



Human Rights Council**Twenty-first session**

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Special Rapporteur on contemporary forms of
slavery, including its causes and consequences,
Gulnara Shahinian****Thematic report on servile marriage****Summary*

The Special Rapporteur provides an overview of her activities and focuses her thematic report on the issue of servile marriage, in which a spouse is reduced to a commodity over whom any or all the powers of ownership are attached. The Special Rapporteur discusses the root causes of servile marriage, which include gender inequality, ideas of family honour, poverty, conflict and cultural and religious practices. She also outlines the various forms of servile marriage, as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, and highlights the need to view such marriages as forms of slavery so as to better inform and shape actions to prevent servile marriage and support victims. The Special Rapporteur recommends that the Human Rights Council develop a more comprehensive approach to the issue of servile marriage and that States enact legislation to prevent servile marriage, provide support to victims and launch campaigns to raise awareness of servile marriage and its negative impact.

* Late submission.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1	3
II. Activities of the mandate.....	2–8	3
A. Visits to countries and follow-up activities.....	2–6	3
B. Communications and other activities.....	7–8	3
III. Servile marriage	9–21	4
IV. International legal framework on servile marriage.....	22–41	6
A. International human rights instruments	22–29	6
B. Regional human rights instruments	30–34	7
C. International human rights mechanisms	35–41	8
V. Root causes of servile marriage.....	42–62	9
A. Gender inequality.....	43–44	9
B. Family honour.....	45–48	9
C. Poverty.....	49–53	10
D. Conflict	54–55	11
E. Cultural and religious practices	56–62	11
VI. Forms of servile marriage	63–70	12
A. Non-consensual marriage	65	12
B. Sale of wives.....	66–69	13
C. Wife inheritance.....	70	13
VII. Impact of servile marriage on girls and women	71–87	13
A. Domestic servitude	73–74	14
B. Sexual slavery.....	75	14
C. Violations of the right to health	76–80	14
D. Violations of the right to education	81–83	15
E. Right to be free from physical, psychological and sexual violence	84–86	15
F. Right to non-discrimination	87	16
VIII. Challenges.....	88–94	16
A. Legislation	88–93	16
B. Family and societal pressure.....	94	17
IX. Conclusions and recommendations	95–104	17

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 15/7 by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. In part II, the Special Rapporteur summarizes her activities since her previous report to the Council, and in parts III to IX she discusses and makes recommendations on the issue of servile marriage.

II. Activities of the mandate

A. Visits to countries and follow-up activities

2. The Special Rapporteur conducted an official country visit to Lebanon from 10 to 17 October 2011 to engage in dialogue with the Government about policies, programmes, plans and activities aimed at combating domestic servitude (see A/HRC/21/41/Add.1). She wishes to thank the Government for acceding to her request to visit Lebanon.

3. The Special Rapporteur participated in two follow-up workshops focused on the recommendations that she made upon concluding her country visits. On 30 and 31 January 2012, she participated in a follow-up workshop in Nouakchott, at which the participants produced a road map to guide the implementation of her recommendations. She also participated in a follow-up workshop in Quito on 29 and 30 March 2012, at which the participants focused on the status of implementation of her recommendations on contemporary forms of slavery in Ecuador. They developed time-bound action plans to follow up on forced and bonded labour, child slavery in mining and domestic servitude.

4. Both workshops were organized jointly by the relevant Governments and the Office of the United Nations High Commissioner for Human Rights. The participants included relevant Government officials and representatives of civil society organizations and United Nations agencies. The Special Rapporteur wishes to thank the Governments of Mauritania and Ecuador for their continued cooperation and commitment to implementing the recommendations made in her reports (A/HRC/15/20/Add.2 and A/HRC/15/20/Add.3, respectively).

5. The Special Rapporteur welcomes the invitations from the Governments of Kazakhstan and Madagascar to carry out country visits. She would appreciate receiving invitations from the other countries to which she has sent requests to visit: Bangladesh, Ghana, Nepal, the Niger, the Sudan and Uzbekistan.

6. The Special Rapporteur participated in an international consultation on good practices and strategies to eliminate caste-based discrimination held in Kathmandu from 29 November to 1 December 2011. The consultation was organized by the International Dalit Solidarity Network in cooperation with the Feminist Dalit Organization, the Nepal National Dalit Social Welfare Organization, the Dalit NGO Foundation and the Samata Foundation. Its aim was to enhance engagement among countries, constituencies and institutions with a view to sharing good practices and strategies to eliminate caste-based discrimination. The Special Rapporteur was a keynote speaker and also facilitated a working group session on forced and bonded labour and discrimination issues in employment.

B. Communications and other activities

7. The Special Rapporteur, jointly with other special procedures mandate holders, sent communications on alleged cases of concern to her mandate to India, Lebanon, Pakistan,

Thailand and the United Kingdom of Great Britain and Northern Ireland (see A/HRC/21/49). She received replies from Lebanon and the United Kingdom and urges the other Governments to respond.

8. The Special Rapporteur issued numerous press statements, either individually or jointly with other special procedures mandate holders.

III. Servile marriage

9. In its resolution 843 (IX), the General Assembly declared some customs, ancient laws and practices relating to marriage and the family to be inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights.

