

To:
OHCHR
Women's Rights and Gender Section (WRGS)

13.12.2013

Call for submission on Child, Early and Forced Marriage

In April 2000, the Oslo Red Cross was assigned by The Ministry of Children and Family Affairs, to serve a national information helpline about forced marriage. This was part of a step in the Norwegian Government's first action plan against forced marriage. The Red Cross Helpline about Forced Marriage and Female Genital Mutilation, hereby referred to as the Red Cross Helpline, is one of the oldest participants in the field of working with forced marriages in Norway. The Red Cross Helpline's main goal is to prevent forced marriages and female genital mutilation. From the year 2008 to 2012, the Red Cross Helpline received 2545 inquiries and among these there were 601 youngsters in danger of being married by force, and 290 were forced into a marriage. The Red Cross Helpline offers information and guidance on how to act in situations where forced marriage, FGM and honour related violence occur.

In the Red Cross Helpline's submission to the report we will emphasize:

- 1) The Norwegian government's effort to combat forced marriage and child marriage in Norway.
- 2) Changes in legislation to combat these forms of marriages.

1. Political actions: A national effort to combat forced marriage in Norway

Norwegian authorities have from 2008 - 2013 implemented four action plans against forced marriage. In the following paragraphs, the main measures in these action plans will be reviewed.

1.1 The Action Plan to Counteract Forced Marriage (1998 - 2001)¹

The Norwegian Government began work to create an action plan that could counteract forced marriage after a representative of the Parliament for the Conservative Party at that time, Erna Solberg, brought the subject up in an interpellation to the Parliament in the fall of 1997. The reason for Solberg's interpellation was the dramatic media coverage of Norwegian girls who had been the victim of forced marriages as well as information coming from a number of immigrant organizations.

The Ministry of Children and Family Affairs began preparing an action plan together with the then Ministry of Church Affairs, Education and Research, the Ministry of Local Government and Regional Development, the Ministry of Health and Social Care, the Ministry of Foreign Affairs and the Directorate of Immigration. Input also came from a range of immigrant organizations, religious communities and resourceful citizens. The Government presented its action plan in December 1998. The Ministry of Children and Family Affairs had the main responsibility for the action plan that consisted of 40 different action measures.

¹ *Handlingsplanen mot tvangsekteskap 1998-2001*, Ministry of Children, Equality and Social Inclusion.

The action plan had two objectives:

- To prevent young people being forced into a marriage
- To provide a better level of help and support for young people who are subjected to or who have already been subjected to forced marriages.

With this in mind, the authorities intended to highlight the problems of forced marriage and send a clear signal to the world that the Norwegian society does not accept this form of matrimony. The action plan pointed out two main categories of measures: preventive measures and measures to deal with crises. The preventive measures deal with projects that emphasised changing the attitudes of the community, spreading information and supporting projects that promote dialogue between generations. The crisis measures deal with creating assistance networks and housing solutions for young people who need to escape from a home or break family ties, provide advice and guidance to young people who are having conflicts with their parents and help mediate between young people and their parents.

The voluntary organizations played an important role in preparing the first action plan. One measure in the action plan recommended setting up a forced marriage counselling service. This measure was implemented in year 2000 by setting up a nationwide helpline that dealt specifically with forced marriages, under the auspices of the Oslo Red Cross.

The Ministry followed up on the action plan with a supplementary document entitled "Efforts to Combat Forced Marriages for Spring 2000" (Innsatts mot Tvangsekteskap Våren 2000)². This document showed that the problem was actually much more extensive and serious than the Government knew.

1.2 The renewed effort to counteract forced marriage (2002-2006)³

The Government saw the need to continue trying to counteract forced marriage by presenting 30 new measures in the spring of 2002.

Important new measures:

Crisis - housing

Offering young people a place to live was one of the new focus areas. Young people who had broken family ties needed a place to live, often needing to stay with one or more adults who could help them mentally and socially. Young men who were threatened or subjected to forced marriages and young people who had a boyfriend or girlfriend against the wishes of their parents had little or no place to live that could provide the necessary form of protection they needed. A nationwide system of crisis housing was set up that involved making at least 10 dwellings available and ready for use by young people in crisis at any given time. The Norwegian State Housing Bank was responsible for administering this scheme.

