As noted most recently by the Human Rights Committee⁵, there is a need for Sudan to take all measures to eliminate harmful practices, such as child, early, and forced marriage.

The effects of male guardianship systems, including deprivation of liberty, is evidenced in the case of Noura, a Sudanese girl, who was forcibly married by her family at 16 years of age to an older man. Despite her protestations, her new "husband" raped her whilst three of his male relatives held her down. When he attempted to rape her again, Noura fought back, fatally stabbing him with a knife in self-defense. Since marital rape is not specifically criminalised in Sudan, it was unclear whether the Criminal Code's provisions on self-defense applied to the case. On 10 May 2018, Noura was sentenced to death by hanging. Thankfully, due to international protest and a petition signed by over 1.3 million people, on 26 June, Noura's death sentence was replaced with five years of imprisonment and a financial penalty of 337k Sudanese Pounds (around \$18,400 US) to be paid to the deceased's family as blood money. However, as of this date, Noura's fight for justice is still not over, as the state prosecutor has appealed against the removal of the death sentence and instead called for the reinstatement of the death penalty. She remains imprisoned.

- *Saudi Arabia: impact of male guardianship system on women human rights defenders*

Since 15 May 2018, the Saudi authorities have been arresting prominent women human rights activists and, among the estimated 15 who are currently being detained, are Loujian El Hathloul, Azzia El Yousef and Dr Hatoon el Fasi apparently for only having peacefully campaigned for the protection and promotion of women's rights in the Kingdom. The activists have long campaigned for equality, including calling for the end of the discriminatory male guardianship system which restricts women's rights by requiring them to obtain their male guardian's consent in order to obtain a passport and travel outside the country, and needing the accompaniment by a male guardian to travel in case the woman was granted a government scholarship to study abroad. They continue to remain in detention without having access to proper legal representation or their families.

⁵ Human Rights Committee, List of issues in relation to the fifth periodic report of the Sudan, par. 7, U.N. Doc. CCPR/C/SDN/Q/5 (May 3, 2018)

Our concerns about their well-being have heightened since reports emerged that the Saudi Public Prosecution on 6 August 2018 requested the death penalty for Israa Al Ghomgham and four other human rights defenders, all of whom equally appear to have been arrested solely on the grounds of having peacefully expressed their views. The 2014 Counter-Terrorism Act, 2007 Cyber Crime Act and the 2011 Web Publishing Act have been invoked as a means to criminalize women's rights defenders and their abusive misuse has been criticised by CEDAW⁶ in its Concluding Observations to Saudi Arabia in March 2018. Since May, the government has instigated a media campaign with the intention of slandering the reputation of women's rights defenders by labelling them as traitors to the State, claiming they pose a threat to the stability and security of the Kingdom. The threatening actions by the Saudi government in targeting these activists serves to create a fearful environment where freedom of expression is not tolerated, male guardianship continues to reign and any voices which are critical of the State will be eliminated.

Whilst Saudi Arabia has undertaken some efforts to eliminate discrimination against women in Saudi Arabia, such as the lifting of the driving ban on 24 June 2018⁷, enabling women to vote in municipal elections and granting women access to public sporting events, as long as the discriminatory male guardianship system continues to exist and permeate all facets of women's and girls' lives, real and genuine progress and comprehensive equality will not be achieved. As reiterated by the CEDAW, the male guardianship system subjects women's and girls' enjoyment of most of their rights under the Convention to authorization by a male guardian and all discriminatory provisions in national legislation should be repealed, in accordance with Articles 1 and 2 of the Convention and Targets 5.1 and 10.3 of the Sustainable Development Goals.

Forced pregnancy and motherhood in Latin America and the Caribbean

According to General Comment No. 35 of the Human Rights Committee on Article 9 of the International Covenant on Civil and Political Rights (ICCPR), the right to liberty of the person "concerns freedom from confinement of the body," and examples include actions such as "police custody, [...] house arrest, administrative detention, involuntary hospitalization, institutional custody of children."⁸ State parties have the obligation to protect "the right to liberty of person against deprivation by third parties, including 'employers, schools, and hospitals.'"⁹ According to a report researched and published by our partner in Paraguay, the Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM), thousands of girls in Latin America and the Caribbean have been forced into motherhood by their state.¹⁰ Although state responses to adolescent pregnancy vary on a case-

⁶ CEDAW Concluding Observations on the combined third and fourth periodic reports of Saudi Arabia, CEDAW/C/SAU/CO/3-4, 9 March 2018

⁷ Further to the Supreme Order of 26 September 2017 which allows the issuance of driving licenses on equal terms to women and men. However, it is important to note that despite the lifting of the ban, women have been encountering several obstacles which are preventing the realization of their right to drive, including the high cost of driver's licenses and other fees compared to what men pay, as well as limited access to driving schools for women which are only in Jeddah, Riyadh and Al Shariqia. See Equality Now's Call for Action: <https://www.equalitynow.org/give-saudi-women-equal-access-to-driving>

⁸ Human Rights Committee, *General Comment No. 35*, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

⁹ *Ibid* 8. at par. 7.

