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**HARMFUL TRADITIONAL PRACTICES AGAINST WOMEN  
AND LEGISLATION**

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\* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

## **I. Introduction**

By harmful practices, we mean all practices done deliberately by men on the body or the psyche of other human beings for no therapeutic purpose, but rather for cultural or socio-conventional motives and which have harmful consequences on the health and the rights of the victims. As such, these practices do negatively impact often irreversibly on the life of the girl, the spouse, the mother, the husband or their family members; it is therefore a societal phenomenon.

These practices which have remote and mysterious origins, and are based on absurd and vague reasons, amount to violence against women and they have proved difficult to eliminate.

As they have been clearly identified as gross and serious violation of the rights of women, triple level mobilization has been put up at national, regional and international levels to bring about total elimination of the practices, through two main tools: sensitization and legislation.

On the basis of its self assigned front line role, the Inter African Committee on traditional practices affecting the health of women and children (IAC) is one of the first organizations to acknowledge the paramount role legislation can play in the struggle for elimination of these practices.

The focus of document will be on legislation as a strategy for protecting and promoting women's human rights, through the elimination of harmful traditional practices.

## **II. Reminder on Harmful Traditional Practices**

There are thousands of harmful beliefs and behaviors which have anchored themselves deep in societies with a view to keep women in submission, according to the good pleasure and whims of men and their communities. Some of these practices include:

### **2.1. Early/Forced Marriages**

Agreed upon and consummated before the girl is 18 years old, with her sexual organs not yet mature, and her consent irrelevant, early marriage is always a forced marriage and its outcome always a tragedy for the victim. For that reason, early marriage compares easily with child trafficking and as such, it deserves particular attention. Consequences of early/forced marriages include: domestic violence and rape; undesired pregnancies; illegal termination of pregnancies; inadequate or even lack of pregnancy follow-up and antenatal care leading to highly risky delivery, and possibly to the death of the expecting young mother.

### **2.2. Female Genital Mutilation**

Female genital mutilation (FGM) refer to all intervention involving partial or total cutting of women's external genitalia or any other injury done on the female sexual organ for no therapeutic purposes.

Female genital mutilation is a violation of women and girl's rights irrespective of the type of FGM. They have very serious consequences of reproductive organs of the victims.

### **2.3. Massage of the clitoris**

In Central Africa, several populations of the Bantu stock indulge in massaging the clitoris, labia minora and majora of the adolescent girls in order to enlarge them as far as possible. The leaves of the Kifumbe plant are used among other things for this purpose.

### **2.4. Lips Plates**

This practice consists of making a large cut in the lower lip in order to insert a plate of variable size; other tribes add another cut in ears. The operation is done to highlight beauty and its timing is after excision and marriage. This is a mutilation which is accompanied by the extraction of front lower teeth. This entails serious consequences on the health of the victim (infections, malnutrition, etc...). This practice is prevalent among Mursi population of the South West of Ethiopia.

### **2.5. Food Taboos**

Food taboos refer to traditionally forbidden food which is enforced against a given social group (especially women and children). These forbidden food items are generally known to be rare and delicious food (eggs, meats, fish...). These food restrictions are often a traditional way of managing rare food items. The consequences are among other things: malnutrition, small birth weight, infections, all manner of diseases, and sometimes death.

### **2.6. Force-Feeding**

Force-feeding consists of forced over-feeding girls and women in order to fatten them, with a view to exact a substantial bride price or dowry. Force-feeding rhymes also with forced marriage. This practice makes no case for the girl's health which is sacrificed on the altar of profit because force-feeding sustains obesity leads to metabolic disorders and to diabetes, hypertension, etc.

### **2.7. Breast ironing**

Breast ironing is often practiced by the girls' mothers and several tools are used, including grinding stones, pestles, belts, heated implements, etc.

This practice destroys breast tissues and is performed in order to do away with external manifestation of the girl's puberty to "protect" her, and is an attempt to suppress reproductive health of the victims.

### **2.8. Kidnapping/Abduction**

This is the kidnapping of girls in order to forcibly marry them and it is a traditional practice which is prevalent in several African countries. Unfortunately, it is perpetrated often with the parents conniving with abductors.

## **2.9. Domestic violence against women**

In many areas of Africa, violence against women and girls is widespread. Gender based violence refers among other things to physical and brutal attacks against women by the husband, husband's close friends/relatives, members of the family including sexually driven attacks and harassment, rape through which women are forced into unwanted sexual intercourse. In some communities, tradition has it that women battering are a sign of emotional affection to them

## **2.10. Sexual exclusion of wives**

In many African countries, especially in West Africa, menopause is seen as a sign of the end of all forms of sexual relations for women, even with their husbands, and tradition has it that non compliance would bring sickness (bloated stomach, intoxication,). This belief has serious psychological and physical consequences on women who fall victim of the practice, and some of them are forced into using corrosive and toxic substances in order to get the menstruation "to come back". Far from regarding the apparition of blood in the cervix in this state of sexual weaning as a sickness, the incident is welcomed with joy by women, taking it to be the return of lost reproductive age.

