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

Joint written statement* submitted by Girls Not Brides: The Global Partnership to End Child Marriage, Forum des femmes autochtones du Cameroon (FFAC), Fundacion para Estudio Investigacion de la Mujer, non-governmental organizations 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.

[30 May 2023]

* Issued as received, in the language of submission only.

Mis-enforcement of custody rights hinders girls' and women's dissolution of forced marriages and unions

Girls Not Brides: The Global Partnership to End Child Marriage, and the NGOs co-sponsoring this statement, welcome the report by the UN Special Rapporteur on violence against women and girls, its causes and consequences, which addresses the link between custody cases, violence against women and violence against children, with a focus on the abuse of the term “parental alienation”.^[1]

We echo the findings of the report and express our concern regarding the recurring abuse of the “paternal alienation” concept, particularly in domestic violence cases, which, as previously underlined by the Special Rapporteur and other experts, “is part of the continuum of gender-based violence and could invoke the responsibility of States for institutional violence”.^[2]

Custody rights and violence against women and children, the theme of this year's report of the UN Special Rapporteur to the Human Rights Council, speaks to the larger topic of dissolution of marriages and unions, particularly in the context of domestic violence. This statement aims to highlight the relationship between the mis-enforcement of custody rights on the one hand (especially in the case of women and girls fleeing forced and/or abusive marriages and unions) and the dissolution of child, early, and forced marriages and unions (“CEFMU”) on the other. The two are closely interlinked, given that separation, and/or fear of being separated, from their children represents a contributing factor which keeps women and girls from ending a union or marriage.^[3]

Child, early and forced marriages and unions are relationships where the autonomy, consent, free will and choice of one or both parties are compromised - including the decision to terminate, dissolve or leave their marriage or union. Obstacles to the exercise of such autonomous choices are often enshrined in laws and policies, as well as reinforced by harmful gender societal norms and expectations. They include gender-inequitable legal or customary barriers that privilege men (for example, when it comes to divorce and custody of children, but also other aspects such as division of assets or payment and support for maintenance),^[4] and loss of status and capital (including social capital) and restricted access to employment and other rights linked to stigma for single mothers.^[5]

These barriers can constitute institutional violence and are, at their core, manifestations of gender inequality and the lack of gender perspectives in systems and processes related to access to justice. The moment women and girls decide to terminate a marriage or union, the risk of experiencing violence by their partners surges.^[6] Oftentimes, custody disputes become mechanisms of threats or punishment by male partners against girls and women for deciding to dissolve their marriage or union and coerce mothers into continuing the marriage or union.^[7] Women who decide to dissolve their marriages or unions oftentimes encounter legal barriers due to the deficiencies of judicial systems that subject them to institutional violence loaded with sociocultural patterns that recognize the violence and discrimination exercised by their spouses as minor domestic conflicts. It is of urgent importance that family courts refrain from referring to concepts and from following practices that reinforce gender stereotypes, undermine the severity of women's experience of domestic and intimate partner violence and lead to further victimization.^[8]

Member-CSOs of Girls Not Brides have highlighted other important obstacles to women's and girls' access to justice when deciding to end a marriage/union, particularly in cases where children's custody is at play. For instance, in countries with plural legal systems, where customary law applies, the adjudication of domestic violence and family matters is oftentimes particularly fraught with cultural biases and gender stereotypes, resulting in the re-victimization of mothers and their children and even forcing them to reconcile with their aggressors. This generates impunity and normalizes violence surrounding child, early and forced marriage and unions, and their termination. This makes women and girls reluctant to

approach the justice system, either out of distrust of the judicial system or for fear of the stigma they may face with justice operators or in the larger community.[9]

A common lack of economic resources on the part of female complainants also makes it difficult to efficiently access public services, including the justice system, which are often centralized, making access difficult especially for indigenous women and girls, those from rural communities or belonging to minority groups.[10] Similarly, the lack of information regarding their rights as victims of domestic violence prevents many girls and women from accessing justice systems – especially in the case of women and girls in informal unions as it is assumed that since the relationship with the partner is not legally recognized, legal protections – including in matters related to the custody of their children – do not apply to them. For example, women and girls in regions such as Latin America and the Caribbean who are in unions (rather than marriages) have no guarantee to claim child support. Most are economically dependent and have no place to live with their children. In the event that they decide to return to their family, families usually do not have housing or economic conditions to welcome them back, which leads women to remain with their aggressor.[11]

The prevalence and magnitude of these obstacles require States to effectively guarantee access to justice for women and girls to enable them to exercise their right to dissolve a marriage or union without risking their integrity and safety, and that of their children.

