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## Human Rights Council

### Advisory Committee

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#### Requests addressed to the Advisory Committee stemming

**From Human Rights Council resolutions: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind**

**Joint written statement\* submitted by the Association for Women's Rights in Development, the International Planned Parenthood Federation, non-governmental organizations in general consultative status, Action Canada for Population and Development, the Asian Forum for Human Rights and Development, the Cairo Institute for Human Rights Studies, the Canadian HIV/AIDS Legal Network, the Center for Reproductive Rights, the Center for Women's Global Leadership, Development Alternatives with Women for a New Era, Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, the International Gay and Lesbian Human Rights Commission, the International Lesbian, Gay, Bisexual, Trans and Intersex Association, the International Movement Against All Forms of Discrimination and Racism, the International Service for Human Rights, the International Women's Health Coalition, IPAS, the Italian Association for Women in Development, the Federation for Women and Family Planning, the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights, Women for Women's Human Rights - New Ways, the Women's International League for Peace and Freedom, non-governmental organizations in special consultative status, Asia Pacific Forum on Women, Law and Development, non-governmental organizations on the roster**

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

[29 July 2011]

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

## Traditional values \*\*

HRC Resolution 16/3, “Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind” stresses that “traditions shall not be invoked to justify harmful practices violating universal human rights norms and standards”, thereby acknowledging that traditions are sometimes invoked to justify human rights violations. The resolution tasks the Advisory Committee to “prepare a study on how a *better understanding and appreciation* of traditional values of dignity, freedom and responsibility can contribute to the promotion and protection of human rights”. In order to gain such an understanding, the study must discuss both the negative and positive ways in which “traditional values” affect the promotion and protection of human rights.

### Concerns with a traditional values approach to human rights

“Tradition” is frequently invoked to justify maintaining the *status quo*, ignoring the fact that cultures and social norms have always evolved and will continue to change with time; by contrast, a human rights-based approach often requires *changes* to the status quo in order to ensure compliance with international standards. Simply because a practice or belief has existed over a period of time or is practiced by a majority does not provide it with worth or validity. The obligation must always be to promote and protect human rights, which may require that traditional values and practices evolve in order to meet international standards.

Many practices that fall under “tradition” are of long-standing origin, but others that claim to be “traditional” are in fact relatively recent. Tradition itself changes over time and all cultures contain diverse and contradictory traditions. Most importantly, many “traditional values” may be inconsistent with international human rights, and “traditional values” are frequently invoked to justify human rights violations. In previous decades and centuries, mixed-race marriages, desegregation, women having the right to work, to vote, to hold public office, or to own property would have been thought by many to be inconsistent with “traditional values”.

As many marginalised groups have experienced, “traditional values” are frequently invoked to restrict access to human rights for those segments of society who, from the conservative

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\*\* The following NGOs also supporting this statement: ARC International, Arcigay, Italy, Asia Pacific Transgender Networks (APTN), çavaria vzw, Belgium, Center for Legal and Social Studies (CELS), Argentina, Coalition of African Lesbians, Cook Islands Women’s Counselling Centre, Drodrolagi Movement, Fiji/Pacific, East and Horn of Africa Human Rights Defenders Project, Equal Ground, Sri Lanka, Forum de la Femme Ménagère (FORFEM), Democratic Republic of Congo Fundación Triángulo, por la Igualdad Social de Lesbianas, Gais, Bisexuales y Trans. GATE - Global Action for Trans\* Equality, Gay Japan News, Global Alliance for LGBT Education (GALE), Horizon Community Association, Rwanda, Human Rights Institute of South Africa (HURISA), Idaho Committee (International Day against Homophobia and Transphobia), Inter-American Center for Human Rights, International Alliance of Women Lesben- und SchwulInnenverband (LSVD), Germany, LGBT Centre, Mongolia, Moscow Helsinki Group, Mouvement pour les Libertés Individuelles, Burundi, Other Sheep Africa (OSA), Out-Right Namibia (ORN), Partners for Law in Development, India, Pembe Hayat LGBTT Solidarity Association, Turkey, Realizing Sexual and Reproductive Justice (RESURJ), Salmah Women's Resource Center, Sudan, Sexuality Policy Watch Shustha Jibon, Bangladesh, STP 2012, International Stop Trans Pathologization Campaign, The Union of solidarity with political prisoners, Russia, Transgender and Intersex Africa, United and Strong Inc., Saint Lucia, Violence is Not our Culture campaign, Women Human Rights Defenders International Coalition (WHRD IC), Women Living Under Muslim Laws, Women's Action for Change (WAC), Fiji, Women's Global Network for Reproductive Rights (WGNRR)

