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Human rights situations that require the Council's attention

Follow-up to and implementation of the Vienna Declaration and Programme of Action

Written statement* submitted by The Next Century Foundation, 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.

[20 August 2020]

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

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The Need to address Article 353 of Bahrain's penal code

The Next Century Foundation (NCF) would like to bring Article 353 of Bahrain's penal code to the attention of the United Nations (UN) Human Rights Council in its 45th session and push for its repeal on a human rights basis.

Under Chapter two: Rape and Sexual Assault of Bahrain's penal code, Article 353 states that "No penalty shall be inflicted against a person who has committed one of the crimes set forth in the preceding Articles if he was subject to a final court judgement before concluding the marriage". This article thus allows for a perpetrator of sexual assault or rape to escape prosecution if they marry their victim.

The NCF would like to emphasize this "marry-the-rapist" law is a violation of human rights. The United Nations Declaration on the Elimination of Violence against Women stresses in its first article that "violence against women" is an instance of gender-based violence that results in the "physical, sexual or psychological harm or suffering to women" (1993). The act of sexual assault or rape and the possible consequence of marriage is physically, sexually, and psychologically harmful.

The Next Century Foundation would also like to point to Article 3 of the Universal Declaration of Human Rights, as set out by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which emphasizes the right to life, liberty, and security of a person. The security of a person includes sexual safety and governments and justice systems should be actively working towards protecting women against attacks of sexual violence. The Committee on the Elimination of Discrimination against Women declares that a women's right to live without gender-based violence is completely interdependent with other human rights.

In addition, the Next Century Foundation would like to point to the General Recommendation No.35 on gender-based violence against women (2017) where "the Committee regards gender-based violence against women to be rooted in gender-related factors such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour". Society and its assumptions regarding young women who are subject to sexual attacks are also a reason that a law like this is allowed to exist. Social stigma regarding victims is still prevalent in some societies and by marrying the perpetrator, the family is often saved from dishonor or performing a retaliatory offence. However, rape and sexual assault should not be viewed as a woman violating her chastity or shaming her family, rather a violent crime committed against innocent women. This systematic discrimination against Bahraini women is only further deepened by laws such as Article 353 which should be repealed immediately so that perpetrators of sexual violence against women do not have a law protecting them from prosecution or punishment. This law only punishes the victim by providing an incentive for her family, no matter her age, to force her to submit to marriage with the very person who has committed a violent crime against her.

The Next Century Foundation would like to draw attention to Article 20 of Bahraini's family law that states that girls under sixteen cannot be married unless granted permission by the Shari'ah court. However, there is no minimum age below which the Shari'ah court cannot allow a marriage to go forward. This aspect of law allows young girls to be married off by their families.

The Next Century Foundation would like to note that Bahrain has made numerous strides in women's rights such as the right to vote and the right to participate as political candidates (2002). It has long strived for equality between the genders as is emphasized in a statement delivered by H.E. Shaikh Mohammed Bin Mubarak Al-Khalifa, Deputy Prime Minister and Minister of Foreign Affairs (September 2003). By asking women to be a part of governing bodies, the government of Bahrain asserts to their countrymen and the international community that they value women as contributing members of society. Regarding sexual and reproductive rights, Bahrain has been working to address these issues.

Beginning in 2010, Bahrain's Ministry of Interior's Committee Against Violence and Addiction Program developed a flagship program called "Together Against Violence and Addiction" with the objective of protecting youth. As stated earlier, violence does not exclusively refer to physical violence and should include counts of sexual violence. The Supreme Council for Women created support programs in 2013 which offered courses on listening to child victims who have suffered sexual, physical, and psychological violence. The establishment of such a government entity, where a council of women is established for the purpose of providing guidance to the government is remarkably progressive.

However, the establishment of these programs becomes diminished when faced with the fact that Article 353 is allowed to protect violators of human rights. As the Bahrain government works to further women's rights, article 353 does not seem to be consistent with these progressive government policies. A repeal of Article 353 would be a step forward for gender equality as well as a commitment to human rights for all of its citizens.

The Next Century Foundation would like to acknowledge the repeal of similar laws in some of the more progressive states of the League of Arab States including Morocco (Article 475-repealed in 2014), Jordan (Article 308-repealed in 2017), Lebanon (Article 522- repealed in 2017), Tunisia (Article 227-repealed in 2017), and State of Palestine (Article 308-repealed in 2018). This shows a political and geographical movement in repealing these kinds of laws. Bahrain aligns with many of these countries in the League of Arab States, an organisation which coordinates common interest and policies, as well as reinforcing relationships between the signatory states. These diplomatic relationships should be used in order to expand the human rights of the countries in the region.

The Bahrain parliament considered the repeal of Article 353 and voted to abolish it in March of 2016. However, by July 2017, the government ruled that it was only willing to repeal the marriage aspect of the law under the circumstances of gang rape.

The Next Century Foundation would like to re-emphasize how imperative it is that Article 353 in Bahrain's penal code be repealed. In addition to the repeal of this law, NCF calls on the Supreme Council of Women to continue creating programs educating the public on how to address sexual assault and rape and how to support victims of abuse in their society. Education is vitally important in changing the narrative of the social stigma that is associated with sexual assault and rape.

Regarding the Government of Bahrain and United Nations Strategic Partnership Framework 2018-2022 (2017), we would also like to echo the suggestion that the monitoring and reporting of human rights issues become possible through commissioners and staff members of both the Bahrain government and the UN Human Rights Council. This in turn will encourage civil society to become increasingly active and human rights institutions to better support victims and encourage the judicial system to try criminals for their crimes. The work that Bahrain has done regarding women's rights has been substantial, however, Article 353 is not only a gross violation of women's human rights but also a source of deep pain and suffering that cannot be allowed to continue. By refusing to take serious and immediate action to protect the women of the country, Bahrain is choosing to "contribute to the explicit or implicit social acceptance of gender-based violence against women" (Committee on the Elimination of Discrimination against Women 2017).