



**HIGHLIGHTS FROM THE INTERNATIONAL EXPERT
CONSULTATION TO ADDRESS HARMFUL PRACTICES
AGAINST CHILDREN**

13- 15 June 2012

Radisson Blu Hotel

Addis Ababa, Ethiopia

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ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACPF	The African Child Policy Forum
ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
BIAAG	Because I Am A Girl Campaign
CARMMA	The Campaign for the Accelerated Reduction of Maternal Mortality in Africa
CBOs	Community based Organizations
CEDAW	Convention on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
CSW	Commission on the Status of Women
DAC	Day of the African Child
EU	European Union
FGM/C	Female Genital Mutilation/Cutting
GBV	Gender Based Violence
GIZ	German Development Cooperation
HIV	Human Immunodeficiency Virus
HPs	Harmful Practices
IEC	Information Education Communication
ILO	International Labour Organization
NGO	Non-Governmental Organization
NHRIs	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
SAIEVAC	South Asia Initiative to End Violence Against Children

SOAS	School for Oriental and African Studies
SRSG	Special Representative of the UN Secretary- General
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
VAC	Violence against Children

Background

A global expert consultation on how to effectively address harmful practices against boys and girls in plural legal systems was held in Addis Ababa from 13th to 15th June 2012. The expert consultation, which was hosted by the Office of the Special Representative of the Secretary General on Violence against Children and Plan International, in close cooperation with the African Committee of Experts on the Rights and Welfare of the Child, the Committee on the Rights of the Child, UNICEF, OHCHR and the International Council on Violence against Children, brought together experts from different regional backgrounds, including government representatives, parliamentarians, United Nations Agencies, child rights monitoring bodies, intergovernmental and regional organizations, and civil society.

The aim of the consultation was to share good legislative developments, taking into account possible risks and backlashes in countries where law reform combined with effective enforcement, awareness-raising and social mobilization has given positive results in addressing deeply rooted social conventions and promoting the abandonment of harmful practices against children. The consultation also aimed to promote cross-regional learning and benefitted from the developments and experiences of the Africa region in particular.

Day 1: Opening Remarks

Ms Marta Santos Pais

Special Representative to the Secretary General on Violence against Children

The Special Representative to the Secretary General (SRSG) on Violence against Children commenced the meeting by expressing her gratitude to the organizations that contributed to the planning of the expert consultation. These included the African Committee of Experts on Rights and Welfare and Children (ACERWC), the Committee on the Rights of the Child (CRC), the United Nations Children's Fund (UNICEF), and the Office of the High Commissioner for Human Rights, the NGO Council on Violence against Children, the African Child Policy Forum (ACPF) and Plan International.

Ms Santos Pais noted that harmful practices, such as female genital mutilation/cutting (FGM/C), child and forced marriage, breast ironing, son preference, female infanticide, virginity testing, honour crimes and other harmful initiation rights are increasingly becoming more visible and known across all regions. The causes for these practices vary. Some harmful

practices such as honour killings and stoning are forms of torture and are often justified by morality or family honour. Some practices may not have any evident religious or cultural justifications, such as acid attacks against girls, but be deeply rooted in gender-based discrimination. Others are forms of discriminatory beliefs and ill-perceptions towards children with disabilities, albinism, children from a low caste or children who are accused of being witches, and often lead to serious forms of violence.

Protection from harmful practices is of critical importance to her mandate as SRSG on Violence against Children. While based on beliefs for the best interest of the child, these practices can negatively impact the child's survival, integrity, development and sense of citizenship.

Although we all recognize the existence of these practices, there is no universally accepted definition of harmful practices. The UN Study on Violence against Children urged states to prohibit by law all forms of violence against children, including harmful practices. This recommendation is important because it recognizes the accountability of the state for the protection of children's rights.

In 2011, the Office of the SRSG, along with several partners, organized an expert consultation on law reform that culminated into 4 key conclusions:

1. Law reform on violence against children is an essential component of a robust national child protection system
2. Law reform is an ongoing process and cannot be reduced to isolated or fragmented actions
3. Legislation to protect children from violence is by nature complex and wide-ranging and requires both a comprehensive and an explicit legal ban of all forms of violence
4. Law reform initiatives have been particularly successful when promoted through an inclusive and participatory process with key stakeholders at different levels.