## **2.11. Sororate and Levirate**

Sororate is a situation whereby a deceased wife is replaced by her younger sister. Levirate is a practice which consists of marrying a widow to the brother of her deceased husband. These two harmful traditional practices are as widespread as early marriages/forced marriages, and have serious consequences touching on partners' procreation, since the cause of the deaths are not taken into account. Infectious and transmittable diseases such as HIV/AIDS are thus propagated in the concerned families with disastrous consequences.

## **2.12. Dry Sexual intercourse**

This practice consists of using herbal substances to bring about contraction and dryness of the vagina, supposedly in order to increase sexual bliss. Women undergo these practices to gain "more affection" from their male partners to increase incidences of sexual intercourses especially when they desperately need to be impregnated, or when they want to end their partner's urge to get involved with other women. These substances damage the cervix's walls and increase the risk of contracting the HIV/AIDS and other infections, and may be a major cause of sterility

## **2.13. Trokosi**

This is a practice which consists of giving away young girls to gods or fetishes without physically sacrificing them on the altar. The girls are surrendered to fetish temples to live there and be used as domestic servants or sexual slaves. They are being made to pay for crimes which are said to have been perpetrated by a member of the girl's family or for some social wrongdoing generations

before the birth of the girl child.

#### **2.14. Widowhood rites**

After the death of the husband, his widow is suspected to have been the cause of his death. She is then forced by tradition into a process of proving her innocence, and she must undergo extremely distressing rites, such as drinking the water used to wash the dead body. She is denied sleep, food and appropriate care.

#### **2.15. Other Harmful traditional practices**

There are many other traditional practices at family, community or state levels, such as wearing rings on the neck, preference of the boy child over girl child, the use of women as war plunder, etc.

### **III. Harmful Traditional Practices and Legislation**

By considering harmful traditional practices in depth, the extent of their violence and their unwarranted nature, we came to the conclusion adoption; popularization and enactment of legislation were indispensable tools of the struggle to put an end to these plagues.

But there is need to acknowledge that the link between Harmful Traditional Practices and Peoples' cultures is strong and delicate, and that simple deliberation and blind enforcement of legislation lead too often to undesired outcomes or to results running contrary to expectations.

More often than not, as some overlook the universal nature of human rights, they readily establish an antinomy between Western inspired laws and traditional practices which are rooted in the depths of African communities.

The big number and the variety of Harmful Traditional Practices make it difficult to take them all on board in the development and enactment of encompassing legislation. For this reason, when talking about legislation, we need to pinpoint all forms of legislation and regulation that can help to protect women.

#### **3.1. Socio-communal Legislation**

Within communities, especially village communities, there are legal traditional and local instruments/customs which are more efficient than written laws which were voted and adopted. Some of these customary legal tools include:

- Those enacted by traditional chiefs (village chiefs, village elders...);
- Socio-communal conventions;
- Those enacted by religious leaders;
- Those adopted by social and professional groups (youth, women, brotherhood,).

Socio-communal legislation is often more appropriate, more easily accepted and more respected than legislation handed down by national assemblies and by deputies, because it is based on a

deeper knowledge and consideration of the historic and cultural background of communities. For example, in most West African countries, the aunt and the sister is a “sacred” person by all accounts. All the brothers and nephews love and respect her, and she is protected together with her children. As a result of that, using her for sensitization and/or advocacy for protection of the rights of women would enhance adoption of socio-communal regulations.

### 3.2. National Legislation

Countries adopt legislation protecting or promoting human rights of women and get them enacted by acts of their national parliaments. Here, it is important to take note of the achievements recorded in terms of the existence of legal provisions, even though the enforcement is well below expectation. These laws which are part of the penal codes or proclamation concerning families in the respective countries deal especially with:

- Early/forced marriages;
- Female genital mutilation
- Women and children trafficking;
- Kidnapping and rape of women and girls;
- Domestic violence, etc.

For example, in the fight against female genital mutilation, 16 countries have developed specific legislation owing to the aggressive work of sensitization and advocacy by the Inter African Committee (IAC) since its establishment in 1984. These countries include the following:

Country	Date	Country	Date
Benin	2003	Guinea	1965/2000
Burkina Faso	1995	Kenya	2001
Côte d’Ivoire	1998	Niger	2002
Djibouti	1994	Central African Republic	1995
Egypt	2008	Senegal	1999
Eritrea	2007	Tanzania	1998
Ethiopia	2005	Chad	2002
Ghana	1994 Amended in 2007	Togo	1998

Family proclamations and penal codes remain often unenforced as far as provisions concerning

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protection of women are concerned as it is assumed that these are issues to be settled amicably inside families. But gradual and positive change is emerging owing to the pressure by organizations and individuals who are committed to the defense of human rights of women.

