

# **Sexual Rights Initiative<sup>1</sup> submission regarding best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity**

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## **Summary**

Many practices and norms that discriminate against women and other groups of people that have historically suffered discrimination and persecution are justified by reference to tradition, such as so-called honour killings, dowry-related violence and homophobic violence. Several States have taken actions to dismantle such traditional values, norms and practices, such as laws and programmes to end domestic violence and female genital mutilation, decriminalization of consensual sexual activity and media campaigns to counter homophobia. States should enact and implement laws, policies and programmes that prevent and penalize harmful traditional practices and promote human rights for all.

## **Context**

1. All societies have practices based on traditional beliefs and values that vary according to the ethnic background, culture, religion, social standing and political power of the groups involved. The social sciences have demonstrated that cultures, traditions and traditional values are the product of dynamic processes, changing over time in response to factors such as colonization, environmental conditions, socio-economic circumstances, scientific and technological progress, interactions with other communities, gender-based norms, and growing understanding of human rights.<sup>2</sup> The World Values Survey, supported by *inter alia* the Russian Ministry of Education and Science, has documented an increased tendency to favour values related to secularism, self-expression and personal choice in all regions of the world, except Africa.<sup>3</sup> However, African States are also challenging gender-biased norms through the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, which *inter alia* calls for the eradication of “elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women.”<sup>4</sup>
2. The UN Special Rapporteur on cultural rights reiterated in 2012 that: “many practices and norms that discriminate against women are justified by reference to culture, religion and tradition,” and recommended that States ensure: “The freedom of women to refuse to participate in traditions, customs and practices that infringe upon human dignity and rights, to critique existing cultural norms and traditional practices and to create new cultural meanings and norms of behavior.”<sup>5</sup> Human slavery, once considered an acceptable tradition in various parts of the world, now causes outrage; the burning of women as witches due to cultural beliefs is also regarded with horror.
3. Citing ever-changing “traditional values” as a basis for promoting human rights can therefore jeopardize progress towards ensuring the enjoyment of rights by all individuals regardless of their nationalities, ethnic origins, race, colour, sex, cultural and personal identities, belief systems, political views, physical location or any other social statuses. Values reflected in traditions may or may not promote and protect the globally shared values adopted by States through human rights conventions: equality; dignity; self-determination; non-discrimination; freedom of

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<sup>1</sup> The Sexual Rights Initiative is a coalition of organisations working to advance sexual rights at the UN Human Rights Council, including Action Canada for Population and Development, Akahatá Equipo de Trabajo en Sexualidades y Generos (Latin America), Coalition of African Lesbians, Creating Resources for Empowerment in Action (India), Federation for Women and Family Planning (Poland), Egyptian Initiative for Personal Rights, and others. Action Canada for Population and Development and Federation for Women and Family Planning are NGOs accredited with the Economic and Social Council of the UN.

<sup>2</sup> National Council for the Social Studies. No date. National Curriculum Standards for Social Studies: Chapter 2—The Themes of Social Studies; Silver Springs, MD, NCSS; <http://www.socialstudies.org/standards/strands>

<sup>3</sup> Christian Welzel. 3 November 2006. *A human development view on value change trends (1981-2006)*;

[http://www.worldvaluessurvey.org/index\\_findings](http://www.worldvaluessurvey.org/index_findings)

<sup>4</sup> African Union. 11 July 2003. Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa. Article 4d; [http://www.achpr.org/files/instruments/women-protocol/achpr\\_instr\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf)

<sup>5</sup> UN General Assembly. 10 August 2012. *Report of the Special Rapporteur in the field of cultural rights. A/67/287*. New York, United Nations; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/459/30/PDF/N1245930.pdf?OpenElement>

expression and opinion; and freedom from inhuman, cruel and degrading treatment.

### **States, traditional values and violations of human rights**

4. Under international law, States are obliged to work towards eliminating harmful traditional beliefs, values, stereotypes or practices that contravene human rights. States must not invoke “traditional values” to justify violations of human rights, particularly for people who are members of groups that have historically suffered discrimination and persecution, such as women, children, same-sex desiring and transgender individuals, ethnic or cultural minorities, refugees, migrants and indigenous groups. Yet, this continues to occur; just two examples are given here.

