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## SUBMISSION

### **OHCHR Compilation on best practices in the application of traditional values in promoting and protecting human rights**

#### **Summary**

This submission references the report of the Human Rights Council Advisory Committee, which notes that there is no agreed definition of the term “traditional values”. The submission follows existing UN analysis in defining the relevant “traditional values of humankind” as those values that are inscribed in the Universal Declaration of Human Rights. It focuses on the best practices in the development of jurisprudence while promoting and protecting human rights and upholding human dignity, and references analyses elaborated by UN Treaty Bodies and Special Procedures mandate holders. These analyses recognise the dangers of a traditional values approach to human rights as such values are used to perpetuate widespread practices involving violence or coercion against women, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. They further recognise the following principles as best practices in ensuring human rights protection:

1. 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;
2. Tradition and culture may not be invoked to violate human rights nor to limit their scope;
3. States have a positive obligation to take effective and systematic action to modify or eliminate stereotypes and negative traditional values and practices that are inconsistent with human rights, in particular practices, traditions, patriarchal attitudes and deep-rooted stereotypes that perpetuate discrimination against women.

## MANDATE OF HUMAN RIGHTS COUNCIL RESOLUTION 21/3

This submission follows the analysis of the Advisory Committee and the conclusions of the OHCHR report on the expert workshop on traditional values in defining the relevant “traditional values of humankind” as those values that are inscribed in the Universal Declaration of Human Rights (UDHR):

There is no agreed definition of the term “traditional values of humankind”. No such definition resulted from the discussions in the Human Rights Council or its Advisory Committee. To the extent that “humankind in its entirety” can be said to share a common set of values, such values are those which “have made an important contribution to the development of international human rights norms and standards.”<sup>1</sup> As the report of the OHCHR workshop on traditional values affirmed:

**Such values were inscribed in the Universal Declaration of Human Rights that, having incorporated diverse, cultural and political traditions and perspectives and having been adopted by consensus, “represents a common standard of achievement for all peoples and all nations.”<sup>2</sup>**

Therefore, we can read the mandate of Human Rights Council resolution 21/3 as requesting information on “best practices in the application of *the UDHR* while promoting and protecting human rights and upholding human dignity”.

The report of the Advisory Committee on traditional values outlines numerous examples of best practices in applying universal values in promoting and protecting human rights and upholding human dignity. **This submission will particularly focus on the best practices identified by the Advisory Committee in the development of jurisprudence** in the application of the UDHR while promoting and protecting human rights and upholding human dignity.

## BEST PRACTICES IN THE DEVELOPMENT OF JURISPRUDENCE ON HUMAN RIGHTS

### 1. Committee on the Elimination of Discrimination against Women (CEDAW)

In its general recommendation No. 19, CEDAW stated that 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 thus justify gender-based violence as a form of subordination or control of women.

CEDAW has consistently expressed concern in its Concluding Observations to numerous member States (including the Russian Federation, Egypt, Uganda, Uzbekistan and others) about **the persistence of practices, traditions, patriarchal attitudes and deep-rooted stereotypes that perpetuate discrimination against women**, and continues to express concern at States’ failure to take effective and systematic action to modify or eliminate **stereotypes and negative traditional values and practices**<sup>3</sup>.

### 2. The Committee on Economic, Social and Cultural Rights (CESCR)

In its General Comment No.21 on the Rights of everyone to take part in cultural life, CESCR identified violations of the rights enshrined in article 15 of the Covenant on Economic, Social and Cultural Rights. One example was that a violation occurs when a State party fails to take steps to combat practices harmful to the well being of a person or groups of persons. These harmful practices, including those attributed to customs and traditions, such as female genital mutilation and allegations of the practice of witchcraft, are barriers to the full exercise by the affected persons of the right enshrined in article 15, paragraph 1(a)<sup>4</sup>.

The Committee stated that while State parties have a wide margin of discretion in selecting the steps they consider most appropriate for the full realisation of the right, they must immediately take those steps intended to guarantee access by everyone, without discrimination, to cultural life<sup>5</sup>.

### 3. The Special Rapporteur in the field of cultural rights

The Special Rapporteur noted three principle and interrelated components of the right to take part in cultural life as elaborated by CESCR and her mandate, namely participation in, access to and contribution to cultural life. Some key elements with regard to women were detailed as follows:

<sup>1</sup> A/HRC/RES/16/3, PP 5.