10. In its resolution 66/140, the General Assembly reiterated its call for an end to harmful traditional or customary practices, such as early and forced marriage, and called upon States to take appropriate measures to address the root factors of child and forced marriages, including by undertaking educational activities to raise awareness regarding the negative aspects of such practices. It urged all States to enact and strictly enforce laws to ensure that marriage was entered into only with the free and full consent of the intending spouses, and, in addition, to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary, and to develop and implement comprehensive policies, plans of action and programmes for the survival, protection, development and advancement of the girl child in order to promote and protect the full enjoyment of her human rights and to ensure equal opportunities for girls, including by making such plans an integral part of her total development process.

11. The General Assembly also urged States to ensure that efforts to enact and implement legislation to end child and forced marriages engaged all stakeholders and agents of change and to ensure that the information on the legislation against the practice was well known and generated social support for the enforcement of such laws and legislation. States were urged to support community workshops and discussion sessions to enable communities to collectively explore ways to prevent and address child and forced marriages, provide information through stakeholders credible to the community, such as medical personnel and local, community and religious leaders, regarding the harm associated with those marriages, give greater voice to girls and ensure consistence of message throughout the entire community, and encourage the much-needed strong engagement of men and boys.

12. The General Assembly called upon States to support and implement, including with dedicated resources, multisectoral policies and programmes that ended the practice of child and forced marriages and to ensure the provision of viable alternatives and institutional support, especially educational opportunities for girls, with an emphasis on keeping girls in school through post-primary education, including those who were already married or pregnant, ensuring physical access to education, including by establishing safe residential facilities, increasing financial incentives to families, promoting the empowerment of girls, improving educational quality and ensuring safe and hygienic conditions in schools.

13. Under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, all forms of forced marriage are defined as practices similar to slavery, which reduce a spouse to a person over whom any or all of the powers attaching to the right of ownership are exercised. International law has further reiterated and reinforced the provisions within the Convention that prohibit forced and early marriages. Over the years, however, the idea that forced and early marriages are forms of slavery and, therefore, servile marriage has been lost.

14. Servile marriage affects both adults and children. Under international human rights law, a child cannot provide informed consent to a marriage. The marriage is therefore considered forced and falls under the slavery-like practices defined in the Convention. International human rights law, including the Convention, requires that a minimum age for marriage be established, with 18 years the recommended minimum age. The Special Rapporteur acknowledges that, in some countries, the minimum age for marriage is lower than 18 years. She also recognizes that, in some countries, exceptions are made for marriage below the national minimum age. The Special Rapporteur strongly urges that rigorous measures be taken in such situations to ensure that the rights of the child are in no way violated by marriage.

15. The violations that occur within servile marriage cannot be viewed only as acts of violence against women and girls because, although the overwhelming majority of those in servile marriage are girls and women, boys and men are also victims. Owing to gender prejudices, it is often easier for boys and men to leave forced marriages, live as divorcees, remarry and regain control of their lives, in particular because they are usually more educated and can be financially independent. Girls and women are more vulnerable and more likely to be sexually and physically abused. The Special Rapporteur focuses herein on girls and women in servile marriage for those reasons and also because, whether by design, error or omission, there is scant information available about the impact of servile marriage on boys and men.

16. From an early age, girls are brought up and viewed as commodities to be used to solidify family links and preserve honour, in addition to financial assets that can improve the family's economic status. Discriminatory attitudes within the family are reinforced in the community and throughout the girl's life. Complicity by other women in the family and the community strengthens the concept of women as property and embeds the perception that violence against female family members is to be tolerated and remedied privately within the family environment. From the beginning of the marriage, a spouse is treated not as an individual but as a commodity, given that his or her consent to the marriage is not required.

17. Other slavery-like practices take place during servile marriage as the spouse usually ends up in domestic servitude (see A/HRC/15/20) and sexual slavery (whereby she is sexually exploited through the use or threat of force). Although commonly understood to take place during times of conflict, sexual slavery can occur at any time and violates the International Bill of Human Rights. National courts have acknowledged this concept. For example, in *United States of America v. Sanga*, a man forced a woman to work as a domestic maid for more than two years and to have sex with him. The United States Court of Appeals for the Ninth Circuit unanimously held that she was a virtual slave, contrary to the provision of the Thirteenth Amendment to the United States Constitution, under which slavery and involuntary servitude were prohibited. Girls and women in servile marriage have no choice but to perform the tasks expected of them, such as domestic chores, shop or farm work and engaging in sexual intercourse with their husbands. If they refuse to do so, or if their performance is unsatisfactory, they face physical, psychological and sexual abuse.

18. Victims of servile marriage are often unable to escape because their families and/or the societies in which they live will not support them, whether for economic reasons or for traditional, cultural and religious beliefs. Such beliefs and practices cannot, however, be used to justify servile marriage. Under the Supplementary Slavery Convention, States parties are to bring about the complete abolition or abandonment of slavery-like institutions and practices, such as servile marriage. It does not provide for any exceptions in which slavery may continue to exist. Evolving international law has confirmed that slavery is a crime against humanity and, as such, no culture, tradition or religious practice can be used to justify servile marriage.

19. Reaffirming forced and early marriages as slavery-like practices is important as it provides an understanding of the violations that victims endure and the kind of interventions required to prevent, monitor and prosecute servile marriage. Victim protection programmes can also be specifically tailored better to support victims of servile marriage. It moves the discussion from being about the rights of women and girls to being about abolishing slavery within communities.