5. In 2000, the UN estimated that some 5000 so-called honour killings took place yearly; research showed that 58% of victims were murdered explicitly for disobeying cultural and religious expectations or for being “too Western”.<sup>6</sup> In various countries, laws have permitted lighter sentences for those convicted of such crimes in contrast to other murders. For example, the draft Palestinian Penal Code would grant men and women lighter sentences or freedom from punishment if they commit a murder under “extenuating circumstances” (finding their spouse in an extramarital relationship).<sup>7</sup> In 2011, at least 943 women, including 93 minors, were victims of so-called honour killings. In addition, 701 women committed suicide and 428 attempted this, according to the Human Rights Commission of Pakistan because of “the social order being over-determined by strong cultural mores” and women “being denied the right to express themselves as human beings and a denial of bodily rights.”<sup>8</sup>

6. In 2011, States at the HRC adopted a resolution expressing grave concern about violence and discrimination against persons on the basis of their sexual orientation and gender identity.<sup>9</sup> Subsequently, in February 2013, the government of the Ukraine announced that it would pass a law prohibiting discrimination against homosexuals.<sup>10</sup> The Russian Federation, in contrast, was considering passage of a federal law prohibiting the promotion of homosexuality among minors.<sup>11</sup> In a 2013 response to the Council of Europe concerning a judgment by the European Court of Human Rights, the Russian government claimed that local and regional laws prohibiting the promotion of homosexuality have been upheld by courts, in particular citing a ruling by the Constitutional Court that “such propaganda” can induce minors “to form warped perceptions that traditional and non-traditional marital relations are socially equal.”<sup>12</sup> The Ukraine’s intention to address discrimination based on sexual orientation, as done by Chile in 2012,<sup>13</sup> stands as a best practice in honouring human rights obligations to take measures towards eliminating harmful practices and their underlying traditional values.

### **State actions that aim to dismantle discriminatory practices**

#### ***Traditions embodied in customary laws***

7. Customary laws based on traditions that deny equality on the basis of sex are now seen as violations of women’s rights and States are acting accordingly to strike down such provisions. For example, Uganda’s Constitution prohibits “laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status.”<sup>14</sup> In Botswana, the High Court ruled in 2012 that Ngwaketse Customary law, which denied women the right to inherit a family residence, violated their right to equality under the Constitution.<sup>15</sup> Similarly, the Constitutional

<sup>6</sup> Phyllis Chesler. Spring 2010. Worldwide trends in honor killings. *Middle East Quarterly*, pp. 3-11;

<http://www.meforum.org/2646/worldwide-trends-in-honor-killings>

<sup>7</sup> Abeer Hashayka. 25 June 2012. *Amending Palestine’s laws for honor killings*. JURIST; <http://jurist.org/datetime/2012/06/abeer-hashayka-honor-killings.php>

<sup>8</sup> Human Rights Commission of Pakistan. March 2012. *State of human rights in 2011*, pp. 167-169. Lahore, HRCP; <http://www.hrcp-web.org/pdf/areports/7.pdf>

<sup>9</sup> Human Rights Council. 14 July 2011. *17/19 Human rights, sexual orientation and gender identity*. A/HRC/RES/17/19. Geneva, United Nations; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>

<sup>10</sup> News. 8 February 2013. *Law prohibiting homosexual discrimination to be passed in Ukraine, Kozhara sure*. forUm; <http://en.for-ua.com/news/2013/02/08/111250.html>

<sup>11</sup> Council of Europe. 17 December 2012. *Freedom of expression should not depend on sexual orientation, says PACE Rapporteur*; <https://wcd.coe.int/ViewDoc.jsp?id=2015501>

<sup>12</sup> Council of Europe, Secretariat General. 28 January 2013. *Communication from the Russian Federation concerning the case of Alekseyev against Russian Federation (Application No. 4916/07)*;

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2221951&SecMode=1&DocId=1973964&Usage=2>

<sup>13</sup> 14 May 2012. *Ley Antidiscriminación fue aprobada por el Congreso Nacional*. Biblioteca del Congreso Nacional de Chile;