She highlighted that during the two and a half day consultation the experts from different backgrounds would share good legislative examples and identify tensions and challenges that arise in plural legal systems.

Ms Santos Pais concluded her remarks by expressing her hopes that the discussion would achieve the following outcomes:

- Contribute to the development of a thematic report with concrete recommendations
- Provide substantive inputs to the drafting process of the joint CRC/CEDAW General Comment on harmful practices
- Develop a strategy for follow-up activities in different regions and at the international level

Ms Chikwe Mbweeda

Plan Ethiopia

Ms Mbweeda welcomed all participants on behalf of Plan's Regional Director in Eastern and Southern Africa, Mr. Gezahegn Kebede. Ms Mbweeda expressed Plan's satisfaction in co-hosting such an important meeting with the office of the SRSG.

She emphasized that Plan has made child protection issues one of its global priorities. Through its community-based work, Plan has indeed identified various forms of harmful practices as a major hindrance to children's best interests and development. Plan has also provided input to the CRC Committee's General Comment 13 on the right of the child to freedom from all forms of violence and worked towards the full implementation of the recommendations of the UN Study on VAC.

Through its "Because I Am A Girl Global Campaign" (BIAAG), Plan has recognized that child marriage and gender based violence (GBV) are barriers to girls education hence the need to work towards ending these harmful practices.

Ms Mbweeda presented research findings carried out by Plan in various countries including Togo, India and Ethiopia, which confirmed the damaging effects of HPs on children, including immediate bodily harm, serious medical problems, and psychological and social implications. She emphasized the need to address the components of child protection systems including appropriate legal systems.

Finally, she presented Plan's expectations of the meeting as follows:

- To inform the development of Plan's policy paper on HPs
- To scale up and address HPs issues at the international level. Plan will engage member states at the UN General Assembly and the Commission on the Status of Women (CSW)
- To fully implement the recommendations contained in the thematic report on HPs which will be launched in October

Professor Julia Sloth Nielsen

African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

Prof Sloth Nielsen informed participants that an expert meeting on harmful traditional practices took place during the last session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in March 2012, in collaboration with the German Development Cooperation (GIZ) and the African Union (AU).

The ACERWC has also selected HPs as the theme for the Day of the African Child (DAC) in 2013. Prof Sloth Nielsen recalled that in 1990 the virtues of cultural heritage inspired the development of the African Charter on the Rights and Welfare of the Child (ACRWC) and the creation of the ACERWC. She made reference to the Charter, which discourages customs, traditions, cultural or religious practices that are inconsistent with its obligations (Article 1.3). She also cited Article 16 of the Charter, which makes provisions against child abuse and torture and requires States Parties to take legislative measures accordingly. Prof Sloth Nielsen placed an emphasis on Article 21 of the Charter, which requires States Parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare and dignity of the child.

In conclusion, Prof Sloth Nielsen thanked the SRSB for inviting the African Committee to the meeting. She pledged that the African Committee would continue to engage with States Parties regarding the issue of HPs.

Session 1: Legal pluralism and the protection of children's right to protection from harmful practices

Country examples of the interplay between international human rights standards, national legislation and customary and religious law. Positive developments, tensions, challenges and gaps

Professor Fareda Banda

School for Oriental and African Studies, UK

Professor Fareda Banda introduced the session on legal pluralism. She discussed how different states deal with legal pluralism constitutionally and the human rights dimensions involved. While most legal systems and states do not have religious law as binding or dominant, many people view religion as normative frameworks and guides, rather than what the state tells them is law. That, she stated, is a form of legal pluralism.

While we might think legal pluralism is a challenge to Africans, Prof Banda said, in fact it is a global challenge. Legal pluralism is universal and not unique to any country. In some post-1990 African constitutions, such as Ghana's and Uganda's, any practice that breaches the equality principle must yield, because human rights principles and standards have higher rank in cases with any conflict. But this is not necessarily what people do. So how do people reconcile these problems?