viewpoint or perspective of those in authority, challenge the mainstream or fall outside the dominant norm. For example, a Government Minister of State for Ethics and Integrity defended a Bill that would have included the death penalty for certain forms of consensual same-sex conduct on the basis that it was needed to maintain “traditional Christian values as prescribed in the Bible.” (*Ugandan MPs debate Bill proposing death penalty for gay sex*, Times Online, December 18, 2009). UN Secretary General Ban Ki-moon recently noted that “deeply-rooted cultural sensitivities can be aroused when we talk about sexual orientation” but underlined that “cultural considerations should not stand in the way of basic human rights”.<sup>1</sup>

Women are frequently the subject of traditions, often linked to national, cultural or ethnic practices, which violate human rights and freedoms. For example, reports of the Special Rapporteur on violence against women have repeatedly addressed harmful traditional practices such as female genital mutilation; honour killings; spousal abuse; dowry-related violence; and customary laws that deny women’s equality. Last year a resolution on discrimination against women by the Human Rights Council recognized that “laws, policies, customs and traditions that restrict women’s equal access to participate fully in development processes and public and political life are discriminatory.” (A/HRC/12/L.3/Rev.1)

### **The link between traditional values and traditional practices**

Harmful traditional practices are frequently legitimised by the values on which they are founded. Building on the work of independent experts, including the former Special Rapporteur on harmful traditional practices, the OHCHR has emphasized:

“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. Despite their harmful nature and their violation of international human rights laws, such practices persist because they are not questioned and take on an aura of morality in the eyes of those practising them.”

As one NGO representative pointed out in a statement to the Human Rights Council during discussions around the resolution on traditional values:

“Today, women and other marginalized communities in my region and around the world have made significant gains. Yet there are some who still advance so-called “tradition” as an argument against many attempts to remedy injustices or protect human rights:

- calling on the State to protect women from domestic violence, we are told, would violate the “traditional value” of familial privacy;
- combating marital rape allegedly contravenes the “traditional value” of women’s duty to obey their husbands;
- equality in marriage similarly goes against the “traditional value” of male guardianship, or qawama.
- even when [our] government finally decided to ban the practice of female genital cutting last year, it was accused of standing against the “traditional value” of protecting the chastity of girls.”<sup>2</sup>

### **UN precedents on tradition, culture and human rights**

<sup>1</sup> UN Secretary General, Statement to High-level panel on Ending Violence and Criminal Sanctions based on Sexual Orientation and Gender Identity, 17 September, 2010.

<sup>2</sup> Oral statement, item 8, Egyptian Initiative for Personal Rights, 30 September 2009.

Many UN instruments and resolutions recognize key principles and standards regarding the relationship between tradition, culture and human rights. In particular:

- (i) While cultural, traditional and regional specificities must be borne in mind, States have an obligation to promote and protect all human rights and fundamental freedoms, “regardless of their political, economic and cultural systems”;
- (ii) Tradition and culture may not be invoked to violate human rights nor to limit their scope.
- (iii) States have a positive obligation to work towards the elimination of harmful traditional or cultural beliefs, values, stereotypes or practices that are inconsistent with human rights.

For example:

- The Convention on the Elimination of Discrimination Against Women affirms 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” (CEDAW, preamble) and; requires State parties to “take all appropriate measures 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” (CEDAW Art.5)
- The Vienna Declaration and Programme of Action calls upon States to work towards the elimination of “the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism” (VDPA, para. 38).
- “All human rights are universal, indivisible and interdependent and interrelated. ... While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.” (VDPA, para. 5)
- The Declaration on the Elimination of Violence against Women (A/RES/48/104), for example, recognizes traditional practices harmful to women as a form of violence against women, and includes amongst these harmful traditional practices: “battering, sexual abuse of female children in the household, dowry-related violence, marital rape, and female genital mutilation”;
- 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).
- That 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));
- 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));

- 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”;
- The UN Declaration on the Rights of Indigenous Peoples affirms the spiritual traditions of Indigenous Peoples, while also underscoring that the “human rights and fundamental freedoms of all shall be respected.” (art 46).
- The Beijing Declaration and Platform for Action (A/CONF.177/20) requires governments to “refrain from invoking any custom, tradition or religious consideration to avoid their obligations”;
- The African Women's Protocol requires States to “eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the ... tolerance of violence against women”.