<sup>14</sup> *Constitution of the Republic of Uganda, 1995*. Article 33.6; [http://www.ugandaembassy.com/Constitution\\_of\\_Uganda.pdf](http://www.ugandaembassy.com/Constitution_of_Uganda.pdf)

<sup>15</sup> In the High Court of Botswana held at Gaborone. 12 October 2012. *Judgment. MAHLB-000836-10*; [http://www.africanlii.org/sites/default/files/inheritance\\_judgment.pdf](http://www.africanlii.org/sites/default/files/inheritance_judgment.pdf)

Court of South Africa ruled in the same year that customary laws and other legislation upholding male primogeniture regarding inheritance of property discriminate against women and children born to non-married couples on the grounds of race, gender and birth.<sup>16</sup>

### ***Discriminatory practices based on gender-biased traditional norms and values***

8. The UN Working Group on discrimination against women in law and practice has noted that: “women defenders are more at risk than men of suffering from certain forms of violence and other violations, due to the perception that they are challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, the family and the role and status of women in society.”<sup>17</sup>

9. Practices based on traditional values contribute to the occurrence of domestic violence, which has been tolerated due to traditional beliefs such as “women are men’s property,” women are subordinate and must meet men’s demands, and women are of less value to society than men. The UN defines domestic violence as including gender-based physical, sexual, psychological and economic violence and abuse in interpersonal relationships and households. It encompasses acts such as sexual violence, marital rape, dowry or bride-price related violence, and so-called honour killings.<sup>18</sup>

10. Laws in various countries have embraced this definition, such as Bulgaria’s Law on Protection against Domestic Violence: “Domestic violence is any act of physical, mental or sexual violence, and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or have had family or kinship ties or cohabit or dwell in the same home.”<sup>19</sup> Some States have included dowry-related violence in their laws, such as India’s Protection of Women from Domestic Violence Act. Following a ruling by the Inter-American Court of Human Rights that Brazil failed to effectively prosecute and convict perpetrators of domestic violence, the government enacted the Maria da Penha Law on domestic and family violence, which mandates preventative measures, special courts and severe penalties for perpetrators.<sup>20</sup> On the other hand, only 52 countries specifically designate marital rape as a crime.<sup>21</sup>

11. In November 2012, the UN General Assembly adopted by a consensus a resolution condemning female genital mutilation (FGM) – an act recognised in the Beijing Declaration and Platform for Action as a harmful traditional or customary practice – and urged States to take all needed measures to protect them from such violence.<sup>22</sup> Many countries have passed laws against FGM and UN agencies are working with civil society organizations and communities to change the traditional norms on which the practice has been based. For example, in Liberia, the OHCHR office works with traditional leaders in rural communities to stop girls being taken from school for FGM.<sup>23</sup> In Tanzania, the Maasai Women Development Organisation (MWEDO), with support from UN Women, has provided women and girls with scholarships to complete their education rather than being subjected to FGM and early and forced marriage.<sup>24</sup>

### **State actions to implement the human rights to equality and non-discrimination**

12. States are enacting legislation and policies that extend the globally shared values of equality and non-discrimination to more of their citizens. In 2012, the Inter-American Court of Human Rights ruled that a

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<sup>16</sup> ESCR-Net. 2012. *Bhe v. Magistrate Khayelitsha & Ors. 2005 (1) BCLR 1 (CC), 15 Oct. 2004*; <http://www.escr-net.org/docs/i/400589>

<sup>17</sup> Human Rights Council. 5 April 2012. *Report of the Working Group on the issue of discrimination against women in law and in practice*. A/HRC/20/28. Geneva, United Nations; [http://www.ohchr.org/Documents/Issues/Women/A-HRC-20-28\\_en.pdf](http://www.ohchr.org/Documents/Issues/Women/A-HRC-20-28_en.pdf)

<sup>18</sup> UN Commission on Human Rights. 2 February 1996. *A framework for model legislation on domestic violence*.