Establishment of a Expert Team for the Prevention of Forced Marriage

Establishing a national Expert Team that could provide advice and guidance in forced marriage cases was a new effort that was introduced in this action plan. The team provides

² *Innsatts mot tvangsekteskap, Våren 2000*, Ministry of Children, Equality and Social Inclusion.

³ *En fornyet innsatts mot tvangsekteskap, Våren 2002*, Ministry of Children, Equality and Social Inclusion.

information and assistance to the public sector in cases of forced marriages and other forms of honour related violence.

Changes in legislation

Cases of forced marriage at an official level were challenging issues for legislation, and a number of legal changes were made based on the new action plan: The Government amended the provisions of the Immigration Regulations where the requirements for economic support are concerned when applied to family reunifications based on marriage; more stringent rules were introduced for the level of self-sufficiency economic a spouse will need to support a person who is younger than 23 years old.

Among other changes guidelines were prepared for how Norway's foreign missions should approach cases when they suspect a forced marriage was occurring. Another measure dealt with an interview scheme that involved interviewing the foreign partner of the person residing in Norway, and denying a residence permit until the spouse has returned to Norway and been interviewed by the immigration authorities. A provision was also introduced stating that a residence permit can be denied if it was likely a marriage was being entered into against the will by one or both parties.

The Government empowered the county governors with the right to initiate legal proceedings through the courts to test the validity of any marriage. The Norwegian Marriage Act received a new provision in Section 16 (a) that allows the county governor to initiate legal proceedings to invalidate or annul a marriage if needed. This provision may be used if one suspects bigamy or forced marriage - or if a marriage entered into in a foreign country conflicts with Norway's general sense of justice – for example, if one of the spouses was a minor at the time of the marriage, among others.

The Parliament adopted the changes to the Norwegian Marriage Act on 13 December 2006, as well as changes to the Criminal Procedure Act and the Partnership Act, to hinder or stop forced marriages. This included the marriage of children/minors and for people who try to circumvent Norwegian law by getting married abroad, and to help the parties to break out of a forced marriage.

Main items:

- A new provision in Section 18a of the Norwegian Marriage Act which recognises a marriage entered into in a foreign country as long as it is valid in the country of origin and there is obviously no conflict with Norway's general sense of law (ordre public).
- A new provision in Section 18a of the Norwegian Marriage Act establishes that a marriage entered into in a foreign country where one or both parties are under the age of 18 and where at least one of the parties is a Norwegian citizen or is residing permanently in Norway at the time of marriage will not be recognised in Norway.
- Two changes were introduced to Section 1 of the Norwegian Marriage Act. The county governors now have to deny a marriage if an applicant is under the age of 16, and furthermore that the county governor may only permit a marriage between young persons aged 16 to 18 if significant grounds exist for allowing the marriage.
- A new provision in Section 18a of the Norwegian Marriage Act establishes that no marriage using a stand-in spouse/deputy will be recognised in Norway if at least one of the parties of a marriage is a Norwegian citizen or resides permanently in Norway at the time of the marriage.

