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PANEL II

Capacity-building on mainstreaming a gender perspective in the development, implementation and evaluation of national policies and programmes for the elimination of all forms of discrimination and violence against the girl child.

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* The paper has been reproduced as submitted.

1. “Today, the devastating impact of child marriage continues to be ignored in the developing world. Millions of child brides, some just past puberty, are denied access to health, education and economic opportunities. The majority of them are burdened with the roles and responsibilities of wives and mothers... This is despite the existence of numerous international and regional human rights laws and conventions against the practice. It is clear that international human rights instruments relating to child marriage remain, at best, rhetoric, or general declarations of principles, without effective national policies and mechanisms to implement and enforce them.” (International Planned Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls)
2. This is true because in many cases it is impossible to even assess the extent of child marriage because there are no provisions for birth or marriage registration or the laws on this is not enforced. So marriages are unregistered and unofficial and hence are not a part of any data collection system
3. The topic I am to speak on is mainstreaming and capacity building to address child marriage. The above quote points to the intransigent nature of child marriage in spite of the obvious fact that it is a gross violation of the human rights of the girl. Hence mainstreaming and capacity building has to take in the many complexities of this issue. We have to unravel and address the denial of a range of other rights that underpin this phenomenon and pose obstacles that go beyond the immediate issue of child marriage. We have to recognize that sex based discrimination and stereotyping that present themselves as culture and tradition gives social validity to the practice of child marriage and denies governments the moral courage to enforce the laws they have enacted. So what sort of mainstreaming and capacity are we talking about? Is mainstreaming only about targeting a unit of government such as women and children affairs department or law ministries and law enforcers? Is capacity only about technical know how and training on gender sensitivity? I think we have to discuss the need for social transformation, the elimination of all forms of discrimination against women and girls and the achievement of de facto equality. Above all we need to discuss the creation of political will and commitment. Mainstreaming in this sense will have to be at a broader level and in the long term, the mainstreaming of the human rights of women and girls premised on the principles of equality and non discrimination into all national policies, and programmes. This approach will then defend and support and make non negotiable all direct efforts to end child marriage.
4. I will now attempt-to provide a policy framework for ending child marriage that takes a human rights approach and addresses the practice of child marriage as well as its underlying causes. Such a framework will recognize that not only are rights interrelated but also so are violations and discrimination, It will also establish State accountability to end this practice. While the practice itself is mired in social and cultural patterns of conduct, due diligence has to be exercised by the State to take all appropriate measures including legal and policy measures as well as programmatic measures that would enable girls to exercise all other rights that restrain their vulnerability to sexual exploitation in the guise of marital unions and to change societal norms that condone this.

- (i) The first element that needs to be addressed and for which capacity building is needed is to set the standards for State action. In relation to child marriage the standards are to be found in the following human rights instruments .
- 1948 **Universal Declaration of Human Rights** provides that men and women are entitled to equal rights in marriage and marriage breakdown, and that both potential spouses should freely and fully consent to the marriage [Article 16]
 - 1956 **Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery** considers any marriage that is forced upon a girl or woman by her family or guardians a practice similar to slavery [Article 1 (c)]
 - 1964 **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages** indicates that marriage requires the consent of both parties [Article 1]; calls upon parties to eliminate the marriage of girls under the age of puberty and requires that states stipulate a minimum age of marriage
 - 1966 **International Covenant on Civil and Political Rights [Article 23]** and the 1966 International Covenant on Economic, Social and Cultural Rights [Article 10] reinforce that marriage shall be entered into with the free and full consent of both parties
 - 1979 **Convention on the Elimination of Discrimination Against Women** (Article 16 (1) Article 16 (2) provides that the betrothal and marriage of a child shall have no legal effect. It further requires that states set a minimum age of marriage and that they require the official registration of marriages.
 - 1989. **The Convention on the Rights of the Child (CRC)**
 - 1990 **African Charter on the Rights and Welfare of the Child** provides that shall child betrothal and marriage shall be prohibited and that effective action shall be taken to ensure that the minimum age of marriage is 18. Article 21
 - 2000. **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 6, clauses (a), (b), (d)**

5. All the above instruments provide for (1) the right to enter into marriage after free and full consent; (2) the right to freely choose a spouse; and (3) the right not be discriminated in the enjoyment/exercise of the right to enter freely into marriage. All efforts to end child marriage must meet these standards.

6. As part of capacity building, there is a need to create conceptual clarity as well as a uniform understanding of the problem. Child marriage has to be understood as an extreme form of discrimination against the girl child from the perspective of the definition of discrimination provided in article 1¹ of the Convention on the Elimination of

¹ Article 1

All Forms of Discrimination against Women the Convention). Discrimination occurs when an act leads to the denial of rights in any field. Child marriage grossly violates many rights of the girl, right to choose, right to education, development and capacity formation, to earn a living, to sexual and reproductive rights, to be free from violence, to be free from cruel and degrading treatment, right to health and even to life. Furthermore the denial of equality and rights to the girl child in the first instance makes her vulnerable to child marriage which is also forced marriage.