E/CN.4/1996/53/Add.2; <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/0a7aa1c3f8de6f9a802566d700530914?Opendocument>

<sup>19</sup> UN Women. *Definition of domestic violence*. New York, UN Women; <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>

<sup>20</sup> UN Women. 2011. *In pursuit of justice. 2011-2012 Progress of the world’s women*, p. 18. New York, UN Women; <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>

<sup>21</sup> UN Women, p. 33

<sup>22</sup> UN General Assembly Third Committee. 16 November 2012. *Intensifying global efforts for the elimination of female genital mutilations*. A/C.3/67/L.21/Rev.1. New York, United Nations; <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N12/595/63/PDF/N1259563.pdf?OpenElement>

<sup>23</sup> OHCHR. 7 February 2013. *Fighting FGM: Girls’ right to education versus traditional practices*. Geneva, OHCHR; <http://www.ohchr.org/EN/NewsEvents/Pages/FightingGirlseducationversustraditionalpractices.aspx>

<sup>24</sup> UN Women. 28 November 2012. *Escaping the scourge of female genital mutilation in Tanzania: a Maasai girls’ school provides scholarships for those at risk*; <http://www.unwomen.org/2012/11/escaping-the-scourge-of-female-genital-mutilation-in-tanzania-a-masai-girls-school-provides-scholarships-for-those-at-risk/>

Constitutional Court ban on in vitro fertilization in Costa Rica violated the rights of infertile persons;<sup>25</sup> the government agreed to lift the ban and make the procedure available. After the Constitutional Court of Colombia ruled that the country's very restrictive abortion law violated women's fundamental rights, the government revised the Penal Code, issued regulations for the provision of abortion services, and made the procedure legally available through the public health system.<sup>26</sup> In 2013, the High Court of Pretoria, South Africa, ruled that criminalization of consensual sex between adolescents was an infringement of their right to privacy.<sup>27</sup>

13. The Working Party on Human Rights of the Council of the European Union issued a toolkit in 2010 to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual and transgender (LGBT) people.<sup>28</sup> Its aim was to enable Member States "to proactively react to cases of human rights violations of LGBT people and to structural causes behind these violations." In 2011, the European Commission issued a report on discrimination against that transgender and intersex persons that includes "promising approaches in the laws of some Member States which can and should serve as models for others to follow."<sup>29</sup> The governments of Argentina, Australia, India, Nepal, Pakistan, Portugal, the United Kingdom and Uruguay have facilitated legal recognition of gender change for transgender and intersex people.<sup>30</sup> In the United States, a ground-breaking ruling by a judge in the state of Massachusetts ordered a sex-change operation as a form of medical care for a transgender prisoner.<sup>31</sup>

14. Governments such as Brazil and Ireland have supported mass media campaigns to counteract homophobia as a means of decreasing violence against non-heterosexual individuals. Whereas in the past, in many traditions marriage was an institution reserved for male and female partners, an increasing number of jurisdictions are granting marriage rights to couples of the same sex. As of February 2013, 11 countries in Africa, Europe, North America and Latin America permitted such marriages; jurisdictions within the United States and Mexico did so as well.<sup>32</sup> In countries such as Argentina, Belgium, The Netherlands, Norway, Spain and the United States, gay individuals and couples are legally able to adopt children.

#### **The need for establishment and enforcement of laws**

15. Many States still lack appropriate legislation to address discrimination based on traditional values and should utilize the guidance provided by the UN, regional human rights bodies and others to enact laws to prevent and penalize harmful traditional practices, as well as laws and policies promoting human rights for all. For example, UN Women provides governments and advocates with expert guidance on drafting, implementing and monitoring national laws to address violence against women and girls.<sup>33</sup>

16. Having laws in place is necessary but insufficient, however. UN Women notes: "although equality between women and men is guaranteed in the constitutions of 139 countries and territories, inadequate laws and loopholes in legislative frameworks, poor enforcement and vast implementation gaps make these guarantees hollow promises, having little impact on the day-to-day lives of women."<sup>34</sup>

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<sup>25</sup> Inter-American Court of Human Rights. 2012. *Caso Artavia Murillo y otros ("fecundación in vitro") vs. Costa Rica. Sentencia de 28 de noviembre de 2012*; [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_esp.pdf)

<sup>26</sup> UN Women, p. 20

<sup>27</sup> SAPA. 17 January 2013. Ruling against criminalisation of consensual teen sex hailed. Daily News;