¹⁰ Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM), *Girl Mothers – Forced Child Pregnancy and Motherhood in Latin America and the Caribbean*, pg. 6 (Feb. 2016), available in Spanish <https://www.cladem.org/images/imgs-noticias/nin%CC%83as-madres-balance-regional.pdf> and English

by-case basis, they sometimes detain adolescent girls to “ensure that the pregnancy is carried to term with strict control over or prohibition against visits by family and friends.”¹¹ Detention can take the form of housing in state-affiliated institutions for pregnant adolescents.¹² “The detention of the girls in an institution until the moment of birth, as well as the legal prohibition against terminating the pregnancy or family pressure not to do so, obligate the girls to undergo forced motherhood,” and deprive them of their liberty.¹³ This practice constitutes not only a harmful practice, according to criteria established in the Joint General Recommendation of CEDAW and CRC¹⁴, but results in serious human rights violations. Moreover, the Special Rapporteur on torture has found that “[h]ighly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment or to safeguard the life or health of the woman violate women’s right to be free from torture and ill-treatment”.¹⁵

Mainumby’s case exemplifies the challenges faced by young victims of sexual violence and forced motherhood, and how it can lead to the deprivation of liberty.¹⁶ When she was just 10 years old Mainumby discovered that she was pregnant following years of sexual abuse by her stepfather. When doctors first diagnosed her pregnancy at 21 weeks, they determined that her life would be at risk if she carried the pregnancy to term and recommended she have an abortion. Based on this recommendation, Mainumby’s mother requested for Mainumby to be provided an abortion. Although Paraguayan law permits abortions when a woman or girl’s life is at risk, the Ministry of Health intervened, prevented Mainumby from obtaining an abortion, and had Mainumby’s mother imprisoned. The state subsequently removed Mainumby from her family and institutionalized her until she gave birth.

Due to the high-risk nature of her pregnancy, Mainumby was hospitalized several weeks before she gave birth via C-section. Although she was reunited with her family and allowed to return home shortly after the birth, Mainumby still feels traumatized by the ordeal and subsequent forced motherhood. Today, Mainumby lives with the consequences of the abuse she suffered and the denial of reproductive health care by the Paraguayan government. Similarly, Mainumby’s mother was released from prison and all charges against her were dropped, but in the interim she lost her job and still faces harassment from fundamentalist religious organizations.

Paraguay prioritized a foetus over the right to life of Mainumby, who faced a greater risk of death with each day that her pregnancy advanced, and also deprived Mainumby’s mother of her rights. Mainumby was extremely ill and seriously undernourished when she was pregnant. The risk to her life could have been prevented had Paraguay protected Mainumby from sexual violence and, after her mother requested an abortion based on a medical recommendation, provided her access to a safe, therapeutic abortion.

https://d3n8a8pro7vnm.cloudfront.net/equalitynow/pages/311/attachments/original/1528286922/Girl_Mothers_English_Final_To_Publish_0_%283%29.pdf?1528286922

¹¹ Ibid 10 at iv.

¹² Ibid.

¹³ Ibid.

¹⁴ 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 on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18

¹⁵ Human Rights Council 31st session, Report by the Special Rapporteur on torture, and other cruel, inhuman and degrading treatment or punishment, A/HRC/31/57

¹⁶ Mainumby is a pseudonym used to protect the survivor’s identity and privacy. To learn more about Mainumby’s story, visit <https://www.equalitynow.org/action-alerts/justice-mainumby>

Recommendations

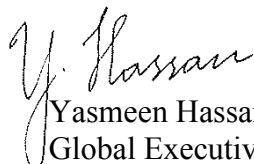
Equality Now would like to emphasise the importance of a holistic approach to be undertaken when addressing discrimination against women and girls, including with respect to ensuring a broad interpretation of the right to liberty as enshrined in international law. With respect to the examples of deprivation of liberty given above we respectfully recommend that:

- Male guardianship systems and practices should be abolished and States should take the necessary measures to ensure that all women and girls have equal access to services and can exercise their rights free from discrimination.
- States should enact good laws and policies on reproductive rights and establish clear norms and protocols to implement them. They should ensure that the rights of pregnant women and girls, particularly pregnant adolescent girls (who if under a certain age have clearly been raped), are considered a priority and that they are not subjected to giving birth and motherhood without their free consent.
- States should ensure that policies and practices treat girls in prostitution as survivors of child sex trafficking and of sexual exploitation, and thereby offer full protection from punitive measures and deprivation of liberty and granted services for trafficking victims.

We hope the examples of our work outlined in this submission and our recommendations above will be useful to the Working Group in highlighting some of the real challenges women and girls face in being able to enjoy their human rights free from violence and discrimination, and calling for an end to these discriminatory practices which deprive women and girls of liberty. We look forward to the Report.

Thank you for your attention and please do not hesitate to contact us with any questions or clarifications on these issues.

Sincerely,


Yasmeen Hassan
Global Executive Director