Change can occur organically in communities through firstly, the evolutionary approach where change happens eventually. Secondly, in the revolutionary approach, she added, the right to be free from violence is more important than any person's constructions of what a human norm is. A third approach is the proportionality approach suggested by the South African constitutional Judge Albie Sachs in which the more severe the level of violation, the quicker the response should be. As an example, Prof Banda described the murder of young girls after they are born as more severe than telling a child they have to go to religious school on Saturday mornings.

When determining a contribution to the joint General Comment by CRC and CEDAW on harmful practices, the focus should be on state due diligence. States are legally responsible for violations by non-state and local actors. In Article 5 of CEDAW, the state has an obligation to tackle harmful traditional and emerging practices. In addition, she stated, we need to think about issues of prevention, investigation, prosecutions, punishment and reparations.

Mr Yehualashet Mekonen

Senior Programme Manager, The African Child Policy Forum, Ethiopia

Enhancing child protection through harmonizing customary and formal laws

Mr Mekonen based his presentation on a multi-country study conducted by ACPF and Plan West Africa that looked at legal pluralism and customary law in Africa, using FGC and child marriage as examples.

By examining public perception, the researchers were able to determine the factors that encourage people to use customary law. These include long distances to formal legal

systems, simpler processes, accessibility (in cost, geography, and language), quick justice/verdicts, flexibility and transparent elements.

The demerits of customary systems include inconsistency and subjectivity in decisions, inequality before the law, a tendency to replicate patterns of power imbalances (male dominance), harmful evidence extraction, absence of systematic recording, the competency of judges and less possibility of appeal.

Mr Mekonen cited Sierra Leone as a good practice in that they found a way to merge elements from the traditional and formal legal systems in the Children's Act. An article in the Act allows for the creation and establishment of a chiefdom child welfare committee at the village level.

The key message from Mr Mekonen's presentation was a need to distinguish between ritual and violent aspects of practices. He referred to FGC as a violent ritual, often shrouded in a festive mood, and believed to bring respect to the girl. Child marriage is a cultural issue, he continued, which has both demand and supply side factors that perpetuate the practice. 19 African countries have a minimum age of marriage below 18. There is a strong link between poverty and early marriage. Mr Mekonen stressed the need to remove the violent aspects from traditional practices and maintain cultural rituals, which are the arenas for social interaction.

The 4 key priority areas for action to improve child protection are:

1. Improving the formal justice system by adapting useful aspects from traditional justice systems
2. Transforming the traditional system by sensitizing adjudicators on harmful practices and by giving women and children a voice in court proceedings
3. Working towards recognizing children's rights as a cultural issue
4. Abolishing the violent aspects of community rituals that accompany traditional practices.

Ms Divya Naidoo

Regional Office in Southern Africa, Save the Children Sweden

Study on the interplay between customary law and practices and children's protection rights

In 2010, a review was conducted on the national child protection systems in South Africa, Swaziland and Zambia. In 2011, a follow up study on South Africa and Zambia aimed to study and explore the extent to which African customary law and practices promotes and/or inhibits the protection of children. The study looked at the following domains:

- Customary upbringing and parenting practices
- Gender sensitive practices and attitudes
- Children's health
- Criminal offences by and against children
- Status of children
- Participation of children

The study discovered that children were not able to access social services, because they needed identification documents they did not hold. Other times, parents used children's

grants to provide for the entire family. Adoptions were not regarded as a formal process, and any abuse that might have occurred went unnoticed and unreported, Ms Naidoo explained.

Parental practices were found to be authoritarian, with children required to be subordinate to adults at all times. In some cases, children missed school because they had to stay at home to look after younger siblings. The content of the education often promotes gender stereotypes, making this a major concern. In terms of gender sensitive practices, many girls and women do not have many rights.

In Zambia, preference was given to education of boys rather than girls. Traditional initiation schools in both countries focused on gender stereotypes. Ms Naidoo emphasized the need to work with traditional leaders on the content of traditional initiation schools. Child marriage in poor families in Zambia was also common, and polygamy posed a major problem with negative impacts for children. In Zambia, the Law Development Commission is motivating for this to be banned.

In South Africa, virginity testing was found to be a problem with numerous reports of the practice taking place. There are also major concerns about abused children or children accused of crimes. Children are not given a voice at traditional meetings and are not allowed to be present.