- A new provision in Section 18a of the Norwegian Marriage Act establishes that a marriage entered into in a foreign country where one or both parties are already married will not be recognised in Norway if one of the parties is a Norwegian citizen or is residing permanently in Norway at the time of the marriage.
- A new provision in Section 18a of the Norwegian Marriage Act that provides the opportunity to recognise previously unapproved marriages if special reasons exist for doing so.
- An extension of the right laid down in Section 23 of the Norwegian Marriage Act to allow direct divorce by a court of law applied to forced marriages in general, including situations where other than the spouse are responsible for coercion.
- A modification to Sections 3 and 427 of the Criminal Procedure Act, that requirements to invalidity (such as direct divorce) can also be presented in cases where other than the spouse are accused.
- The Norwegian Penal Code was amended so that unconditional public prosecution may be used in case that deal with forced marriage. The Penal Code also received a new penal provisions concerning forced marriage in Section 222 paragraph two, which reads: *Any person who by force, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct forces anyone to enter into a marriage shall be guilty of causing a forced marriage. The penalty for causing a forced marriage is imprisonment for a term not exceeding six years. Any person who aids and abets such an offence shall be liable to the same penalty.* Forced marriage is also punishable according to the provisions concerning illegal coercion in Section 222 paragraph one. The idea of establishing a specific penal provision for forced marriage was to send the message that forcing someone to enter a marriage is punishable.
- The Government wanted to formulate the rules for how child marriages could be counteracted, so Section 220 paragraph one of the Penal Code was rewritten, which reads: *"Any person who enters into, or who aids and abet another person to enter into a marriage or registered partnership with anyone who is under 16 years of age, shall be liable to imprisonment for a term not exceeding four years (...)."*
- The Government transferred the task of controlling and verifying the conditions for marriage to a public agency. The Norwegian Marriage Act was changed and a marriage will not be valid unless a Certificate of Non-impediments to Marriage from the National Registry Office exists.
- The Government wanted to improve routines to combat forced marriage of children abroad. The right to family allowance/children benefit when living abroad was further limited to a period of 6 months. In addition to this, schools are now obligated to notify the Child Welfare Service if a child does not return to school after being abroad.
- The Government introduced a new provision into Section 30 of the Children Act that states that a marriage agreement on behalf of another person by a parent (or anyone else for example siblings, cousins or uncles) is not legally binding.

1.3 The Action Plan against Forced Marriage (2007 - 2011)⁴

The Government presented the new four-year action plan on in 2007 that contained 40 supplemental or new measures to combat forced marriage. This was the third plan in a row. The measures in this plan were directed at prevention and the protection of young people suffering from such injustice. More than EUR 9 millions was allocated for this action plan.

⁴ *Handlingsplanen mot tvangsekteskap 2008-2011*, Ministry of Children, Equality and Social Inclusion.

This was the largest investment ever made to combat forced marriage in Norway.

The action plan had six focus areas:

- Legislation to counteract forced marriage must be enforced effectively
- Forced marriage must be prevented
- Competence and cooperation must be strengthened
- Measures that intend to aid victims must be good, and be available to those in need
- International efforts and cooperation in this area must be strengthened
- Knowledge and research must be strengthened

One of the main goals of the new action plan is to strengthen public support in this work. In the past, a lot of this work was done by the voluntary organizations.

The main measurers in this plan are:

- Establishing minority advisors at upper secondary schools. The purpose of this is to strengthen work within the school system to counteract forced marriage by finding the pupils who need help and improving the school's competence where forced marriage is concerned, including extreme forms of parental control and authoritarian ways of raising children.
- Creating the position of an Integration Advisor at six Norwegian foreign service missions in countries where forced marriage occur. The purpose here is to strengthen work being done at foreign mission to counteract forced marriage and improve how cases are dealt with and processed across national borders.
- Strengthening the existing Expert Team for the Prevention of Forced Marriage with representatives from the Directorate of Children, Adolescents and Family, the Directorate of Integration and Diversity, and NAV (the Norwegian Labour and Welfare Service), in addition to the already existing resources at the Directorate of Police and the Directorate of Immigration.
- Establish more crises - housing and follow-up programmes for victims both under and over the age of 18.

In this new action plan public agencies are taking over the tasks NGOs previously had.

One of the measures in this action plan was to create a system for follow-up evaluations of the action plan. The Ministry of Children, Equality and Social Inclusion signed a four-year contract with the Institutt for Social Research (ISF).

Link to the actionplan:

http://www.regjeringen.no/upload/BLD/Planer/2007/Tvangsekteskap_engelsk2007.pdf

1.4. The Action Plan against Forced Marriage, Female Genital Mutilation (2012)

This Action plans against Forced Marriage and Female Genital Mutilation (2012) is mainly a continuation of the previous action plan.

