Harmful Traditional Practices/Values and Human Rights

I. **Background: Traditional Practices/Values**


“Every social grouping in the world has specific traditional cultural practices and beliefs, some of which are beneficial to all members, while others are harmful to a specific group, such as women. These harmful traditional practices include female genital mutilation (FGM); forced feeding of women; early marriage; the various taboos or practices which prevent women from controlling their own fertility; nutritional taboos and traditional birth practices; son preference and its implications for the status of the girl child; female infanticide; early pregnancy; and dowry price.”

II. **References to Traditional Practices/Values in International and Regional Human Rights Instruments**

A. **VDPA:**

Para. II. 38:

“The World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.”

B. **CEDAW**

1. **Preamble:**

“Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,”

2. **Art. 2:**

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;"

3. Art. 5:

"States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;"

4. Introduction to CEDAW by the Division for the Advancement of Women:

http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm

"The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses 'that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women.' States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate 'prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women' (article 5). And Article 10.c. mandates the revision of textbooks, school programs and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in all of the Convention's provisions that affirm the equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex."

C. CRC

1. Art. 24:

"States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

D. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

1. Art. 2:
“States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.”

2. Art. 4:
“States Parties shall take appropriate and effective measures to:

d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women;”

3. Art. 5:
“States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

• creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programs;

• prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all other practices in order to eradicate them;

• provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting;

• protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.”

E. African Charter on the Rights and Welfare of the Child
1. Art. 21: Protection against Harmful Social and Cultural Practices

“States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) those customs and practices prejudicial to the health or life of the child; and

(b) those customs and practices discriminatory to the child on the grounds of sex or other status.”

F. UN Declaration on the Elimination of Violence against Women
1. Art. 2:
“Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;”

G. Beijing Declaration and Platform of Action

1. Para. 114:

“The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;”

2. Para. 119:

“Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement. Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society.”

3. Para. 125:

“(a) Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women.”

H. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women

1. Art. 6:

“The right of every woman to be free from violence includes, among others:
a. The right of women to be free from all forms of discrimination; and
b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.”
III. Treaty Monitoring Committees’ Statements on Traditional Values/Practices

A. Committee on the Elimination of Discrimination against Women


1. General Recommendation No. 14:

“Concerned about the continuation of the practice of female circumcision and other traditional practices harmful to the health of women,

Noting with satisfaction that Governments, where such practices exist, national women’s organizations, non-governmental organizations, and bodies of the United Nations system, such as the World Health Organization and the United Nations Children’s Fund, as well as the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, remain seized of the issue having particularly recognized that such traditional practices as female circumcision have serious health and other consequences for women and children,

Taking note with interest the study of the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children, and of the study of the Special Working Group on Traditional Practices . . . ”

2. General Recommendation No. 19:

“11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.’

“23. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes.”

B. Committee on the Rights of the Child

http://www2.ohchr.org/english/bodies/crc/comments.htm

1. General Comment No. 4:

“39. In exercising their obligations in relation to the health and development of adolescents, States parties shall always take fully into account the four general principles of the Convention. It is the view of the Committee that States parties must take all appropriate legislative, administrative and other measures for the realization and monitoring of the rights of adolescents to health and development as recognized in the Convention. To this end, States parties must notably fulfil the following obligations: . . . ”
(g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation;”

2. General Comment No. 7:

“(11)(b)(i) Discrimination against girl children is a serious violation of rights, affecting their survival and all areas of their young lives as well as restricting their capacity to contribute positively to society. They may be victims of selective abortion, genital mutilation, neglect and infanticide, including through inadequate feeding in infancy….”

C. Human Rights Committee

http://www2.ohchr.org/english/bodies/hrc/comments.htm

1. General Comment No. 28:

“5. Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights…”

D. Committee on Economic, Social and Cultural Rights

http://www2.ohchr.org/english/bodies/cescr/comments.htm

1. General Comment No. 14:

“21. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.”

“22. Implementation of the principle of non-discrimination requires that girls, as well as boys, have equal access to adequate nutrition, safe environments, and physical as well as mental health services. There is a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children.”

IV. Resolutions

1. HRC Resolution 7/29 on the Rights of the Child:

Expresses concern at “the horrific scale and impact of all forms of violence against children, in all regions, in their homes and families, in schools, care and justice systems, workplaces and in communities, and urges States: … to take measures to change attitudes that condone or normalize any form of violence against children, including cruel, inhuman or degrading forms of discipline, harmful traditional practices and all forms of sexual violence” (OP 14(e), 2008).
The resolution also calls upon States to take all necessary measures “to eliminate all forms of discrimination and violence against girls, including female infanticide and prenatal sex selection, rape, sexual abuse and harmful traditional or customary practices, including female genital mutilation, son preference, marriages without free and full consent of the intending spouses, early marriages and forced marriages and forced sterilization, including addressing their root causes” (OP 24(b)).