As such, we call on the HRC and its members and observer states to implement the recommendations of the report of the UN Special Rapporteur and:

- Take the learnings from the report of the UN Special Rapporteur and integrate them into the upcoming biannual HRC Resolution on child, early, and forced marriage, which this year will focus on forced marriage;
- Adopt a robust and holistic approach towards child, early and forced marriage and unions, including measures for those who are already in a forced marriage/union, as well as protection of the rights for those who want to terminate a marriage or union, including concerning custody rights;
- Guarantee access to justice and legal support for women and girls facing domestic violence and/or intimate partner violence, especially for those belonging to rural or indigenous communities or minority groups;
- Ensure that family court judges undertake mandatory training on gender bias and domestic/intimate partner violence, including its impact on children;
- Adopt long-term, holistic solutions that transform social and gender norms and increase educational, economic, health, and social opportunities for all girls and women, including those who are – or have been – married or in unions;
- Guarantee the effective enforcement of the principle of the best interest of the child, as a substantive right, a fundamental interpretative legal principle, and a rule of procedure, as underlined in the UN Committee on the Rights of the Child General Comment 14, in all custody cases;
- Guarantee that custody proceedings respect the right of the child to be heard, according to their age, maturity and understanding and all safeguards and obligations contained in the Convention on the Rights of the Child;
- Take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations, or to modify legal or customary practices which sustain the persistence and tolerance of all forms of violence against women and violence against children, in accordance with the Convention on the Elimination of Violence against Women and the Convention on the Rights of the Child.

AAWAAJ, Nepal; Bal Kalyan Samaj Makwanpur, Nepal; Center for Research on Environment, Health and Population Activities (CREHPA), Nepal; Centro de Estudios y Fortalecimiento Comunitario Mano Vuelta A.C, Mexico; Coordinadora Institucional de Promoción por los Derechos de la Niñez (CIPRODENI), Guatemala; Coordinadora por los Derechos de la Infancia y la Adolescencia (CDIA), Paraguay; Creative Institute Nepal (CIN), Nepal; Fundación Desarrollo Integral Manos Anaranjadas, Dominican Republic; Girl Up México, Mexico; Janaki Women Awareness Society (JWAS), Nepal; Juntas Por Ti y Tus Derechos (JUPTIDE), Dominican Republic; Partenaires Contre la Pauvreté (PACOPA), Democratic Republic of Congo; Red Peruana de Mujeres con VIH, Peru; Movement for the Development of Women (MOWODE), Dominican Republic; Movimiento de Mujeres Dominico-Haitianas (MUDHA), Dominican Republic; SENDAS, Ecuador; YUWALAYA, Nepal, NGO(s) without consultative status, also share the views expressed in this statement.

[1]Report of the Special Rapporteur on violence against women and girls, its causes and consequences, 2023, “Custody, violence against women and violence against children”, A/HRC/53/36.

[2]OHCHR, 2022, “The Committee of Experts of the MESECVI and the Special Rapporteur on Violence against Women and Girls of the United Nations express their concern about the illegitimate use of the concept of parental alienation syndrome against women”.

[3]Council of Europe Parliamentary Assembly, 2022, “Finding solutions for marital captivity”.

[4]World Bank, 2023, “Women, Business and the Law Report”.

[5]Council of Europe Parliamentary Assembly, 2022, “Finding solutions for marital captivity”.

[6]See e.g. Einiö, E., et al., 2023, “Partner Violence Surrounding Divorce: A Record-Linkage Study of Wives and Their Husbands”, *Journal of Marriage and the Family*, 85(1), 33–54.

[7]See e.g. Gutowski, E. R., and Goodman, L. A., 2023, “Coercive Control in the Courtroom: The Legal Abuse Scale (LAS)”, *Journal of Family Violence*, 38(3), 527–542.

[8]Report of the Special Rapporteur on violence against women and girls, its causes and consequences, 2023, “Custody, violence against women and violence against children”, A/HRC/53/36.

[9]See e.g. Barnett, J. P., et al., 2016, “Stigma as Social Control: Gender-Based Violence Stigma, Life Chances, and Moral Order in Kenya”, *Social Problems*, 63(3), 447–462.

[10]European Union and Council of Europe, 2018, “Women’s Access to Justice: A Guide for Legal Practitioners”, p.6.

[11]Response from a Girls Not Brides member organisation in Guatemala to an internal call for contributions for the 53rd session of the Human Rights Council Resolution on forced marriages.