1.5. The Action plan against forced marriage, female genital mutilation and severe restrictions on young people`s freedom (2013 - 2016)

From 2013, several of the measures in the action plan from 2012 is implemented in ordinary operations/ordinary activities. Prevention and strengthening of competence in the relief system/support system, are some of the most important measures in this plan. This action plan consists of 22 new and previous measures. Link to the new action plan:

http://www.regjeringen.no/upload/BLD/IMA/tvangsekteskap/Handlingsplan_2013_ENG_web.pdf

2. Legislation related to forced marriage and honour-related violence

Norway was the first country in the world that has criminalized forced marriage with an own legal provision. In 1993, Norway abolished a law concerning forced marriage which was considered outdated for modern times. Yet over the following years, forced marriage was put on the political agenda when some young girls and women opened up to the media and told their story about involuntary marriage. This led to political activity as a number of legislative and regulatory changes were recommended for the Action Plan against Forced Marriage from 1998 and in redoubled efforts in 2002. The most significant changes to legislation are reviewed in the next section.

2.1. Changes to laws and regulations

Central laws concerning forced marriage

The Children Act:

- Any agreements that a parent (or anyone else) makes regarding a marriage on behalf of the child is not legally binding; cf. Section 30a of the Children Act

The Norwegian Marriage Act:

- Women and men have the same rights regarding free choice of spouse/partner. A marriage must be entered into on own free will and own consent; cf. Section 1b of the Marriage Act.
- A marriage that was realised in a foreign country is not valid in Norway if:
 - it was entered into without both parties being present at the ceremony
 - one of the parties was under the age of 18 when the couple got married
 - one of parties was already married

cf. Section 18a paragraph two of the Marriage Act

- Either one of the spouses may initiate legal proceedings to invalidate a marriage if he or she was forced to marry by the unlawful behaviour of others. This applies regardless of who was responsible for the coercion; cf. Section 16 paragraph three of the Norwegian Marriage Act.
(The parties will then be re-registered as *unmarried*, not divorced)
- Granted direct divorce without a required separation period; cf. Section 23 paragraph three of the Marriage Act.

The Norwegian Penal Code:

- Any person who by force, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct forces anyone to enter into a marriage shall be guilty of causing a forced marriage. The penalty for causing a forced marriage is imprisonment for a term not exceeding six years. Any person who aids and abets such an offence shall be liable to the same penalty; cf. Section 222 paragraph two of the Penal Code.
- Section 220 paragraph one of the Penal Code also aims to combat forcing children to marry. This provision states that anyone marrying a person under the age of 16, or who aids others in such a marriage, can be punished with a jail sentence of up to four years. This rule applies regardless of whether any form of force, coercion or threats were perpetrated against a child.

2.2. Problems related to the application of the laws

The right to choose one's spouse is safeguarded in the Marriage Act, the Penal Code and by our international legal commitments. Despite the fact that Norway has a number of laws that prohibit forced marriage, there are very few cases that finally make it to court. One of the reasons for this is that young people do not want to denounce their own parents to the police. Since young people in general do not dare to denounce their own family, public prosecution was introduced in cases of forced marriage. The reason for amending this law was to free the aggrieved person from the burden of taking one's own parents to court. Experience shows that some young people actually withdraw charges if they fear their parents might end up at the police and be prosecuted, and because any future reunification or reconciliation with one's family seems impossible. They are also afraid that a family conflict could escalate. There has been some discussion in Norway as to whether it is actually beneficial to use public prosecution in cases of forced marriage. Would young people dare to contact the police? (www.tvangsekteskap.net v/Terje Bjøranger).

Norway established a penal provision against forced marriage in September 2003 as laid down in Section 222 paragraph two of the Penal Code. When the law proposal was circulated for public comment some of the consultative bodies stressed that creating a specific legal provision was the correct thing to do in educative terms. On the other hand it was argued by others that this type of provision was unnecessary because such actions were already punishable by virtue of Section 222 paragraph one of the Penal Code. According to Terje Bjøranger, it is uncertain if a specific penal provision is necessarily a good idea. This provision requires that judges, prosecutors and defenders have to make a distinction between arranged marriage and forced marriage, among other problems. In addition to this, police, lawyers and investigators have to distinguish between the different rules for marriage found in the different cultures where these kinds of marriage occur; for example, what is the difference between *engagement* and *marriage* and so on. With a more generalised legal provision that covers coercive acts, such as in paragraph one, they will not have to deal with these questions (www.tvangsekteskap.net).