2. HRC Resolution 6/37 on the Elimination of all forms of intolerance and of discrimination based on religion or belief

Emphasises the need to address “the situations of violence and discrimination that affect many women as well as individuals from other vulnerable groups in the name of religion or belief or due to cultural and traditional practices” (PP 10 and OP 11(b)).

3. HRC resolution 10/23, on the Independent Expert in the field of cultural rights

Affirms that “no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope”.

V. Other Statements on Traditional Values/Practices


1. Calls for national action: clear political will and undertaking to end practices, implementation of international instruments, legislation, creation of national committees and government agencies, national surveys, training programs

2. Calls for international action: retain the issue on the agenda of the Commission on Human Rights and Commission on the Status of Women, the issue should be on agendas of all international organizations and UN agencies/bodies.


http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/f415fb1e9c8ba816f802566b1005c253d?OpenDocument

1. “19. Those traditional practices which should now be abolished are those which jeopardize the health, well-being and dignity of women. There is no doubt that among traditional practices some must be maintained and encouraged. But today, many practices are particularly harmful for women and children because they endanger their physical and mental health and jeopardize their future and dignity.”
2. FGM, son preference, traditional marriage and related practices, traditional birth practices

3. Discussion of potential drivers of harmful traditional practices: male supremacy, subordination and vulnerability of women, control of female sexuality.

4. Calls for the implementation of the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children.


1. Examines current situation regarding harmful traditional practices based on the government responses received (Guatemala, UK, Israel, Qatar, Mexico, Finland, and Portugal).

2. While certain traditional practices should be maintained (e.g., breastfeeding), States should take measures to create public awareness of the dangers of harmful traditional practices.


1. Outlines national, regional, and international initiatives taken against harmful traditional practices.
   
a. National measures include legislation and public awareness campaigns.
   
b. Regional measures include symposia, regional workshops, working groups.
   
c. International measures include UN-organized world conferences

2. Warns of demonizing cultures under the cover of condemning harmful practices.

3. FGM, female infanticide, selective abortion, temple prostitution (devi and devadasi) in India and Nepal, early marriage, food taboos.


   http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/156783fc6d8426d6c1256aa900300cd3/$FILE/G0114455.pdf

1. Reviews of national, regional, and international initiatives taken against FGM and other harmful traditional practices.
   a. National measures include legislative measures, prevention projects, national education programs, medical assistance, and seminars.
   b. Regional measures include symposia, draft convention on the elimination of harmful traditional practices affecting the human rights of women and girls (proposed as an addition to the African Charter).
   c. International measures include conferences, recommendations by treaty monitoring committees, working groups.


"It is unacceptable that the international community remain passive in the name of a distorted vision of multiculturalism. Human behaviors and cultural values . . . have meaning and fulfill a function for those who practice them. However, culture is not static but it is in constant flux, adapting and reforming. People will change their behavior when they understand the hazards and indignity of harmful practices and when they realize that it is possible to give up harmful practices without giving up meaningful aspects of their culture."

G. UNESCO Universal Declaration on Cultural Diversity
   1. Art. 4:

   "The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope."

H. Inter-African Committee on Traditional Practices Affecting the Health of Women and Children
   2. Has national committees in 28 African countries
   3. Some identified Harmful Traditional Practices (HTPs):
      a. Female genital mutilation
      b. Early marriage
      c. Forced marriage
      d. Teenage pregnancy
      e. Unhealthy delivery practices
      f. Breast ironing
      g. Son preference to a girl-child
      h. Nutritional taboos
      i. Forced feeding of women
      j. Other gender-related violence

I. GA Resolution on Traditional or Customary Practices Affecting the Health of Women and Girls [A/Res/56/128]
1. Reaffirms A/Res/54/133

2. Calls on States to, inter alia, “develop, adopt and implement national legislation, policies, plans and programs that prohibit traditional or customary practices affecting the health of women and girls, including female genital mutilation, and to prosecute the perpetrators of such practices.”

J. Council of Europe Parliamentary Assembly, Resolution 1247 (2001)

doptedText%2Fta01%2FERES1247.htm

1. In reference to FGM, “[i]t is therefore a matter of urgency to make a distinction between the need to tolerate and protect minority cultures and turning a blind eye to customs that amount to torture and inhuman or barbaric treatment of the type the Council of Europe wishes to eradicate.”


1. Calls on States to take steps towards the total eradication of traditional practices negatively affecting the health of women and the girl child.