<sup>2</sup> A/HRC/16/37, para.65, conclusions (a) and (b).

<sup>3</sup> CEDAW/C/LSO/CO/1-4, CEDAW/C/EGY/CO/7, CEDAW/C/USR/CO/7, CEDAW/C/ZAF/CO/4, CEDAW/C/LAO/CO/7, CEDAW/C/UZB/CO/4, CEDAW/C/LBR/CO/6, CEDAW/C/PNG/CO/3, CEDAW/C/BFA/CO/6, CEDAW/C/TUV/CO/2, CEDAW/C/TZA/CO/6, CEDAW/C/DJI/CO/1-3, CEDAW/C/TCD/CO/1-4, CEDAW/C/CIV/CO/1-3.

<sup>4</sup> E/C.12/GC/21, para. 64.

<sup>5</sup> *Ibid.*, para.66.

Participation covers not only the right of individuals to act freely, to choose one's own identity and to manifest one's own cultural practices, but also the right not to participate in specific traditions, customs and practices, particularly those that infringe on human rights and dignity<sup>6</sup>.

From a human rights perspective, participation must ensure decision-making (A/HRC/20/26, para. 43). Women must enjoy the freedom to create new communities of shared cultural values around any markers of identity they want to privilege, new cultural meanings and practices without fear of punitive actions, including any form of violence. **This means that women must be able to embrace or reject particular cultural practices and identities as well as to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance.** Active engagement in the cultural sphere, in particular, the "liberty to contest hegemonic discourses" and "given" cultural norms offers women, as well as other marginalized groups and individuals, crucial possibilities to (re)shape meanings. It also helps to build central traits of democratic citizenship, such as critical thinking, creativity, sharing and sociability<sup>7</sup>.

#### **4. The Special Rapporteur on violence against women, its causes and consequences**

During her time as mandate holder, the former Special Rapporteur Yakin Ertürk, produced a report on the intersections between culture and violence against women (A/HRC/4/34). The Special Rapporteur produced quality analyses on how sexist and patriarchal cultural norms contribute to a normalisation of violence against women. For example, the report notes that:

In Western countries, distinct cultural norms that define gender relations are often not questioned or even perceived as culture. In many European countries, for instance, half-day schooling and rigid shop hours remain in place, which presume that "someone" can take care of children and the shopping during regular working hours. These seemingly trivial cultural practices complement gender ideologies that prioritize women's reproductive roles and reinforce, albeit in discrete forms, women's subordination. This helps to explain why a significant number of women in the West, despite their advances in the public sphere, still encounter intimate partner violence<sup>8</sup>.

This analysis can assist States and stakeholders to break down these cultural norms in their efforts to combat violence. In her conclusions the Special Rapporteur suggested guidelines to address the issue of culture and violence against women, including addressing factors that underlie and reinforce harmful cultural paradigms that subordinate women, and recognising that protection of rights needs the transformation of cultural norms and attitudes<sup>9</sup>.

#### **FURTHER EXAMPLES**

Apart from the examples identified by the Advisory Committee and listed above, such principles and standards regarding the relationship between tradition, culture and human rights are recognised by many UN instruments and resolutions and can be identified, *inter alia*, in the Convention on the Elimination of Discrimination Against Women (preamble, and Article 5), the Vienna Declaration and Programme of Action (paragraphs 5 and 38), the Declaration on the Elimination of Violence against Women (A/RES/48/104), the Beijing Declaration and Platform for Action (A/CONF.177/20), the African Women's Protocol, the Declaration on the Rights of Indigenous Peoples (article 46) and various Human Rights Council resolutions<sup>10</sup>.

#### **CONCLUSIONS**

Based on the relevant jurisprudence on the relationship of traditional values and human rights, the OHCHR report and the Advisory Committee study both recognise the dangers of a traditional values approach to human rights, identifying the following principles as best practices in ensuring human rights protection:

- 1. 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;**
- 2. Tradition and culture may not be invoked to violate human rights nor to limit their scope;**
- 3. 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.**

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<sup>6</sup> A/67/287, para. 25

<sup>7</sup> *ibid.*, para.28

<sup>8</sup> A/HRC/4/34, para.47

<sup>9</sup> *ibid.* para.72

<sup>10</sup> See for example A/HRC/6/37 (PP 10 and OP 11(b)), A/HRC/10/23 (OP4), A/HRC/7/29 (OP 14.e)