The study made the following recommendations:

- Legislative and executive advocacy should be performed to:
 - Promote gender-sensitive attitudes and practices
 - Address children's health
 - Address criminal offences against and by children
 - Promote the status and participation of children

Mr David Chabalala

Director in the Children's Rights Unit, Department of Women, Children and People with Disabilities, South Africa - *Experiences from South Africa*

Mr Chabalala gave an overview of the legislative situation in South Africa and its challenges. South Africa is committed to implementing the international human rights instruments, Mr Chabalala said, and proceeded to outline the main articles of the South African Constitution.

Article 31 states that linguistic community may not be denied. Section 1 observes the right to religion. Section 28 indicates every child has a right to a name and nationality from birth and to be protected from abuse, neglect and degradation.

In Section 12, a child's rights are protected, including from activities that may be detrimental to his/her wellbeing. It prohibits genital mutilation or circumcision of female children, and restricts virginity testing, male circumcision below a certain age and requires counselling before undergoing circumcision. There are some provinces in South Africa where children under 12 are engaged in circumcision. This has to do with the beliefs and cultures of community members within the country, Mr Chabalala explained.

Even though the right to culture is protected, Section 36 states that no right in the Bill of Rights is absolute. There has to be careful balancing of the rights contained in the

constitution. Regarding corporal punishment in the home, under common law, parents have the power to inflict moderate or reasonable penalties on their children.

Another problem is that of child and forced marriage. These children have in most cases been abducted, and the Department of Women, Children and People with Disabilities is working closely with traditional leadership to ensure this practice is not taking place because it contravenes the principle of protecting the rights of children.

Q&A Session

When asked how to respond to an issue where the community might have a strong say over the constitution, Prof Banda explained that justice is what makes one feel that one has been heard and their claim has been honoured.

When asked whether quick justice, an element of traditional law, is effective in maintaining human rights, Mr Mekonen said that quick justice is “shorter” and people feel more comfortable using traditional systems. Formal systems often have long delays. While there are deeply ingrained attitudes in customary justice systems, children and women are not given space to air their views and concerns. One of ACPF’s recommendations is to hear from women and children directly. Another recommendation is to push for women’s representation in the council of the customary legal systems.

On male circumcision as a protection mechanism from HIV, Mr Chabalala noted that male circumcision in South Africa is allowed for children older than 16 as long as medical practitioners conduct the procedure.

Prof. Sloth Nielsen, the moderator for this session, closed with a few remarks. She said that by 2030, Africa will be 50% urbanized. When people move to the cities, they take their customary laws with them. It is not a static situation and with globalization, legal pluralism and customary law will similarly go global.

Session 2: Legal prohibition of all harmful practices against children

Legal reform to prohibit harmful practices against girls and boys in penal codes, family law and other laws. Country experiences from different regions.

Professor Julie Stewart

Director of the Southern and Eastern African Centre for Women’s Law, University of Zimbabwe - *Legal prohibition of harmful practices against children*

Professor Stewart began her presentation by acknowledging the conflict between statutory/case law and customary and religious law arenas. It is important, she stated, for us not to lack the resources for our law reform processes. Many African countries have laws that are not implemented and the legal minimum age of a child can end at 14, 16 or 18 depending on several factors.

In Zimbabwe, there have been problems with implementing laws, despite the number of signed both international and national laws. The country is also looking at a new

Constitution. Zimbabwe is a signatory and has ratified CEDAW, the Protocol to the African Charter on Human and People's Rights on the Rights of Women (Women's Protocol) and the CRC. The ACRWC has been signed but not ratified. Children's rights are clearly secured in the draft constitution. There will be no protection for cultural rights or customary law except for their recognition.

Some of the barriers to effective implementation of the law in Zimbabwe are; selective applications and compliance, contradictions and inconsistencies in legal regulation, tendency to focus on one sex (female), lack of enforcement, lack of adequate resources, attitudes of personnel at all levels and in all settings and a lack of awareness raising.