20. It is important to note the distinction between servile marriage and arranged marriage. The Working Group on Contemporary Forms of Slavery was established by the Economic and Social Council in its decision 16 (LVI) to monitor the existence of slavery and the slave trade in all their practices and manifestations, including slavery-like practices such as servile marriage. The Working Group believed that it was important to highlight the distinction between forced marriage and arranged marriage. Arranged marriages, which exist in many parts of the world, are based on the consent of both parties, whereas forced marriages do not involve the consent of the parties or, at any rate, both of the parties. Any duress in a marriage is a violation of internationally recognized human rights standards and cannot be justified on religious or cultural grounds. The Working Group asserted that the perpetuation of forced and early marriages was a result of gender inequality and lack of both a culture of education for girls and of self-esteem.

21. Studies have shown that an overwhelming majority of women in servile marriage were forced to be girl brides. According to the United Nations Children's Fund (UNICEF), the Niger has the highest occurrence of early marriage, followed by Chad, Mali, Bangladesh, Guinea, the Central African Republic, Mozambique, Nepal, Malawi and Ethiopia.¹ Girls and women experience the same violations within a servile marriage and, unless otherwise stated, the violations discussed herein apply to both girls and women. Girls are, however, much more vulnerable to abuse given their lack of physical and emotional maturity.

IV. International legal framework on servile marriage

A. International human rights instruments

22. The Supplementary Slavery Convention prohibits any institution or practice whereby 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; 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 a woman on the death of her husband is liable to be inherited by another person.

23. The Convention implicitly prohibits forced early marriage. Under article 1 (d), States parties are required to abolish 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.

24. To tackle the issue of forced and early marriages, under article 2 of the Convention States parties are required to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

¹ *The State of the World's Children 2011: Adolescence – An Age of Opportunity* (United Nations publication, Sales No. E.11.XX.1).

25. This provision is reiterated in article 16 (2) of the Universal Declaration on Human Rights and in the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. Article 2 of the latter states that States parties are to specify a minimum age for marriage, which is given as not less than 15 years in the non-binding recommendation accompanying the Convention. It further states that no marriage is to be legally entered into by any person under that age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses.

26. Article 23 (2) of the International Covenant on Civil and Political Rights provides for the right of men and women of a marriageable age to marry and to found a family. Article 23 (3) provides that no marriage is to be entered into without the free and full consent of the intending spouses.

27. The Convention on the Elimination of All Forms of Discrimination against Women contains specific provisions in relation to forced marriage (article 16 (1) (b)) and early marriage (article 16 (2)). Child marriages, which are unions that involve at least one partner below the minimum legal age of marriage, constitute a form of forced marriage as the child is not in a position to consent. Article 16 of the Convention specifies that the betrothal and the marriage of a child are to have no legal effect, and all necessary action, including legislation, is to be taken to specify a minimum age for marriage.

28. Under article 24 (3) of the Convention on the Rights of the Child, States parties are required to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

29. Under article 5 of Convention on the Elimination of All Forms of Discrimination against Women, States parties are to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

B. Regional human rights instruments

30. Article 17 (2) of the American Convention on Human Rights guarantees the right of men and women of marriageable age to marry and to raise a family, and requires that no marriage is to be entered into without the free and full consent of the intending spouses. Under article 17 (3), the States parties are to take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. Article 3 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women safeguards a woman's right to be free from violence² in both the public and private spheres.

31. Article 21 (2) of the African Charter on the Rights and Welfare of the Child states that child marriage and the betrothal of girls and boys are to be prohibited and effective action, including legislation, is to be taken to specify the minimum age of marriage to be 18 years. Article 6 of the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa states that no marriage is to take place without the free and full consent of both parties, and requires States to enact appropriate national legislative measures to guarantee that the minimum age of marriage for women is to be 18 years.

² Article 1 of the Convention defines violence as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere".

32. On 22 February 2008, in *Prosecutor v. Brima et al*, the Special Court for Sierra Leone recognized forced marriage as a crime against humanity under international criminal law for the first time. The Court confirmed that forced marriage involved a perpetrator compelling a person by force or threat of force, through words, or conduct of the perpetrator, or anyone associated with him, into a forced conjugal association resulting in great suffering or serious physical or mental injury on the part of the victim. It concluded that forced marriage might also include one or more international crimes such as enslavement, imprisonment, rape, sexual slavery and abduction.

33. The Court noted that the crime of forced marriage was not exclusively, or predominantly, sexual and as such was not fully encompassed by the crime of sexual slavery. The women who testified in the case described the forced marriages as having encompassed a series of violations, including abduction, forced labour, deprivations of liberty, corporal punishment, assault and sexual violence.

34. In 2005, the Parliamentary Assembly of the Council of Europe adopted resolution 1468 on forced marriages and child marriage. The Assembly defined forced marriage as “the union of two persons at least one of whom has not given their full consent to the marriage”. It defined child marriage as “the union of two persons at least one of whom is under 18 years of age”. Among other things, it urged the national parliaments of the Council of Europe member States to fix at or raise to 18 years the minimum statutory age of marriage for women and men, to make it compulsory for every marriage to be declared and entered by the competent authority in an official register, and to consider the possibility of dealing with acts of forced marriage as an independent criminal offence.

C. International human rights mechanisms

35. In its general recommendation No. 24, the Committee on the Elimination of All Forms of Discrimination against Women specifically recommends that States parties enact and effectively enforce laws that prohibit the marriage of girls. In its general recommendation No. 21, the Committee recognizes that forced marriage may exist as a result of cultural or religious beliefs, but maintains that a woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being and that this must be protected and enforced by law.