### **HRC Resolution 16/3 – mandate of the study**

HRC Resolution 16/3, “Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind” stresses that “traditions shall not be invoked to justify harmful practices violating universal human rights norms and standards”. It tasks the Advisory Committee to “prepare a study on how a better understanding and appreciation of traditional values of dignity, freedom and responsibility can contribute to the promotion and protection of human rights”.

In light of the previous discussion and examples, it cannot be assumed that these “traditional values” will contribute to the promotion and protection of human rights. This is why the Advisory Committee has been requested to prepare a study which will fully explore the impact of these “traditional values” on human rights. This means understanding and appreciating both the positive and negative impacts.

### **Dignity as a traditional value**

The concept of “dignity”, particularly after a reference to “traditional values” can be misused to justify human rights violations, through concepts such as the “dignity of women”. Such problematic uses suggest a particular “dignified” role for individuals within society based on the extent to which they play a traditional role. Dignity is in fact inherent to the human person and thus, it is important that the Advisory Committee’s report focus on the language from the preamble of the UDHR that affirms “*the inherent dignity and worth of the human person*”.

### **Responsibility as a traditional value**

It is unclear what is intended by “responsibility” as a traditional value of humankind. It is also unclear under what basis in international human rights law would justify elevating “responsibility” to a principle on an equal footing with “the inherent dignity and worth of the human person” and “freedom”. The dangers of such a lack of clarity around the concept of “responsibility” as a traditional value can be illustrated by cases where it has been invoked to justify abuses of an individual’s human rights. For example, a woman’s “responsibility” to maintain the “honour” of the family:

“In patriarchal and patrilineal societies maintaining the honour of the family is a woman’s responsibility. In these societies, the concept of women as commodities and not as human beings endowed with dignity and rights equal to those of men is deeply embedded. Women are seen as the property of men and they have to be

obedient and passive, not assertive and active”. (Special Rapporteur on Violence against Women on “honour” crimes, 2002)<sup>3</sup>

The principle of universality reaffirms that all human beings are entitled to the full enjoyment of all human rights. This can never be conditional on ill-defined notions of “responsibility”. Under international law, the State clearly has the responsibility to promote and protect universal human rights consistently with the universal values of equality and non-discrimination, amongst others. Any report to the Human Rights Council should clearly state the potential negative implications of an understanding of responsibility which relates to traditions, whilst underlining an appreciation for the responsibility of the State in protecting the fundamental rights and freedoms of the individual.

#### **The role of family, community, society and educational institutions**

Finally, the resolution notes “the important role of family, community, society and educational institutions in upholding and transmitting these values”.

It is problematic to promote the “role of family, community, society and educational institutions” without acknowledging that human rights violations may also come from within these institutions, e.g. in the case of spousal abuse or marital rape. The Special Rapporteur on violence against women dedicated an entire report on cultural practices within the family that are violent towards women (E/CN.4/2002/83), including female genital mutilation, honour killings, the pledging of girls for economic and cultural appeasement, witch hunting, incest, forced/child marriage, rape, widow rites, female infanticide, and caste-based discrimination and violence.

Furthermore, the study should acknowledge that through the ICPD Programme of Action (para 5.2a), the international community has recognized that “family” takes a plurality of forms, including single-parent families, households with extended families, families with parents of the same sex or gender, etc. This recognition challenges traditional forms of relationships such as marriage between a man and a woman as the only kind with “value” and welcomes the value and worth of alternative forms of relationships as well.

#### **Universality of human rights, equality, and non-discrimination**

The common “values of humankind” underpinning international human rights law are already inscribed in the Universal Declaration of Human Rights and other international human rights instruments. These include equality and non-discrimination – specifically to protect groups that have “traditionally” faced marginalisation or exclusion. Injecting undefined concepts of “tradition” into this framework risks upsetting the careful balance found in existing instruments and subordinating the universality of human rights to cultural relativism. The study should therefore include consideration of equality and non-discrimination as cross-cutting values underpinning the entire human rights framework.

#### **Methodology of the study**

We urge the Advisory Committee to:

- Form a drafting team that reflects appropriate regional and gender balance – this is particularly important for a subject matter relating so closely to cultures and traditions, and their impact on women’s rights;
- Prepare a questionnaire to facilitate consultations with Member States, civil society, human rights experts such as Special Procedures mandate holders, UN organisations

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<sup>3</sup> E/CN.4/2002/83

(such as UNAIDS and UNFPA) and all relevant stakeholders on both the positive and negative impacts of “traditional values” on human rights;

- Ensure that the study focuses on the promotion and protection of universal human rights, underlines that “traditional values” may not detract from the international human rights framework and affirms that traditional values and practices may need to evolve to ensure conformity with international human rights standards.
-