7. Research shows that there is correlation between child marriage, residence in rural areas, low education of the girl child and poverty. Low education and poverty seems to be both cause and effect. According to the UNFPA , poor academic results and consequent dropping out of school may limit other options compelling parents to arrange the marriage of their young daughters and on the other hand expectations of early marriage and early child bearing as a value may make girls lose interest in their studies and make them available for early marriage.² The Demographic and Health Survey data shows that median age of marriage is directly correlated with higher rates of girls in school.³

8. Research also indicates that when parents face economic hardship it may be seen that marriage is in the best interests of the girl. High levels of economic hardship and social inequality even force parents to sell their daughters as a means of earning money. In some contexts girls are given away to settle feuds and a decision to give the girl in marriage for whatever reason may be made by one member usually male without the consent of the mother.

9. In societies which are predominantly patriarchal and women have a much lower status than men. It is the girl children who suffer most from this discriminatory attitude and girls are a liability from the time they are born. Sons are perceived to continue the blood linkage; daughters do not. Above all there is a cultural and social compulsion to get a girl child married. The primacy given to virginity for girls and the value of the wife's life long fidelity to her husband gives rise to the compulsion to "protect" girls until they are given off in marriage. This ensures life long submission to male control from that of father to husband. Freedoms of all kinds for the girl child is not valued at all and submissiveness at all times is the desired norm. Child marriage and the continued control by male guardians will ensure this. This lack of freedom will also ensure that any child she bears is "legitimate" as it will prevent unsanctioned sexual activity. The cultural norm that women are keepers of their family honour subscribe to the pressures placed on women to preserve their "chastity". Marriage that takes place in childhood is a social mechanism to make sure women preserve the family honour. The lack of law and order and real or perceived lack of physical security compounds the "fear" of families about the vulnerability of girl children. This may particularly be so among economically backward

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

² Menache b. E , J Bruce and M E Greene "The Uncharted Passage : Girls Adolescence in the Developing World." Population Council. Cited in UNFPA. Fact Sheet

³ Cited in UNFPA Fact Sheet.

communities or communities in rural areas.⁴

10. So the social de valuation of the female child as well as denial of decision making rights to mothers which contribute to child marriage even though poverty or other causes may be a trigger, indicates that this practice cannot be ended unless there are long term concerted efforts to eliminate discrimination against women and the girl child in all its forms.

(iii) The next step in mainstreaming is to draw up a comprehensive, and holistic plan for ending child marriage based on an anti discrimination approach taking into consideration causes and consequences of child marriage and involving all relevant ministries in a mainstreaming exercise.

(iv) This plan will ensure an adequate legal framework that comprises constitutional guarantees for equality and non discrimination that bind both the public and private sectors including individuals and families and there is a law restricting child marriage. The law must make no exceptions on the basis of culture, religion, ethnicity

(v) Research and analyses has to be undertaken in situ to pin pint the causes and consequences of child marriage, why the law is so poorly enforced or implemented, the nature of societal attitudes and resistance etc.

(v) The research and analyses must inform further action which aims to deter and prevent child marriage, ensure the law is enforced, give girls the right of choice in marriage and mitigate the consequences of child marriage. While the research could be undertaken by the National Machinery for Women, all further actions must be mainstreamed and an inter ministerial agency set up..

Some elements of State action that needs to be mainstreamed and questions that need to be asked are:

Information dissemination

- Is there adequate publicity given to the rights of girls to have choice in marriage to life choices and about the consequences of child marriage. Is the information disseminated to all sectors of the community on a constant basis gender sensitive, culturally appropriate information that motivates (men and women)

Who is this done by? (Ministry of information/ Education)

- Is there provision of information about women's right to equality to all state agencies vertically and horizontally: How much information do state agents (including judges) have on the obligation of the State under the treaties. Who should do this education of state agents.

Relevant infrastructure

- Are provision for infrastructure for birth and marriage registration: available through wide coverage and accessible with information to people on where they are and why birth and marriage should be registered.
- Is statistics collected showing registration of births and marriages?

⁴ AALI. India

Measures to identify ongoing and emerging obstacles (internal) and resolving them

- Are there programmes to resolve society/community resistance, changing culture, conducted in partnership with community based organizations

Ensuring levels of capacity, safe conditions and freedoms to access the means

Long Term

- Are there are measures to promote women's ability to exercise inter-related rights such as education, employment, asset ownership, mobility, safety. Access to economic resources, land rights, labour rights, freedom from violence, guarantees for livelihood systems, housing, health, support services for child rearing are all areas for legislative and policy attention. This helps set standards, identifies the actors who have obligations and provides an irreducible framework for the fulfillment of rights as non-fulfillment can be challenged.
- Are there provision of enabling conditions, affirmative action (temporary special measures)
- Are there are plans for the progressive realization of women's rights in all fields and in particular for the elimination of child marriage, through National Plans of Action for the Advancement of Women with indicators and benchmarks that is mainstreamed into National Development Plans.