<http://www.iol.co.za/dailynews/news/ruling-against-criminalisation-of-consensual-teen-sex-hailed-1.1453581>

<sup>28</sup> Working Party on Human Rights. 10 June 2010. *Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People*. 11179/10; [http://www.coe.int/t/dg4/lgbt/Toolbox/Bestpractices\\_EN.asp](http://www.coe.int/t/dg4/lgbt/Toolbox/Bestpractices_EN.asp)

<sup>29</sup> European Commission. 2012. *Trans and intersex people. Discrimination on the grounds of sex, gender identity and gender expression*. Luxembourg, European Union; [http://www.coe.int/t/dg4/lgbt/Source/trans\\_and\\_intersex\\_people\\_EC\\_EN.pdf](http://www.coe.int/t/dg4/lgbt/Source/trans_and_intersex_people_EC_EN.pdf)

<sup>30</sup> Human Rights Council. 17 November 2011. *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the United Nations High Commissioner for Human Rights*.

A/HRC/19/41. Geneva, United Nations; [http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/170/75/PDF/G1117075.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G11/170/75/PDF/G1117075.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/170/75/PDF/G1117075.pdf?OpenElement); Government of Argentina. 23 May 2012. Ley 26.743 y Decreto 773/2012 Identidad de Género; <http://www.nexo.org/index.php/legales/265-ley-26743-y-decreto-7732012-identidad-de-genero>

<sup>31</sup> Joe Palazzolo. 4 September 2012. Judge orders sex-change operation for prisoner. *The Wall Street Journal*;

<http://blogs.wsj.com/law/2012/09/04/judge-orders-sex-change-operation-for-federal-prisoner/>

<sup>32</sup> The Pew Forum on Religion & Public Life. 12 February 2013. *Gay marriage around the world*; <http://www.pewforum.org/Gay-Marriage-and-Homosexuality/Gay-Marriage-Around-the-World-2013.aspx>

<sup>33</sup> UN Women. 29 January 2013. *Legislation*. New York, UN Women; <http://www.endvawnow.org/en/modules/view/8-legislation.html>

<sup>34</sup> UN Women. p. 8

17. Once laws are in place to ensure that discriminatory practices based on harmful traditional values are no longer tolerated, much needs to be done to ensure that such laws are applied and enforced. The Human Rights Commission of Pakistan, for example, recommends that parallel adjudication systems, such as the Federal Shariat Court and informal community structures, be brought within the purview of civil courts, that a bill against domestic violence be enacted and implemented, and that employment opportunities for women and transgender persons be improved so that they can better withstand family pressures and domestic violence.<sup>35</sup>

18. As noted in the foregoing examples, some traditional values lead to stigmatization, discrimination and violence against people on the basis of their racial or ethnic origin, religion or other beliefs, disability status, age, sex, gender identity or sexual orientation. States should support programs to educate communities about the negative effects of harmful traditional values and practices and the benefits of promoting the rights of those affected by such practices. Action undertaken in the area of FGM provides a model, incorporating elements such as: capacity-building for those responsible for upholding laws; support for community- and school-based gender and human rights education; support for national and community-based monitoring mechanisms; media campaigns; partnerships with influential community and religious leaders to end harmful traditional practices; and well-publicized social, health and legal services for survivors of harmful traditional practices.<sup>36</sup> The European Union's programme to raise awareness among populations about their rights and obligations and the benefits of diversity, to promote the exchange of good practices and to support anti-discrimination training is a good example of needed intergovernmental action to promote globally shared values of equality, dignity, non-discrimination and self-determination.<sup>37</sup>

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<sup>35</sup> Human Rights Commission of Pakistan, p. 170

<sup>36</sup> UNFPA-UNICEF Joint Programme on female genital mutilation/cutting, 2012. *Accelerating change. Annual report 2011*. New York, UNFPA; [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/Annual\\_report\\_on\\_FGM-C\\_2011\\_low\\_res.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/Annual_report_on_FGM-C_2011_low_res.pdf)

<sup>37</sup> European Commission, 5 December 2012. Tackling discrimination. [http://ec.europa.eu/justice/discrimination/index\\_en.htm](http://ec.europa.eu/justice/discrimination/index_en.htm)