Professor Stewart emphasized the need to articulate and recognize the realities of multiple pluralisms, which should include what is happening in children's and families' lives. She outlined 4 areas for law reform: reform, lobbying, implementing and utilizing, and dissemination. Furthermore, she gave examples of what methods could be used to advance reform in these areas:

- On reform: research on comparative methods, determining human rights standards, informed dialogue with key players
- On lobbying: personal meetings with parliamentarians, donor pressure on government, regional power pressure
- On implementing and utilizing: training manuals, monitoring mechanisms
- On dissemination: radio, popular theatre, TV, cartoons, posters, discussions

Ms Judith Mulenga

Regional Representative, International NGO Council on Violence against Children

Presentation of the NGO Council's submission to the expert consultation

Ms Mulenga briefly presented the history of harmful practices, which were first condemned by the UN in 1979. Using examples of female genital mutilation (FGM) and child marriage, both of which affect girls in particular, she outlined the gender component of harmful practices (e.g. gender inequality and discrimination). She also noted that even though the main human rights instruments use various terminologies, for instance 'harmful traditional practices' and 'harmful social and cultural practices', the terminology has shifted to simply harmful practices because there has been a recognition that not all harmful practices are 'traditional' but some are social, cultural or religious practices. The International NGO Council on VAC was therefore proposing to name such practices as 'harmful traditional, cultural and religious practices' on the assumption that 'social' is subsumed in 'cultural' but that 'harmful practices' is too broad. Ms Mulenga made reference to international and regional human rights instruments, which make provisions against HPs including the CRC, CRC General Comment Number 13, CEDAW, ACRWC and the Maputo Protocol. She highlighted various aspects which influence the issue of HPs including multiple legal systems, non-informed consent by the child, lack of respect for children's independent rights to religious freedom and the assumptions of parental powers or rights over their children that allow the perpetration of a wide range of harmful practices, some by parents directly, some by other people with parents' assumed or actual consent.

In addition to suggesting law reform as a way to prohibit HPs, Ms Mulenga also made the following recommendations:

1. The need for high-profile global analysis of harmful practices affecting children and of legal and other measures needed to prohibit and eliminate them
2. The need to recognizing that HPs affect both girls and boys of all ages, in every state and including specific groups of children such as children with disabilities
3. The need for categorization of harmful practices with the primary purpose of identifying the appropriate legislative, administrative, educational, social and other measures required to eliminate them
4. Formation of a web-based clearing house which includes models of legislations used to prohibit and eliminate harmful practices, examples of effective and appropriate implementation and enforcement of prohibition, information on programmes and measures taken at regional, national, and local levels to accompany prohibition and ensure the rapid elimination of harmful practices
5. Encouragement of widely disseminated evaluations of the effectiveness of legislation and other measures on the realisation of the full range of children's rights, free of such harmful practices.
6. Ms Mulenga finally presented examples of good practices taken to fight harmful practices against women. These include the creation of the Division for the Advancement of Women (under UN Women), Vienna 2008 on Violence against Women as well as the Handbook of Legislation on Violence against Women.

Ms Violet Odala

Senior Programme Coordinator, The African Child Policy Forum, Ethiopia

Protection of children from harmful practices through the law in Africa

Ms Odala's presentation was based on research conducted by ACPF on the status of legal protection of children from harmful practices in Africa. The presentation focused on FGM, early marriage and corporal punishment.

The CRC and the ACRWC contain articles that obligate states to take legislative and other measures. The ACRWC has 46 ratifications and 7 signatures, the Women's Protocol has 21 ratifications and 25 signatures, and 52 African countries have ratified the CRC.

Ms Odala also shared the status of the minimum age of sexual consent and the minimum age of marriage across the continent. There is a discriminatory approach to sexual consent, where the minimum age of marriage is often lower than the minimum age of sexual consent. The study also compiled the statistics of corporal punishment, prohibition of FGM and child law reform.

While there have been commendable efforts by African countries to enact comprehensive laws on children, not all law reform amounts to harmonization with international and regional standards. Ms Odala proposed that these laws might be difficult to implement due to stringent social values. Also, most laws focus on well known harmful practices. Ms Odala further added that the 4 Cardinal CRC Principles¹ might be a good entry point for addressing harmful practices, as most African countries have adopted these principles.

Recommendations from the study include:

¹ Non-discrimination, best interest of the child, participation, survival and development to the maximum extent possible

- Approaching harmful practices from the broader child rights debate as opposed to a thematic approach, due to the interrelated nature of child rights
- Raising awareness of all forms of harmful practices against children amongst law makers
- Promoting the 4 Cardinal Principles as they provide a good legal basis for protecting children from harmful practices even where there is no specific prohibition of harmful practices

Q&A Session

Participants raised the importance of engaging communities to avoid failure.

Participants also acknowledged the risks involved in dealing with these issues. We should not uphold those practices that are detrimental to human dignity. One participant stated that African culture has become the subterfuge of abusive, dominating and exploitative men. In that sense, when discussing culture and religion, one must not fall victim to the male-driven human rights agenda. The universalization of values should be upheld in any particular context and in any society. This means harmonizing our laws and ensuring the observance of those human rights in every society.

One participant reminded the audience that harmonizing laws and placing legal frameworks is good, but the biggest single issue is implementation. That is where the most engagement needs to take place, through working with communities, respecting how they look at these issues and giving them space to actively dialogue about it.

The issue of approaching harmful practices through child rights was also discussed. Some participants felt it was more efficient to address early marriage through education, for example.

General Discussion Session

Ms. Kiran Bhatia

Regional Gender Advisor, UNFPA Asia Pacific Regional Office

Ms Bhatia presented SAIEVAC, the South Asian Initiative to End Violence Against Children. (an apex body of the *South Asian Association for Regional Cooperation, SAARC*) that was recently established through the efforts of the South Asia Coordination Group(SACG), a UN and civil society partnership of UNCIEF, UNFPA, Plan, SCF and ECPAT as key partners. Three priority regional issues related to child rights and protection have been researched and advocated by SAEIVAC: corporal punishment, child marriage and child sexual abuse. SAEIVAC works with state governments through national chapters and organize thematic consultations, support campaigns and child participation and perform monitoring through national and regional networks. They also aim to develop mechanisms for national accountability and provide regional technical assistance. SAIEVAC's greatest challenge is to address harmful practices within the diverse socio- cultural norms in South Asia and the deep rooted gender inequality and social exclusion that underpins the patriarchal systems and structures. Ms Bhatia emphasized that children like adults are not a homogenous group; a gender equality- and rights based inclusive approach is essential to address harmful

practices. Girls suffer additional challenges and consequences from the lack of equitable access to survival, education, health and equal opportunities as boys.

There are international legal frameworks that prescribe definitions by age, girls under 18 are categorized as children, but are often forced to live the lives of adult women due to harmful practices such as child and coerced marriage. Ms Bhatia questioned how we could work together to break the silos that are defined by our agency thematic focus and build alliances that are issue-based for more effective community level impact, in addition to legal reform. Furthermore, we must ensure that lessons learned are addressed together and not separately in order to implement an integrated response at the community level. UNFPA, as per the ICPD mandate, works with many partners to address the sexual and reproductive health and rights of women and girls in a life cycle approach to support their empowerment and well-being.

There are innovative efforts to build partnerships and alliances through working with leaders, youth networks and community leaders. UNFPA Asia Pacific, in partnership with the Asian Forum of Parliamentarians on Population and Development, established a standing Committee of Male Parliamentarians on prevention of violence to women and girls. They have prioritised harmful practices with a focus on child marriage for 2012 and will be producing an advocacy kit and policy briefs for high level national advocacy. In Asia there are strong CSO networks, and an emerging youth network with one of the highest proportion of young people in the world.

Investments must include a focus on primary prevention, in addition to legal reform and services. There is a need to rethink gender roles and rethink masculinity and work with young boys and girls through school curriculums and out of school programmes on addressing harmful practices. Ms Bhatia questioned: How do we ensure that we apply evidence based research on the wide range of interventions? How can we incorporate emerging issues and make sure we have a holistic approach?

Dr Rosa Marta Ortiz

The Rapporteur on the Rights of the Child at the Inter-American Commission on Human Rights

Ms Ortiz discussed the issue of child domestic workers in Paraguay and how awareness and advocacy work helped families, teachers, community leaders and legislators to understand and work towards ending this practice.

Children who are brought up in families that are not their own, live as domestic workers in order to go to school because their own families cannot afford to send them and often live far from the schools. These children often lack uniforms and due to their workload they sleep in class and are frequently absent. Ms Ortiz found that the teachers were pleased to work on this issue, but did not know how to help the students. The children and the teachers were not aware of children's rights. In fact, many of these students work in the teacher's homes because they are affordable. So although unaware, the teachers were part of the problem.

Ms Ortiz and partners worked to create a system of promoting and protecting children's rights. One important part concerned the local government, where an Ombudsman for children, a person with knowledge on children's rights, was appointed. They carried out an

awareness-raising campaign with the teachers and with the local government and achieved several things:

1. The families that use children as workers realized that the situation is monitored by an authority
2. The children realized they were not alone anymore, that they had lawyers to support them if needed
3. The families of origin also realized that this practice is harmful for children
4. The government realized that they need to have more schools with additional grades in the countryside
5. The children became empowered. All the actors made an agreement that the children would go home for 3 months each year during school holidays

More children go to school now than before, even those who work. Less children work now than before. At present, Ms Ortiz explained, they are ready to pursue for legislation that will prohibit this practice.

It is important to gain support for change through conversation first. Adopting a criminal law should be secondary. The participants weighed in on which of the two approaches is best in ensuring the best interests of the child. Another participant raised the tendency of some to think there is a logical sequence, but very often it is the other way around. While there might not be a right or wrong, it was agreed by all that there needs to be a sense of urgency when dealing with HPs.

Session 3: Invisible and emerging forms of violence. Gaps in data systems and identification of harmful practices, customs and traditions

Identification- and discussion of responses to harmful practices that have not yet been adequately addressed in law and/or policy.

Prof. Julia Sloth Nielsen

African Committee of Experts on the Rights and Welfare of the Child

Male circumcision in the context of HIV/AIDS

Circumcision is practiced among some traditional communities in South Africa as a rite of passage. Every year, there are cases of children dying from complications related to male circumcision. Prof Sloth Nielsen described the approaches taken at the provincial level to try to regulate, not prohibit male circumcision and to minimize the harm.

When the legislation went to parliament, it was discussed together with the practice of virginity testing, resulting in a heated political debate. Some parliamentarians said virginity testing was important, and a compromise was achieved for girls under the age of 16. Furthermore, regulations were made about how virginity and male circumcision would be carried out.

At some point, circumcision was broadened to include religious and medical circumcision. In other communities around the world, they practice routine infant circumcision. For example, it is prevalent in both Jewish and Muslim cultures and is usually practiced in a hospital setting. Religious and medical circumcision was grouped into the Children's Act in South

Africa, in effect negating people's traditional culture. The legislation now targets religious, traditional and medical circumcision, and medical circumcision is not confined to those over the age of 16.

Prof. Sloth Nielsen referred to the popular study, which showed that circumcision reduced the chances of HIV infection by 60%. Circumcision quickly became a preventative mechanism for HIV/AIDS and funding was flowing to public hospitals for the circumcision of boys at birth. But there were issues raised about the child's rights to choice, Prof. Sloth Nielsen explained.

In light of the medical discovery, she wonders whether it was wise to prohibit the medical and religious circumcision of infants. 30-40% of paediatricians surveyed said routine infant circumcision is a harmful practice. Should it be prohibited as a harmful practice? Prof. Sloth Nielsen questioned audience.

She concluded by stating that the law reform was inappropriate, tried to regulate too much, didn't serve the right purpose and didn't promote healthy practices.

Mr Benyam Mezmur

Research Fellow, Community Law Centre, University of Western Cape

Invisible and emerging forms of harmful practices

Mr Mezmur's presentation gave an overview of what constitutes invisible and emerging harmful practices. A number of factors come into consideration including time (how recent), geography, impact (extent of the harm) and information (conclusive or anecdotal evidence, media reports or research).

Invisible and emerging harmful practices are not regulated by law, and the majority of harmful practices against boys can fall within emerging or invisible harmful practices. Some of the challenges of addressing them are: the lack of intervention, little training for stakeholders to dictate or address these practices, low resource allocation and little to no focus on the research agenda.

Invisible and emerging harmful practices are not limited to Africa and can include, among others:

- Male circumcision
- Children accused of witchcraft
- Breast ironing
- FGM/C
- Labia elongation
- Selective abortion
- Imprisonment of children
- Tourist marriages
- Rites of passage for men
- Homosexual rights
- Burning children alive
- Use of blades to remove new born child's blood

Mr Mezmur outlined 6 areas that are key to addressing invisible and emerging harmful practices:

1. Globalization/urbanization: these issues might become cross border at some stage e.g. FGC/M. The extra territoriality of laws is needed. As people move to cities, this might strain the supply for services.
2. Africanization of HPs rather than acknowledging the issues as a global problem
3. Physicalization: there is a greater focus on harmful practices that physically affect children at the cost of the ones that have other affects such as emotional or mental
4. Prioritization: change must be done at the community level, not only at the international or national level.
5. Overgeneralization: one community's reasons for a harmful practice might not be the same reason as another community's. Practices must be categorized by whether it is traditional, cultural, religious or crosscutting.
6. Harmonization: there is an overemphasis of external harmonization, international laws with national laws. States must harmonize horizontally and internally – and between traditional and religious law.
7. Commercialization: with many harmful practices, the economic element is very present. Interventions against them must address the commercial element.
8. Politicization: for example, in Egypt, child sacrifices are made during political elections in order to elevate the success of political candidates. This is often condoned by political parties.

Mr Michael Kakatera

Acting Director of Gender and Women's Rights Directorate Malawi Human Rights Commission - *Main findings from the study on harmful cultural practices conducted by the Malawi Human Rights Commission*

Mr Kakatera explained that the study's main objective was to assess the impact of various cultural practices prevalent in Malawi on the enjoyment of human rights in general and the rights of women and children in particular. The study catalogued cultural practices in Malawi and went on to focus on the elements of different practices that infringed the rights of women and children and finally, made recommendations for changes to practices that violate human rights.

The study examined cultural practices related to marriage, rites of passage, pregnancy, births, sexuality and sex education, funerals and chieftaincy. The study also looked at emerging practices involving homosexuality and relationships with immigrants.

Mr Kakatera noted that cultural practices are associated more with girls than with boys, and many communities in Malawi believe that women are central to society. The practices as a whole have both negative and positive sides. The study revealed that in most parts of the country, girls marry as early as 12 and boys as early as 17. These violate both the CRC and Malawi's Constitution.

The study made several recommendations including:

- A need to understand details of a cultural belief
- A need for counselling at all levels
- A need to respect neutral or positive cultural beliefs

- A need to understand power balances between socio-economic status and gender
- Empowerment of women and children
- Participation by women
- Education for women

Q&A Session

In the case of Malawi, Mr Kakatera explained, many of the harmful practices are linked to the sexual and reproductive obligations within the social institution of marriage. There is a need to determine how to address issues of sexual reproductive rights at the policy level. While there is no clear sexual reproductive rights action plan in Malawi at the moment, it is being worked on. Sexuality is treated as taboo in Malawi and people tend to be conservative with regards to issues concerning sex.

On the issue of male circumcision where it is based on identity, one participant asked how it plays out on the right to consent, further adding that children's rights advocates need to tackle the issue of consent versus that of identity.

Participants also discussed the issue of religion and male circumcision, using a recent example of the recent death of an infant from circumcision in the New York Jewish Orthodox community. Participants recognized that circumcision has become increasingly controversial and at the same time noted the right to religion.

Mr Mezmur said that invisible and emerging practices are absolutely subjective, stating that there has to be a reference point. Even within existing practices there are invisible aspects, he added. For example, early child marriage is always referenced to girls, but boys also get married young. The human rights imperative is to address all violence against children.

In rural areas, practices can be driven underground rather than eradicated, one participant contributed. Advocates should avoid the duplication of efforts. Not only can harmful practices go underground, the method or age can also shift. Ages can go lower so that people are unable to report about it. Efforts to reform the law and encourage state responsibility should be increased.

The SRSB Ms Pais concluded the day's sessions by asking participants to think about the different opportunities for change, what the common lessons are from around the world, the need to have a commitment from the community as a whole.

DAY 2

Session 4: Law reform and the process of social change. