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**THE CEDAW CONVENTION AND
HARMFUL PRACTICES AGAINST WOMEN:
THE WORK OF THE CEDAW COMMITTEE**

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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.*

Introduction:

The patriarchal nature of societies across the world, which sees women as inferior and subordinate to men, has over the centuries devised measures to reinforce women's subordinate status. Some of these measures are similar in all societies, especially those practices relating to women's reproductive roles. While these measures may manifest in different forms across societies they are not dissimilar in their effects, which are perpetuating women's low position in society. Whatever the form of these practices, their effect on women spreads across all areas of life, economically, socially and legally, thus depriving women of available opportunities to develop their full potential. Some of these measures and practices also have detrimental effects on women, both physically and mentally. While these practices usually manifest in the family and private spaces, they are also surfacing in public spaces where over the last several decades women have made inroads. Sexual harassment in the work place has become a phenomenon which compromises women's access to opportunities in the workplace.

For example, the gender norms that confine women to the private spaces, in the home and family, deprive them of the opportunity to access education, health, economic activities and participation in public life. Consequently, women are less educated than men and therefore marginally represented in the decision making levels of employment and public life whilst being in the majority at the lower rungs of the economic ladder and much fewer in public life. Their confinement to the private sphere also makes them vulnerable to violence and abuse from those persons who are supposed to be their protectors. States' acquiescence in this private/public dichotomy has also led to the situation where states were unable or unwilling to intervene to protect half their citizens who are women, seeing such interventions as outside the scope of the state in regulating the lives of its citizens and thereby reinforcing men's power over women. States have often used the argument of cultural relativism to justify their reluctance to address those cultural practices that are harmful to women and violate their rights.

State institutions and structures, such as the police and the justice system have also not responded in appropriate manner in the cases where they are required to do so, such as referring a case back to the family for settlement because violence against women was considered a family matter, thus compounding women's vulnerability to violence and other abuses.

In 1979, the United Nations General Assembly adopted the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). The Preamble to the Convention clearly outlined the various UN treaties that affirmed equality of rights between men and women and the inadmissibility of discrimination as well as the various resolutions, declarations and recommendations adopted by the UN and its agencies for promoting equality of rights between men and women. The UN member states expressed their concern 'that despite these various instruments extensive discrimination against

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women continued to exist”. The preamble also recalled “that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity”. The preamble ends with the states parties’ determination “to implement the principles set forth in the Declaration on the Elimination of Discrimination against women, and for that purpose, to adopt all measures required for the elimination of such discrimination in all its forms and manifestations.”

The CEDAW is therefore rooted in the principle of equality and non-discrimination. Article one of the Convention defines “discrimination against women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” This broad definition of discrimination allowed the CEDAW Committee in fulfilling its mandate of monitoring the implementation of the Convention to examine not only de jure equality but also substantive equality, including equality of access and opportunity.

Article 2 in its chapeau under scores state parties’ responsibilities to **condemn** discrimination, **pursue by all appropriate means** and **without delay** a policy of eliminating discrimination against women. The subsequent sub-paragraphs proceed to highlight the details of measures that states are required to take in order to fulfill their responsibilities under the convention. The language of the Convention in article 2 and subsequent articles is not only proactive but also mandatory in the implementation of the provisions by states parties. It also allows states to use multiple strategies including law, in addressing violence and all forms of discrimination.

The Convention is the only human rights treaty that acknowledges culture and tradition as influential factors that shape gender roles and impact on women’s rights. Article 2 (f) enjoins States Parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Again, article 5(a) states:

“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 inferiority or superiority of either of the sexes or on stereotyped roles for men and women”.

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Taken together with article 1, these two articles, 2(f) and 5(a) set the standards by which states are to address the issues around gender roles and stereotypes as well as all forms of discrimination which manifest in culture and tradition.

The CEDAW Committee:

The Convention has the second highest ratifications of any human rights treaty, after the Convention on the Rights of the Child. As at now, it has 185 States parties. Yet the Convention is also the one with the highest number of reservations. The highest number of reservations was to articles 2 and 16, which the Committee considers as core articles of the Convention and which in its view is impermissible. In undertaking its mandate of monitoring implementation of the Convention by States Parties, the large number of reservations was a source of concern to the Committee and it then adopted a General recommendation (GR4) calling on States parties to address the issue at a meeting. Subsequently in 1998, the Committee again adopted a statement on reservations as its contribution to the commemoration of the fiftieth anniversary of the Universal Declaration on Human Rights. The committee in its Statement stated that “reservations affect the efficacy of the Convention, whose objective is to end discrimination against women and to achieve de jure and de facto equality for them. Reservations prevent the committee from assessing the progress of implementation of the convention, limit its mandate and potentially affect the entire human rights regime.” It further explained that “by entering a reservation, the state indicates its unwillingness to comply with an accepted human rights norm. It also ensured that women’s inequality with men will be entrenched at the national level. The promise given to its women is therefore not fulfilled, this not only affects women’s ability to exercise and enjoy their rights but also guarantees that they will remain inferior to men and have less access to the full range of civil, political, economic, social and cultural rights enjoyed by men.” (paragraphs 10, 14 and 15 A/53/38/Rev.1)

Consequently, the Committee has over the years consistently raised the issue of reservations with states parties and managed to get quite a number of them to withdraw, some, if not all the reservations.

The Committee has also over the last twenty five years of its existence formulated twenty six general recommendations to expand further on some articles of the Convention to ensure clarity. It has also since its 15th session in 1994 issued concluding observations to states following consideration of reports by states parties.

The first attempt at tackling the issue of stereotypes was at its 6th Session in 1987 when the Committee adopted General Recommendation 3 which highlighted the fact that even though reports have come from states with different levels of development, they present features in varying degrees showing the existence of stereotyped conception of women owing to socio-cultural factors that perpetuate discrimination based on sex and hinder the

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implementation of article 5. The Committee then went on to urge states parties to adopt education and public information programmes which will help eliminate prejudices and current practices that hinder the full operation of the principle of social equality of women.”

The Convention was silent on the issue of violence against women and consequently, the Committee at its 8th session in 1989 adopted a General Comment (GR12) asking States Parties to provide information on violence against women in their reports to the Committee. The information should include any legislation in force to protect women, other measures to eliminate violence and the existence of any support services for women victims of VAW. The Committee, in formulating this GR had based it on their interpretation of States responsibilities under articles 2, 5, 11, 12 and 16.

The following year, at its 9th Session, the Committee once again adopted GR14 in which it expressed its concern about the “continuation of the practice of female circumcision and other traditional practices harmful to the health of women” and requested States to “take appropriate and effective measures with a view to eradicating the practice.”

The adoption of GR19 in 1992 was the watershed point that galvanized action around the issue of violence against women. The Committee, in paragraph 7 of GR 19 defined violence against women as “ gender-based violence against women is ‘violence that is directed against a woman because she is a woman, or violence that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering or threats of such acts, coercion and other deprivations of liberty.

Gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions is discrimination within the meaning of article 1 of the Convention.”

The importance of GR19 to the fight against violence against women cannot be over emphasized. The first key ingredient of the definition is a gendered definition of violence, which is crucial to showing that the victims could not just as easily have been men. The risk factor for women is their being female. Secondly, the definition identifies physical, sexual and psychological violence and traditional practices harmful to women, recognizing that there are ranges of violence that can be perpetrated. Third, the definition recognized that violence is not a neutral thing, it causes harm and/or suffering.

Finally, and most importantly, the definition situated violence against women squarely within the discourse on human rights. The adoption of GR19 a year prior to the third UN Conference on Human Rights in Vienna in 1993 gave women’s rights activists around the world the impetus to push for the recognition by states of violence against women as a human rights violation and women’s rights as human rights. The outcome of the Vienna Conference and the subsequent adoption by the General Assembly of the Declaration on Violence is history and will not dwell on it.

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The appointment of a Special Rapporteur on violence against women: its causes and consequences by the Commission of Human Rights in 1994 and renewing the mandate continuously up to now can be directly attributed to the work of the CEDAW Committee in bringing violence against women into the human rights agenda. The work of the first and the second Special Rapporteurs, Radhika Coomraswamy and Yakin Erturk has complemented the Committee's work in deepening understanding of violence against women, its causes and consequences. In her preliminary report to the Commission of Human Rights in 1994, the Special Rapporteur, Radhika Coomraswamy identified certain cultural factors that may precipitate violence against women to include female genital mutilation, early marriage and dowry related violence and other practices such as widow-burning or sati in India. Subsequently in 2002, she focused her work on cultural practices in the family that are violent towards women. (see E/CN/2002/83)

Since the adoption of GR 3, 12, 14 and 19, the CEDAW Committee has consistently raised issues on harmful practices and violence against women in the constructive dialogues with States parties. The Committee has also made wide-ranging recommendations, from legal and policy reforms, to awareness raising and sensitization of various stakeholders, including state agencies. Recommendations have also included increasing budgetary allocations and strengthening national machineries where they exist in order for them to fulfill their mandate of promoting women's rights in the various countries. In formulating questions during the constructive dialogue, the Committee members have generally relied on articles 1, 2(f) and 5 (a). But sometimes questions relating to practices which have health implications such as FGM could be raised under article 12 or where they are related to family life and marriage under article 16.

Since time will not permit, I propose to focus on two countries whose reports were considered between 1987 and 2008 to see how the Committee dealt with the issue of harmful practices in those countries. The two countries selected, Nigeria and Bangladesh are from two different geographical regions but have both appeared before the Committee four times. My focus on Nigeria will be on harmful practices while the focus on Bangladesh will be on reservations.

Nigeria:

Since it became a party to the Convention, Nigeria has appeared before the Committee four times. Its initial report was considered at the ninth session in 1988, the combined second and third reports at the 19th session in 1988, the Fourth report at the 30th session in 2004 and the fifth report at the in 41st Session in 2008. In the presentation of the initial report, the representative of Nigeria cited ingrained attitudes and prejudices, behaviour patterns and tradition among others as creating obstacles in the way of full participation of women in all spheres of life. Experts then asked questions as to what had been done with regard to those practices and customs such as female circumcision, early pregnancies, polygamy as well as gender roles and stereotyping. The measure taken to address the issues was what was termed "enlightenment campaigns" by the representative.

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In the presentation of the 2nd and 3rd Periodic Report, the Representative of Nigeria stated that traditional practices still affected women, especially rural women but that the 1979 Constitution addressed certain of the practices and seminars had been organized for women to desist from the practice.

In its concluding comments, the Committee expressed concern about religious and customary laws and practices in the family context that violate women's human rights and recommended that effective measures be taken to change laws and cultural norms which allow such practices as polygamy, one-sided repudiation, unequal subsistence rights and shares as well as preventing women to travel without the permission of a male relative. (paragraphs 156 and 157)

It should be noted that an issue like female circumcision (as it was then known) which was identified in the initial report was not mentioned anywhere in the consideration of the 2nd and 3rd reports. It is not too clear whether in between the initial and second report, a period of 10 years, female circumcision had been completely stopped and therefore no longer an issue.

However, in the combined 4th and 5th Periodic Reports considered at the thirtieth session in 2004, the issue of female genital mutilation resurfaced with the representative of Nigeria stating that measures taken to eliminate discrimination against women included the enactment of laws at the state level, relating to widowhood practices and female genital mutilation, the prohibition of early marriage, etc (para. 276) which the Committee welcomed as positive. But the Committee went on to express concern about the persistence and social acceptability of harmful traditional practices, including widowhood practices, female genital mutilation and child and forced marriages, despite prohibition in some state legislation. The Committee recommended the targeting of law enforcement agencies for effective implementation of the legislation as a matter of priority in addition to undertaking awareness raising campaigns. (para 299 and 300)

At its 41st Session in 2008, Nigeria once again appeared before the Committee for the consideration of its 6th Periodic Report. Most of the issues raised by the Committee in 2004 remained issues of concern. Early marriages, persistence of patriarchal attitudes deep-rooted stereotypes concerning women's roles and responsibilities, entrenched harmful traditional and cultural norms and practices, including widowhood rites, as well as the continued high incidence of female genital mutilation in some areas of the country were raised in the constructive dialogue.

In the concluding comments, the Committee referred to its comments in 2004 and urged the state party "to continue to take measures, including the enactment of national legislation, to modify or eliminate traditional and cultural practices and stereotypes that discriminate against women in accordance with article 2(f) and 5(a) of the Convention. The Committee recommended the adoption and implementation of long term strategies,

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including awareness-raising and education directed at men and women, civil society groups, traditional and religious leaders and the media.

Bangladesh:

Bangladesh's initial report was considered at the Committee's 6th Session in 1987. At the time of ratification, Bangladesh made reservations to articles 2, 13 and 16 (1a) and (1f). The representative identified traditional values in society as obstacles to women's enjoyment of their rights in spite of laws. Experts were very concerned about the reservations made by Bangladesh upon ratification of the Convention, particularly to article 2. The committee experts found it difficult to understand why a reservation had been made to article 2 since the Bangladeshi Constitution granted equality between men and women. In replying to the questions and comments, the representative of Bangladesh informed the committee that their comments on the reservation on article 2 had already been conveyed to the government and assured them that there would be positive action to be reported in the next periodic report. She stated that the government was aware of the discrepancies in the constitution and steps were being made to remove them.

The second periodic report was considered at the 12th session in 1993. At the time of the constructive dialogue, Bangladesh had still not withdrawn the reservation to article 2 and it continued to be a matter of concern to the Committee which the representative of the State party explained was problematic because of personal and religious laws.

By 1997 when it presented its fourth report, Bangladesh announced it was withdrawing articles 13 (a) and 16 (1f).

In presenting the 5th report at the 31st session in 2004, the representative of Bangladesh announced that the reservations were before Cabinet for a decision to be taken. The committee expressed its concern over the government's remaining reservations to articles 2 and 16 paragraph 1 (a) and noted that it regarded article 2 as a fundamental and core provision of the convention, while article 16 was critical to the full enjoyment by women of their rights. It also pointed out that prevailing stereotyped attitudes and practices justified on social grounds create a social environment for the acceptance of discrimination against women, thus impeding the full implementation of the Convention. It urged the state party to expedite decision on the withdrawal of the remaining reservations within a concrete time frame. The Committee also asked the State Party to bring the definition of discrimination in its legislation in line with article 1 of the Convention.

In examining the concluding comments over the years, it emerged that there is no clear pattern in addressing the harmful practices. It appears that harmful practices have been subsumed under gender roles and stereotypes or violence generally and no specific reference is made to a specific harmful practice unless it is a major problem even though the practice may have been raised in the constructive dialogue. This may be as a result of

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the Committee's efforts to reduce the concluding comments and to prioritize the issues due to complaints from some States Parties that the comments tend to be too long.

Conclusion:

The objectives of the expert group meeting are to:

- Analyze existing approaches, in particular legal approaches, for addressing harmful practices against women;
- Assess lessons learned regarding different approaches to addressing harmful practices against women, including the development and implementation of legislation;
- Identify effective approaches and good practices to address harmful practices against women, with a focus on legislative responses.

What this presentation has sought to do is to use the reports of the two countries to see the approaches the CEDAW Committee has used over the years in addressing harmful practices against women. It should be noted that even though only two countries reports were used as case studies, reference was made to other reports in drawing the following conclusions.

First, that the most popular approach by states in addressing traditional practices is education and awareness-raising. States have found this an easier option to satisfy their obligations under the Convention rather than use legal measures for fear of antagonizing powerful forces within the country, such as traditional and or religious leaders.

Secondly, from the reports no particular legal approach for addressing harmful practices against women was identified. While some states may have specific legislation against a particular harmful practice, for example legislation against FGM, others may fall on general legislation, such as legislation on gender based violence or general anti-discrimination legislation. Even where specific legislation existed, it was no guarantee that the practice will be eliminated. The legislation has to be coupled with a strong commitment to implement, including committing adequate resources, building capacity of the state agencies with the mandate to enforce the laws as well as educating women especially on the law so they could use the law to protect themselves.

While it is easier to enact legislation to eliminate practices such as FGM, honour killings, acid burning or dowry-related deaths, it may not be so easy use legislation to address harmful practices such as forced feeding of young girls, or deprivation of certain foods during pregnancy even though their effects can be harmful or other gender roles and stereotypes whose effects may have negative effects. Any legislation that is proposed should draw clear distinction between the various practices, ensuring that sanctions are applied where necessary and other strategies used to deal with those that are not criminal

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in nature . The CEDAW places an obligation on states to promote and protect women against discrimination and take measures to enable women fulfill their rights under the Convention. To this end, any proposed legislation should have all three elements of protection, promotion and fulfillment. The CEDAW Committee over the years has recommended states to enact new or review existing legislation, create awareness of various groups as well as capacity building of state agencies. The model legislation should also bring in some of these strategies.