### **3.3. Regional Legislation**

At this level, there are two important legal instruments, namely:

- The African Charter of Human and Peoples' Rights (Banjul, 1981); and
- The Protocol to the African Charter of Human and Peoples' Rights on the rights of Women in Africa (Maputo, 2003).

States have committed themselves to outlaw all forms of traditional practices which have negative impact of the rights of women and which run contrary to international norms. They have pledged to adopt legislation, and all other required measures to eradicate these practices, including;

- a. Prohibit with sanctions, all forms of female genital mutilations, scarification, medicalization and paramedicalization of female genital mutilations, and all other harmful traditional practices.
- b. Provide necessary support to victims of these harmful practices by giving them basic services such as health care, legal and judicial services, counseling and adequate social support as well as vocational training in order to help them become self sufficient;
- c. Protect women who were under threat of being forced to undergo harmful practices and all other forms of violence, abuse and intolerance.

But in spite of the coming of the Protocol into force, practical enforcement in the respective countries is not yet effective. Only a true appropriation of the implementation by women themselves will bring about concrete and notable results.

### **3.4. International Legislation**

International legislation in this field refers to a set of international legal instruments (resolutions, declarations, agreements...) which include:

- The Universal Declaration of Human Rights, 1948;
- The Geneva Conventions and their additional Protocols, 1949 and 1977;
- Convention of the suppression of human trafficking and man exploitation by man, 1949;
- International convention on marriage consent, minimum marriage age and registration of marriages, 1964;
- International pact on civil and political rights; 1966;
- International convention on economic, social and cultural rights, 1966;
- Convention on the elimination of all forms of discrimination against women, 1979;
- Convention against torture and other cruel, inhuman or degrading treatment or punishment, 1984;
- Vienna Declaration and Plan of Action, 1993;
- United Nations Declaration on violence against Women, 1993;
- Declaration and Plan of Action of the International Conference on Development and

- Population, 1994;
- Beijing Declaration and Plan of Action, 1995;
  - Regional WHO Plan for the Acceleration of the Elimination of FGM. 1997;
  - Joint declaration of WHO/UNFPA/UNICEF for the Elimination of FGM, 1998;
  - United Nations Resolution A/RES/53/117 on FGM, 1999;
  - Millennium declaration and Millennium development objectives, 2000;
  - Inter Institution declaration on FGM, 2007;
  - Resolution WHA61.16 OMS on FGM, 2008

Many countries have signed and ratified these international instruments. However, one can only notice that they are not all rigorously enforced at national level. Their integral enforcement remains therefore a challenge that needs to be lived up to for protection and promotion of women's rights in general and the fight against harmful traditional practices (HTPs) in particular.

#### **4. Best practices in legislating against harmful practices**

In consideration of the above mentioned levels in legislation, the following are examples of best practices:

- Community regulations (public declaration and interdiction of early marriages, female genital mutilations and other harmful practices) especially in Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Ethiopia, The Gambia, Guinea, Kenya, Mali, Niger, Senegal, Tanzania and Togo.
- In view of the difficulties of having the parliament vote legislation against FGM in Mali, NGOs and other social structures resorted to the signature of community regulations bearing the signature of village chiefs, religious leaders, the local government authorities, youth and women associations and NGO working in the area.
- In Burkina Faso and Ghana, vote and implementation of anti FGM legislation were achieved through sensitization Members of Parliament, Magistrates and Attorneys/Lawyers, Policemen and Gendarmes. Training and commitment of legal representatives and the use of a telephone hotlines in Burkina Faso which help in reporting offenders, have achieved good results.
- In Kenya, the centre for assisting young girls in Tasaru established by Mrs. Agnes Pareyio is an example for emulation in the fight against early marriages and FGM;
- The Solemn Declaration by African Heads of States is also in support to the Protocol to the African Charter of Human and Peoples' Rights, on the Rights of Women.
- The establishment of the position of "Special Rapporteur" on traditional practices affecting the health of women and children has given momentum to the enactment of legislation at all levels.

#### **5. Shortcomings and limitations of legislation on harmful traditional practices**

Legislation at all levels: community, national, regional and international- is one of the crucial instruments in the fight against harmful traditional practices which harm women. But legislation alone is not enough: it must be supported by sensitization and advocacy. Legislation suffers limitations, including:

- Populations failing to understand a crackdown on practices which had so far been part and



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- parcel of their mores and traditions;
- Inadequate commitment of magistrates and attorneys in delicate issues concerning harmful practices;
  - Inadequate courage and political will to confront these practices in communities which are reservoirs of votes in time of elections;
  - Discrepancy between context and repressive measures. As highlighted earlier, it is needed to take into account the environment, context and history of the community, to determine and develop the appropriate legislation, be it communal, national, and regional or international legislation.

#### **IV. Conclusion**

Legislation is part and parcel of strategies for the elimination of practices which are harmful to the health and rights of women, for in consideration of the fact that these plague being deeply rooted and cultural, sensitization on its own will not do.

Protection of the rights of women cannot be left to the whim or compassion of society; more than that, it must be a legal obligation which is binding for all, at all levels.