Section 222 paragraph one of the Penal Code

Any person who by unlawful conduct or by any threat thereof compels another person to do, submit to, or omit to do anything, or who aids and abets thereto, shall be liable to fines or imprisonment for a term not exceeding three years. If there are especially aggravating circumstances, cf. section 232, third sentence, imprisonment for a term not exceeding six years may be imposed.

The most prominent cases regarding forced marriage that have reached the Norwegian courts are a case from Drammen (Drammen is a city in Norway). This case illustrates the challenges faced by the legal system concerning forced marriage. One of the reasons for this is that the aggrieved person was under the age of 18 when the religious marriage ceremony was held. Consequently, the marriage was never registered officially either in Norway or in the country where the ceremony took place. According to Unni Wikan who was a legal expert in the case from Drammen, Norway's Penal Code assumes that marriages are always registered officially/publically, but in many countries this is not necessarily true. One reason for this is due to the idea that a government has nothing to do with marriage; marriage is a covenant between two parties in front of a religious leader and a witness. Unni Wikan also argues that the Norwegian law concerning forced marriage is per se not adapted to the conditions of the countries from which many of these families come from (2008)⁵.

Since Section 222 paragraph two of the Penal Code only applies to formal marriages - not religious marriages conducted by a mullah or imam - minors in particular and other young people in general who are "married" in this way fall outside the law, so this is why Penal Code Section 222 paragraph one must be applied instead.

Because of this problem the Danish authorities now wish to change their legislation concerning forced marriage so that it also includes religious marriages without legal validity. The reason for this change is that religious marriages in some environment/social context is considered more binding than legally valid marriages. The Swedish government is also considering changing the law in relation to forced marriages by implementing a section which also includes informal marriages entered by force.

A marriage entered into outside Norway will not be valid in Norway if one of the parties is under the age of 18 when he or she gets married. To circumvent Norwegian law, some families choose to send their children to a foreign country for a forced marriage (religious marriage), and then wait until the child has reached the age of 18 before officially registering the marriage. Some of these children are also forced into an engagement in their country of origin or have been promised to a person at a young age. Even if Section 30a of the Children Act states that an agreement made by a parent about the marriage of his or her child is not legally binding, we still see that children and their parents are often unable to break off such an engagement because of the powerful moral and religious aspects of the agreement. We also see that the parents consider engagement and marriage as two sides of the same coin, and that the Norwegian authorities have not established good sanctions that apply to families that force their child into an engagement.

⁵ Unni Wikan also emphasises in her book entitled *About Honor* (Om ære) that certain men do not want to register their partners because of a desire for a bigamous relationship and the traditional bride price.

A person who wishes to file suit to have a marriage annulled because the marriage was coerced must do this before six months have passed after that person is free of coercion, and a suit cannot be filed later than five years after a marriage was entered into; cf. Section 16 paragraph four of the Marriage Act. In our experience, many young people do not understand that the opportunity exists to annul a marriage, so many approach the public services after one or both of these deadlines has expired. Even if Norway has legislation that allows for direct divorce without time of separation and an invalidation/annulations of marriage, we still see that girls and women often have problems getting a religious divorce from their husband. Even if the girl gets a civil divorce in Norway, her country of origin and the religious community from which she came, often refuse to acknowledge this. Even if the forced marriage has been disbanded or annulled in Norway, she may still be considered religiously married and her social environment/family will still consider her a married person.

The Norwegian government have taken many important steps in combating forced marriages, but the challenges lie in the implementation of different measurements in public sector and good coordination between the different public agencies that handles these cases. It is also important that NGOs and the public sector use each other's competence and experience to make an all out effort to combat forced marriages in Norway. The preventive work done by the NGOs is essential in combating forced marriages and child marriages.

One of the main goals of the Government's Action Plan against Forced Marriage of 2008-2011 was to enforce and uphold the law in cases of forced marriages. It is emphasized in this action plan that the legislation intends to have a preventive effect. This effect must be strengthen through effective enforcement of laws and regulations. Yet there is still a giant gap between the extent of existing forced marriages in Norway and the extent to which the courts are used as a tool to safeguard the basic human rights of young people.

Best regards,

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