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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by European Centre for Law and Justice, The / Centre Européen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 May 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

IN VIOLATION OF INTERNATIONAL LAW, YOUNG GIRLS IN KENYA'S SAMBURU REGION ARE THE VICTIMS OF FORCED CHILD MARRIAGES.

1. INTRODUCTION

In Kenya's Samburu tribe, girls as young as ten years old are routinely the victims of forced child marriages, subjecting them to female genital mutilation (FGM), rape, and slavery. These tribal practices gravely harm children, yet perpetrators have been allowed to continue committing these crimes with virtual impunity.

As a signatory to many international treaties that expressly and implicitly ban forced child marriages, Kenya has an obligation to protect young girls from forced marriages. Additionally, adherence to international human rights norms requires the end of these barbaric practices.

The European Centre for Law & Justice (ECLJ) and its international affiliates have gathered nearly 100,000 signatures calling for the end of forced child marriages in Kenya. The purpose of this submission is to urge the United Nations to do everything in its power to protect young girls in Kenya and bring those who perpetrate such heinous crimes to justice.

2. BACKGROUND

The practice of forced child marriages is widespread within the Samburu tribe of Kenya. Girls as young as six years old are forced to marry men as old as their fathers and grandfathers in exchange for several cows or goats. Before their wedding ceremony, the girls are forced to undergo the dangerous and internationally condemned practice of FGM. Once married, these children are trapped in a life of rape and slavery to their new "husbands."

The East African Centre for Law & Justice (EACLJ), an ECLJ affiliate office on the ground in Kenya, is currently partnering with a local NGO to rescue Samburu girls from forced marriages.

On July 7, 2015, in partnership with the Samburu Girls' Foundation, EACLJ staff traveled to Samburu County to rescue two girls from such a fate. When they arrived, one of the girls, just thirteen years old, had already been married off to the area chief, a 53-year-old man. The second girl, only ten years old, was to be married just four days later.

Unfortunately, the girl forcibly married to the chief had already undergone FGM and was living with the chief. The following day, with the help of local police, they rescued this young girl, and rushed her to the hospital to receive medical care for injuries she obtained during the FGM ceremony.

The EACLJ team was next able to rescue the second girl a day before her intended wedding and FGM ceremony. The girl's brother risked his life to hide her from their father until our team could arrive.

These are just two stories of hundreds of Samburu girls who have been rescued from forced child marriages.

Yet, as they rescue girls, the EACLJ staff has seen first hand that many of the perpetrators of these atrocities are allowed to walk free. The EACLJ is currently engaged in legal battles in the High Court of Kenya at Nakuru demanding that no matter what their position or status within the community, those who rape, abuse, and enslave Samburu girls be prosecuted to the fullest extent of the law.

3. FORCED CHILD MARRIAGES ARE HARMFUL TO CHILDREN.

Forced child marriages must be stopped in Kenya because they are detrimental to the development and well-being of Samburu girls who fall victim to the practice. In 2014, the Office of the United Nations High Commissioner for Human Rights released a report that found that child marriage has significant negative impacts on the child.¹ The report revealed that child marriage undermines the autonomy of young girls, and exposes girls to psychological, economic and sexual violence. The report also found that child marriage is associated with poor health and social outcomes, and is often an obstacle to a girl's education, employment and economic opportunities.

Our staff in Kenya has witnessed the findings of this U.N. report first-hand. Each young Samburu girl that is rescued is in desperate need of after-care services. When a victim has undergone FGM before she is rescued, the team often rushes her to the hospital to receive emergency medical care to deal with anemia and other medical complications associated with her injuries. Nearly every girl rescued is in need of counselling services to heal from her abuse, and nearly every girl is in need of educational support as she was forced to leave school when she was betrothed to her "husband."

4. KENYA HAS AN OBLIGATION UNDER INTERNATIONAL LAW AND HUMAN RIGHTS NORMS TO PROTECT GIRLS UNDER AGE EIGHTEEN FROM FORCED CHILD MARRIAGES.

First, Kenya is a signatory to international treaties that expressly prohibit child marriages, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on the Rights and Welfare of the Child (Children's Charter), and the Protocol on the Rights of the Women in Africa to the African Charter on Human and People's Rights (The Maputo Protocol).

For example, by signing and ratifying CEDAW², Kenya has committed to ensuring that no child marriage has any legal effect³, and that all women have the right to freely choose their spouse⁴, a

¹ Human Rights Council Res. 24/23 U.N. Doc., A/HRC/26/22 (April 2, 2014).

² Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc A/Res/34/180 (Sept. 3, 1981) [hereinafter CEDAW]

³ CEDAW, at art. 16(2).

level of consent a child is unable to give. By joining ICESCR⁵ and ICCPR⁶, Kenya committed to outlaw child marriages by agreeing that all marriages must be entered into freely by both spouses, and a child is incapable of this level of consent.

Second, Kenya is a party to international treaties that implicitly require state parties to protect children from child marriages, including the United Nations Convention on the Rights of the Child (CRC), and the African Charter on Human & People's Rights (Banjul Charter).

Specifically, by signing the CRC, Kenya has committed to ensure the overall protection of children under eighteen from all "*forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*"⁷ Child marriage clearly infringes on these protections by exposing children to physical and mental violence, exploitation, and sexual abuse.

Additionally, Article 19(2) of the CRC requires that Kenya develop procedures for identifying, reporting, referring, and investigating instances of such child maltreatment, which thus obligates Kenya to investigate instances of child marriage.⁸

Third, Kenya is obligated to protect children from child marriages under customary international law, derived from legal norms in the Universal Declaration of Human Rights.⁹ The Universal Declaration recognizes the right of all people to freely and fully consent to marriage.¹⁰ A child is too young to cognitively meet this "free and full consent" requirement, so child marriage is against this customary international law.

Moreover, several international bodies, of which Kenya is a member, have passed non-binding resolutions and recommendations condemning forced child marriages, and urging all member states to enact and enforce laws to protect children from such practices. Most notably, as a co-sponsor to the UN General Assembly Resolution on Child, Early and Forced Marriages, Kenya pledged its support to ending the harmful practice of child marriage, acknowledging that it is an abusive practice that violates the human rights of children.¹¹

⁴ CEDAW, at art. 16(1).

⁵ International Covenant on Economic, Social and Cultural Rights, Dec. 6, 1966, G.A. Res. 2200A (XXI) at art. 10(1),

⁶ International Covenant on Civil and Political Rights, Dec. 19, 1966, G.A. Res. 2200A (XXI) at art. 23.

⁷ *Convention on the Rights of the Child*, Nov. 20, 1989, G.A. Res. 44/25 at art. 19.

⁸ CRC, at art. 19(2).

⁹ *The Universal Declaration of Human Rights*, UNITED NATIONS (last visited May 25, 2016) [hereinafter "The Universal Declaration"] (available at <http://www.un.org/en/documents/udhr/>).

¹⁰ The Universal Declaration, at art. 16.

¹¹ G.A. Res. 69/XX (Nov. 2014), at PP7.

5. CONCLUSION

Therefore, the ECLJ urges the United Nations to publically acknowledge, condemn, and further investigate the plight of young girls in the Samburu region of Kenya as they face rape, FGM, and other horrific and illegal practices associated with forced child marriages. The ECLJ also urges the United Nations to demand that Kenya prosecute all perpetrators of these abhorrent practices.