36. In its general comment No. 4, the Committee on the Rights of the Child strongly urges States parties to develop and implement legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices. It also calls upon States parties to protect adolescents from all harmful traditional practices, such as early marriage, and recommends that they review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

37. In its general recommendation No. 21, the Committee on the Elimination of Discrimination against Women considers that the minimum age for marriage should be 18 years for both men and women. This age limit, which is in line with the definition of the child provided in the Convention on the Rights of the Child, is also reflected in article 21 of the African Charter on the Rights and Welfare of the Child.

38. The persistence of such harmful practices recently prompted the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Rights of the Child to work on their first joint general comment on harmful traditional practices, which is likely to be finalized in 2013.

39. The special procedures mandate holders, in particular the Special Rapporteur on violence against women, its causes and consequences, have focused on forced and early marriages, in addition to other issues relating to servile marriage, including honour-related

killings and sexual slavery. In her report on her mission to Somalia, the Special Rapporteur on violence against women concluded that although servile marriages occurred, especially in rural areas, the lack of data made it impossible to ascertain the extent of the practice of rape and early and/or forced marriages (A/HRC/20/16/Add.3, para. 24).

40. According to the Special Rapporteur on traditional practices affecting the health of women and the girl child, the practice of forced marriage deserved the close scrutiny of the international community, as it would not be eradicated until women were considered full and equal participants in the social, economic, cultural and political life of their communities (E/CN.4/Sub.2/2005/36, para. 82).

41. The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially in women and children, concluded that there was a clear recognition in United Nations and regional agreements, as well as in national legislation, that many women and girls around the world lived under conditions where, owing to harmful patriarchal, traditional, customary and/or religious practices, they could not 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 (A/HRC/4/23, para. 38).

V. Root causes of servile marriage

42. In the present section, the Special Rapporteur discusses the root causes of servile marriage, which include strengthening family links, preventing unsuitable relationships, protecting perceived cultural and religious ideals, protecting family honour and controlling female behaviour and sexuality.

A. Gender inequality

43. The leading cause of servile marriage is gender inequality, where girls and women are perceived, because of cultural or religious beliefs, to be commodities unable to make proper decisions about who and when to marry. Girls and women are forced to become brides because it is easier to control them and, in the case of girls, their virginity can be guaranteed and they have longer reproductive periods in which to produce more children.

44. Gender inequality also contributes to servile marriage through its impact on formal legal systems. Although a woman's right to choose if, when and whom to marry is recognized in international human rights law, and although the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Rights of the Child and other treaty bodies state that the minimum age of marriage should be 18 years, several countries with high rates of early marriage also have unequal laws of consent for boys and girls. Such laws reinforce and legalize the idea that marriage is suitable for girls earlier than for boys. Patriarchal laws and practices give women and girls less negotiating power around marriage and sexual and reproductive health and rights.

B. Family honour

45. In some communities, honour is connected with virtue, good works, righteous behaviour and obligations to one's parents, older persons and the community. Honour-related killings have often been associated with religious beliefs. These, however, are traditional or cultural practices. Among some Asian tribes, honour (or *izzat*) is associated with the female body and therefore women and girls must be guarded, protected and passed

on to another member of the tribe. A girl or woman dishonours her family and tribe if her body is violated, even by force, and the shame can be cleansed only through her death.

46. Family status depends on honour. In patriarchal and patrilineal societies, maintaining the honour of the family is a woman's responsibility. The concept of women as commodities and not as human beings endowed with dignity and rights equal to those of men is deeply embedded in these societies. Women are seen as the property of men and must be obedient and passive, rather than assertive and active. Any assertive behaviour is considered to be an element that would result in an imbalance of power relations within the parameters of the family unit (E/CN.4/2002/83, para. 27). UNICEF reports that in some countries, early marriages are regarded by families as a means of protecting girls from premarital sex that would undermine their honour and that of their families.³

47. Honour-related killings are practised by some communities in their countries of origin or in the countries to which they have immigrated. Honour-related killings occur in Asia, the Middle East and Europe, where first-generation immigrants have passed the practice on to their children and grandchildren. Among some Asian communities, to guard the honour of a clan, marriages take place within the biradari system, a social caste system that divides people into separate communities and combines caste and honour with notions of total loyalty to the clan.

48. Reports also indicate that relentless pressure and emotional blackmail are used by parents and families to force young girls into unwanted marriages. More extreme forms of pressure can involve threatening behaviour, abduction, imprisonment, physical violence, rape and, in some cases, murder.

C. Poverty

49. Studies show that servile marriage is most common in poor households. A UNICEF study shows that a girl from the poorest household is three times more likely to marry than a girl from the richest household.¹ A United Nations Population Fund study on adolescents shows that, in Nigeria, 80 per cent of the poorest girls marry before the age of 18, compared to 22 per cent of the richest girls.⁴

50. It is important to note that the payment of a dowry or bride price does not mean that a woman ends up in a servile marriage. In this context, it is the non-consensual nature of the marriage that is the abuse, not the payment. In some countries, however, a bride price does in fact translate into men feeling that they own their wives.

51. In some cases, the parents force a bride into a servile marriage to improve their economic situation or to pay off the family's debts. A poor, rural family is more likely to force a female member into marriage for financial reasons rather than for cultural and religious reasons. The payment may be made in cash or in kind to the woman's family, guardian or any other person or group. In such instances, the bride's family forces her to remain in a servile marriage because returning to her home would mean that her family would have to repay the bride price to her husband or her husband's family.

52. In situations in which a bride has been forced into marriage because of a debt, it is often impossible for her family to repay the bride price. For example, where brides are victims of physical, psychological or sexual violence, their nuclear families will not take them back because they would need to repay the bride price.

³ UNICEF, "Early Marriage: Child Spouses", *Innocenti Digest*, vol. 7 (March 2001), Innocenti Research Centre, Florence, Italy.

⁴ *The State of the World Population 2003: Making 1 Billion Count – Investing in Adolescents' Health and Rights* (United Nations publication, Sales No. E.03.III.H.1).

53. To help to reduce servile marriage, the Government of India launched conditional cash transfer initiatives to provide incentives to families to delay their daughters' marriages. The "Apni beti apna dhan" ("Our daughter, our wealth") programme was established by the local government of Haryana to issue long-term savings bonds redeemable on a girl's eighteenth birthday, provided that she is unmarried.

D. Conflict

54. Conflict and post-conflict situations have also contributed to an increase in servile marriage, given that girls and women recruited or abducted by armed groups have been forced to marry combatants. Armed groups such as the Lord's Resistance Army have been found to force girls into servile marriage in the Central African Republic, the Democratic Republic of the Congo and South Sudan (see S/2012/365).

55. As mentioned above, the issue of servile marriage in conflict was recently highlighted by the adoption of a landmark judgement by the Special Court for Sierra Leone in *Prosecutor v. Brima et al*, in which it recognized forced marriage as a crime against humanity under international criminal law for the first time.

E. Cultural and religious practices

56. Cultural relativism is often given as an excuse for slavery-like violations such as servile marriage and sexual slavery committed against women and girls. Societies that permit servile marriage are based on an overwhelming fear of female sexuality and culturally believe that it should be curtailed and regulated.

57. In Sindh, a province of Pakistan, the custom of *swara* is practised, by which women are used as commodities to settle disputes between clans and tribes. They are either forced to marry the men from the receiving tribe or used by them as sex slaves. This form of servile marriage continues to occur even in the face of legislation prohibiting this practice and the upholding of that legislation by the Supreme Court of Pakistan (see EGM/GPLHP/2009/EP.14).

58. South Africa has given individuals and couples the right to choose the law that should govern their marriage, enabling them to opt out of traditional systems (that they may feel are oppressive or discriminatory) in favour of a law based on the Convention on the Elimination of All Forms of Discrimination against Women. Such an approach should be further explored to ensure that all laws are brought into conformity with international standards (E/CN.4/2002/83, para. 9).

59. In many countries, there is a widespread belief, which also finds expression in law, that a husband is entitled to sexual intercourse and may insist on this entitlement by force. There is a growing trend by countries to repeal such laws, however. For example, Ghana, after much public debate and consultation with stakeholders, amended its legislation in order to protect women from marital rape and enacted new legislation criminalizing physical, sexual and physiological abuse, intimidation, threats and harassment between spouses, other intimate partners and former partners, among others (A/HRC/7/6/Add. 3, paras. 37 and 74).

60. As a result of cultural beliefs, girls and women with dual nationality are sometimes abducted by their families from one country and forced to marry men from their parents' country of origin. This has happened in the United Kingdom to women from Asian diaspora communities. The Governments involved have worked through consular assistance and judicial proceedings to provide victims with effective remedies. In 2005, the United Kingdom set up a forced marriage unit under the Foreign and Commonwealth Office and the Home Office to tackle the issue.

61. There are several practices in which girls are forced into marriage under the guise of religious rites. For example, the Committee on the Elimination of Racial Discrimination has noted the existence in India of devadasi, whereby a girl, usually a Dalit, is forced to marry a deity and forced to have sex with members of the temple (CERD/C/IND/CO/19, para. 18). The Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination have addressed the *deuki* system in Nepal, under which girls may be offered to deities by their families or by wealthy people who buy girls from their parents to be granted wishes or heavenly favours. The girl is then called a *deuki* and engages in prostitution (CRC/C/15/Add.261, para. 67, and CEDAW/C/NPL/CO/4-5, para. 17).

62. Other forms of ritual slavery in which a girl is given to a shrine and married to the gods are practised in parts of West Africa. The girl is enslaved to atone for the real or alleged sins of a male relative. There is a belief that gods often punish a person's sin by causing the deaths of family members until the sin is pardoned. Until the early eighteenth century, livestock or other gifts were given to the priests in atonement. As girls could be used as domestic help and as sexual partners, priests began taking young virgins as reparation instead. A girl is expected to serve a priest for a certain period, depending upon the severity of the crime and the policy of the shrine. The girl's family can redeem her after that period, but the priest demands a high price. If the priest dies, the girl becomes the property of his successor. If the girl dies without her family redeeming her, her family is obligated to replace her with another virgin, meaning that the cycle can continue for generations. Enslaved girls and women are forced to live in inhumane conditions. They are expected to work in the fields and the local market and also provide sexual services to the priests. They are beaten into submission if they resist (E/CN.4/2002/83, para. 42).

VI. Forms of servile marriage

63. As with domestic violence, it is difficult to obtain accurate figures of the numbers of girls and women in servile marriage. Statistics for early marriage, however, can be used as an indication. According to UNICEF, adolescent marriages (where one or both spouses are below the age of 19 years) commonly occur in South Asia and sub-Saharan Africa. In those regions, most marriages take place between the ages of 15 and 18 years.¹ UNICEF suggests that early marriages are often considered to be a way to protect girls, and even sometimes boys, from sexual predation, promiscuity and social ostracism. In some communities, parents perceive girls as wealth.

64. Described below are forms of servile marriage that women and girls experience.

A. Non-consensual marriage

65. Non-consensual marriage is a form of marriage where one or both parties have not consented. The lack of consent is the main principle underlying all forms of servile marriage. In some instances, the law is used to justify non-consensual marriages. For example, to protect the honour of a girl or woman, some countries can compel a rape victim to marry her rapist if the rapist so agrees. In this situation, the rapist is pardoned. Although these marriages purport to be consensual, fear of stigma and family pressure sometimes coerce rape victims into consenting to them (see E/CN.4/2002/83). Recently, the Working Group on the issue of discrimination against women in law and in practice reported the case of Amina Filali, a Moroccan woman who committed suicide after allegedly being forced to marry her rapist. Article 475 of the Moroccan Penal Code provides that a kidnapper or seducer of a minor girl may be acquitted of rape if he marries her (A/HRC/20/28/Add.1, para. 24).

B. Sale of wives

66. The sale of wives, a practice by which a woman is forced to marry several times so that her family acquires money or property, has been reported in Europe, Asia and Latin America (E/CN.4/2002/83, para. 59).

67. The sale of wives also manifests itself in the form of mail-order marriages and paper marriages. In the case of mail-order marriages, women from developing countries in East and South Asia, Eastern Europe and Latin America advertise themselves in newspapers, magazines and on the Internet for marriage outside their countries of origin, usually to men in developed countries. In many instances, the women are economically vulnerable and advertise themselves in the hope of improving their economic situation.

68. Upon the recommendation of the Commission on Human Rights, a report on abolishing slavery and its contemporary forms was published in 2002 by the Office of the United Nations High Commissioner for Human Rights. In the report, it is stated that women who leave their families to marry a man in a foreign country that they have not previously visited are vulnerable to a wide range of forms of exploitation prohibited by existing international standards. The involvement of commercial agents in organizing marriages does not in itself appear to be unacceptable, but if the agent makes payments to the bride's parents or others, the arrangement would come close to infringing the prohibition on the sale of women for marriage in the Supplementary Slavery Convention. As brides in a foreign country, the women's vulnerability is increased by the fact that they have no family or friends to support them if they require assistance. In addition, in some countries obtaining the right to residency as a spouse is a long, drawn-out process that may take years. A wife who leaves her husband is unable to seek assistance for fear of deportation or imprisonment.

69. Paper marriages are those in which the marriages take place officially, often for the woman to obtain a residency permit, but the man and woman do not live together subsequently as husband and wife. The wife is often made to earn money for a third person through income-generating activities such as prostitution.

C. Wife inheritance

70. In societies in which women are considered vulnerable because they have no male protectors, the levirate, a custom by which a man may be obliged to marry his brother's widow, can be used to expose a widow to mental, physical and sexual abuse in the name of tradition. Most recently, the practice has been highlighted by the Committee on the Elimination of Discrimination against Women as an issue to be addressed in the Congo (CEDAW/C/COG/CO/6, para. 15).

VII. Impact of servile marriage on girls and women

71. If a woman refuses marriage, she can be subject to character assassination or kidnapping by the man or his family to force her into marriage or to rape her. Bride kidnapping, a practice by which a bride is forcefully abducted and married, sometimes occurs in Kyrgyzstan and is often accompanied by physical and sexual violence (CEDAW/C/KGZ/CO/3, paras. 21 and 22). In many cases, girls and women endure years of constant abuse that sometimes leads to death at the hands of their relatives, their husbands or their husbands' families. Girls and women are also encouraged or forced by their husbands or their husbands' families to commit suicide.

72. Often overlooked is the psychological pressure placed on the girl or woman because of constant criticism and verbal abuse from her husband or his family, which makes her

insecure and submissive. Such abuse is accompanied by the other violations described below.

A. Domestic servitude

73. Women and girls in servile marriage are required to perform all domestic household tasks and, in some cases, to work outside the home in shops or on farms and to have sex with their husbands. If they do not perform their duties adequately, they face physical and psychological abuse from their husbands or their husbands' families. In many such cases, the girl or woman is also a victim of marital rape.

74. The domestic servitude inherent to child marriage disempowers girls by denying them educational opportunities and the chance to form protective networks of friends and peers.

B. Sexual slavery

75. Sexual slavery is a situation in which absolute control over one person is imposed on another, either by the use or threat of force. Servile marriage results in sexual slavery. As mentioned previously, girls in ritual slavery are forced to have sex with the priest who consummates the marriage between the girl and the deity. A ritually enslaved girl may also be forced to have sex with multiple sexual partners who believe that they become cleansed by having sex with her. The girls are also rendered physically weak by the pregnancies, births and, on occasion, abortions that they undergo. As a result of having multiple sexual partners the girls suffer from reproductive tract infections and sexually transmitted diseases. Unable to leave or seek help, they are often socially marginalized, with few support systems. This contributes to a lack of confidence and low self-esteem, perpetuating subordination.

C. Violations of the right to health

76. A UNICEF study on early marriage indicates that girls under the age of 15 years are five times more likely to die during delivery as a result of haemorrhage, sepsis, preeclampsia or eclampsia and obstructed labour than women between the ages of 20 and 24 years.³

77. The younger the bride, the more likely it is that she will face serious health complications owing to the physical immaturity of her body at the time of childbirth. A girl with underdeveloped physiology risks incurring an obstetric fistula, a rupture of the vagina, bladder and/or rectum during childbirth that causes persistent leakage of urine and faeces. Girls face a greater risk of health problems associated with repeated pregnancies and childbirth. They also have limited access to information concerning their reproductive health and health care.

78. According to Save the Children in the 2004 edition of its annual publication, *State of the World's Mothers*, once born, children of girl brides are twice as likely to die before the age of 1 year as the children of a woman in her twenties. If they survive, the children are more likely than those born to older mothers to have poorer health care and inadequate nutrition as a result of the mother's poor feeding behaviour.

79. In countries with a high incidence of HIV/AIDS, some adult men prefer to marry girls as their virginity and HIV-negative status is assured. Early marriage to older, more

sexually experienced men is, however, no guarantee that a girl will not be infected with HIV. Studies in Kenya and Zambia show that married girls are more likely to be HIV-positive than their sexually active unmarried counterparts.⁵

80. Furthermore, isolation, marital rape and verbal abuse have serious long-term effects on victims' mental health.

D. Violations of the right to education

81. Education is considered to be the strongest predictor of the age at which a girl will be married. According to UNICEF, in Nicaragua, 45 per cent of uneducated girls are married before the age 18 of years, compared to 28 per cent of girls having completed primary education, 16 per cent of girls having completed secondary education and 5 per cent of girls having completed higher education. In Mozambique, approximately 60 per cent of uneducated girls are married by the age of 18 years, compared to 10 per cent of girls having completed secondary education and less than 1 per cent of girls having completed higher education.⁶

82. Girls are taken out of school and forced into servile marriage. The lack of education or limited education seriously harms their opportunities and choices, making them economically dependent on their husbands and vulnerable to poverty if their husbands die or abandon or divorce them.³ Societies in which servile marriage takes place often value boys more than girls.

83. World Health Organization research also shows that women and girls with low levels of education are at a greater risk of violence than better educated and older women.⁷ The higher the levels of schooling for girls, the less they are at risk of servile marriage. In the United Republic of Tanzania, women who attend secondary school are 92 per cent less likely to be married before the age of 18 years than women who attend only primary school.⁶

E. Right to be free from physical, psychological and sexual violence

84. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 19 recognizes forced marriages as a form of violence against women. In addition, the Convention on the Rights of the Child call for States parties to protect children from physical, mental and sexual abuse and exploitation through legislation and other social and educational measures. The obligation to protect children from violence includes protection from parents and caregivers. Article 34 of the Convention requires that States parties protect children from sexual exploitation and abuse.

85. Domestic violence includes physical and sexual violence, and may be committed by the wife's spouse, in-laws or other family members. According to UNICEF, women and girls who marry while aged under 18 years are less educated, more likely to experience domestic violence and believe that their husbands are fully justified in beating them than their peers who marry later.⁶ In Kenya, 36 per cent of girls who married while aged under 18 years believed that a man was sometimes justified in beating his wife, compared to 20

⁵ Shelley Clark, "Early marriage and HIV risks in sub-Saharan Africa", *Studies in Family Planning*, vol. 35, No. 3 (September 2004), pp. 149-160.

⁶ UNICEF, *Early Marriage: A Harmful Traditional Practice* (New York, 2005).

⁷ World Health Organization, *Multi-Country Study on Women's Health and Domestic Violence against Women* (Geneva, 2005). Available from www.who.int/gender/violence/who_multicountry_study/en/.

per cent of married women.⁶ Girls are also less likely to participate in discussions concerning family planning.

86. Girls and women who seek to leave servile marriage may be victims of acid attacks or honour-related killings. Acid attacks, which involve the use of sulphuric acid to disfigure or kill, have been reported in Asia, Europe and North and Latin America.

F. Right to non-discrimination

87. The right to non-discrimination on the basis of sex features in numerous international human rights instruments in relation to marriage. For example, articles 1 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women call for the elimination of discrimination against women in all matters related to marriage and family relations. Article 2 of the Convention on the Rights of the Child recognizes the right of children to be free from discrimination, including on the grounds of age and sex. In cases where there is a difference between the minimum age for girls and boys to marry, however, the minimum age for girls is always lower than that for boys.

VIII. Challenges

A. Legislation

88. Women in servile marriage lack adequate protection in the light of their specific vulnerabilities arising from their gender, low social status and their age (if they are girls). Many countries lack laws criminalizing forced marriage or slavery-like practices that arise from servile marriage such as domestic servitude or marital rape, mainly because some abuses that occur in a marriage are often seen as domestic matters and outside interference is often frowned upon because it would be interference in the privacy of the home. Consequently, there is a tendency to deal with this form of slavery privately, outside the courts.

89. Some countries have enacted legislation that provides that a rapist may be acquitted of rape if he marries his victim. These laws do not consider the victim to be a victim and do not take into account her rights as they favour only the perpetrator of the crime. The victim's rights are further violated when she is forced to marry her rapist and enter a servile marriage.

90. Some countries have abolished such legislation. For example, by Act No. 14 of 1999, Egypt abolished the pardon formerly granted to a perpetrator who married a kidnapped victim. In 2005, Brazil amended its Penal Code along the same lines.

91. In India, under section 13 of the Prohibition of Child Marriage Act, 2006, magistrates can issue an injunction against any person, including a member of an organization or an association of persons, prohibiting a child marriage where they are convinced that such a marriage has been arranged or is about to be solemnized.

92. In some cases, although laws may be in place to protect women and girls from servile marriage, the authorities fail to prosecute the perpetrators. Consequently, victims do not seek help from the police or judiciary as they fear further abuse from Government authorities or being forcibly returned to their husbands. According to a 2008 report by the United Nations Development Fund for Women, between 70 and 80 per cent of Afghan marriages are forced, and 57 per cent are child marriages where one of the spouses is under

the age of 16 years.⁸ In 2009, Afghanistan enacted legislation on the elimination of violence against women, in order to criminalize servile marriage and ensure that perpetrators were brought to justice. The law does not, however, address how authorities should treat a woman who runs away to escape the offences criminalized under the law. Consequently, girls and women who flee servile marriage are arrested and often convicted of intent to have sex outside marriage.

93. Human rights violations taking place within a marriage may at best be seen as isolated domestic violence cases and treated as such, disregarding the wider issue of servitude within a home. In some countries, even in cases of marital rape or physical abuse, the police or judiciary may show leniency to the perpetrators. For example, cases of acid attacks either go unreported or, when reported, the attackers go unpunished.

B. Family and societal pressure

94. Many communities believe that girls should marry and can never divorce because of cultural, religious and financial factors, among others. Consequently, families and communities resist change. In addition, there is an overwhelming belief that events within a family are private and should not be subject to outside interference. A wife who runs away is not permitted to return to her family and, if she does, she will be stigmatized for having left her husband, no matter how abusive the marriage. In some societies, it is believed that the husband has every right to discipline his wife and that there should be no interference in marital matters. The female spouse is often made to feel as though she is at fault and must learn to be a better wife (i.e. more subservient).

IX. Conclusions and recommendations

95. **The Special Rapporteur regrets that the issue of servile marriage has evolved and been addressed in a fragmented way. A more comprehensive approach should be taken by the Human Rights Council to allow for the better-informed, comprehensive and strategic interventions that are required to put an end to the practice.**

96. **Legislation should allow for marriages concluded under force to be made void, annulled or dissolved without undue burden placed on the victims of such marriages.**

97. **Programmes should be put in place to support the victims of servile marriage by providing, for example, shelter (in some cases in the long term), legal assistance (in particular for children who have been victims), financial compensation after divorce and continuing education.**

98. **Violations relating to servile marriage such as domestic servitude and sexual slavery should be criminalized. Governments should also denounce and strengthen laws regarding crimes committed in the name of honour. Victims or survivors of honour crimes should not be placed in protective custody but instead provided with long-term safe housing. Psychosocial services should be provided for victims, such as community-based support mechanisms and services, including mobilizing the community and raising its awareness of the consequences of the crimes, to help to prevent future crimes and to assist with the reintegration of victims.**

99. **In many countries with a legal minimum age for marriage, there are also exceptions for girls below that age. Where exceptions exist, rigorous procedures must be put in place to ensure that the marriage is in the child's best interests. Private and**

⁸ Available from <http://afghanistan.unifem.org/media/pubs/08/factsheet.html>.

public institutions must be required to systematically consider how children's rights and interests are affected by their decisions and actions.

100. The minimum age cannot be applied if there is no proper birth and marriage registration in the country. Registration of births should be compulsory even if the marriages of the parents are not registered.

101. Once legislation prohibiting servile marriage is passed, implementation and enforcement become a priority. Enforcement requires the cooperation of the police and the judicial system. Awareness-raising will also be necessary. States should establish mechanisms for community members to report on servile marriage through helplines, hospitals, schools and/or clinics.

102. Education has been recognized as one of the most effective ways to delay early marriage and allow for married women to make more informed choices about their health and that of their families. States should establish more schools, recruit qualified teachers (in particular female teachers) and train teachers in subjects such as gender sensitivity, HIV/AIDS and reproductive and sexual health. They should also offer economic support and incentives for girls and their families, such as fee subsidies, scholarships, school supplies, school uniform and conditional cash transfers. There should be proper monitoring and evaluation of such transfers. States should also adopt all appropriate educational measures to modify the social and cultural patterns of conduct that foster cultural practices among families that lead to servile marriage. Teachers and other educational staff should be trained to recognize vulnerable girls and react appropriately. Continuing formal education and vocational training for married girls and women should be provided.

103. States should also increase and improve access to reproductive health services and information, in particular for girls and women, including access to family planning. Health information tailored to young mothers about proper nutrition and care for their health and the health of their babies should be made available. Access to reproductive health care for women and girls in urban and rural areas needs to be increased and improved by ensuring that adequate resources and health-care experts are available.

104. States should launch awareness-raising campaigns about servile marriage and the remedies available to potential and actual victims, reproductive health and health care, and the importance of birth and marriage registration. These should be targeted at the general public and health-care workers. Programmes should be developed with local communities and their leaders, including elders and religious leaders, to stop servile marriage within the community.