Identifying obstacles (external) and resolving them

- Is there budgetary analysis to identify state priority for spending
- Are additional resources are mobilized.

Measures to sustain protection of rights

- Are there accountability systems for monitoring, data gathering and utilization, identifying emerging issues and developing new indicators
- Are there community level consultations to ensure people's participation in identifying needs and evolving rights
- Are girls mobilized to spread awareness that they are rights holders and that the State and their parents have duties to fulfill their right to equality and non discrimination and to the fullest development of their potential is an essential ingredient to bring about change. The Education Ministry has a critical role to play in developing such peer educators and making heard the views of girls on their aspirations. There are examples in South Asia of such efforts.
- Is data gathered to show that there is no regression in incidence of child marriages. **(results)**

Measures and mechanisms to ensure, protect and redress based on international standards

- Is there monitoring and documentation of violations, perpetrators (state or non state actors) impact, contributory factors

- Is there support services, legal aid to claim redress and demand justice, regardless of whether the perpetrator is a state or non-state actor.
- Are there complaints procedures and competent tribunals, commissions, courts to hear cases
- Are cases filed against perpetrators (parents/ husbands) and with positive verdicts. This includes cases against police and other agents of the State who collude with the family when a child is married off. In most of the cases the law is not effectively enforced and culture and customary practices prevail in flagrant violation of the law.
- Is the law adequate to end the marriage or make it void.
- Are pregnant girls able to continue education.
- Are there health services to help girls avoid pregnancy, safe motherhood services and prevent risk to life due to pregnancy.

Capacity building

11. Capacity building is an institutional issue. Capacity building is very often taken to be training. While it does include training for the purposes of creating the requisite expertise, capacity building also includes mobilizing adequate resources, human and material, and having structures, processes, procedures and multi sectoral linkages that enable the fulfillment of organizational and programmatic goals.

12. Part of the problem in seeing capacity building as mere training there is no attempt to redefine organizational goals, rearrange institutional processes and procedures to achieve the fulfillment of women's rights and then to assess what skills are needed to make the new system function and in that context who should be trained and for what. When such reorganization does not take place even if the training is good, nothing changes. The skills developed cannot be put to use because the unchanged institutional processes does not allow it. There has to be an organizational commitment to change before training is undertaken. Here the question of the acceptance of the mandate to fulfill women's rights is crucial.

13. In the context of child marriage, great sensitivity and courage is needed to restrain cultural imperatives and patriarchal controls. The State must develop capacity to change norms using community forces and sustaining efforts through maintaining a constant presence in the community.

Further thoughts on mainstreaming:

- In most countries, the national machinery for women has been entrusted with ensuring actualization of the rights of women and girls which really requires the attention of all ministries and sectors. While inter ministerial committees may have been set up in some countries for implementation, in many instances, these bodies do not recognize the authority of the national machinery for women that is trying to coordinate them.
It is obvious that the national machinery for women do not have the authority to get the sectoral ministries to redefine their mandate. The responsibility for doing this then must rest with the Planning Ministry or the Planning Commission or Economic Planning Unit. A high level directive from the cabinet is necessary to

give this responsibility to this central agency. I say this because ending child marriage is not only about legal measures but requires attention to socio economic rights of the girl as well as transformation of the society.

Furthermore as matters stand there are no consequences for any department or individual that does not carry out their responsibilities towards women's rights. The central planning agency has to work out a methodology for assessing performance in this regard and include it as a criteria in the review of performance with specified consequences.

- In order to maintain a universal minimum core set of standards for women's rights generally and to end child marriage in particular and to benefit from the progress made through the development of jurisprudence through the implementation of international treaty law, states need to ensure that they have acceded to the main human rights treaties, have lifted their reservations if they have placed any and report to the treaty bodies on time. They also need to ensure that adequate mechanisms and procedures are in place to implement and monitor treaty law obligations.

14. CEDAW is the main treaty that provides for equality and the elimination of discrimination against women as the principle means by which women can enjoy all rights. With regard to the prohibition of child marriage we need to look at article 16 (1) and (2) of this treaty. The full implementation of this treaty will serve to address child marriage, its causes and consequences. Both the CEDAW Committee and the Committee on the Rights of the Child have consistently taken up the issue of child marriage in their review of States parties. The concluding comments of the treaty bodies need to be also mainstreamed for effectively protecting the human rights of women and girls.

15. These instruments have been ratified by most governments and as mentioned before, they place legally binding obligations on States. These rights are therefore not a matter of choice for governments granted through State benevolence but obligations for which they have to be accountable. Attempting to mainstream without a commitment to good governance will not bring results.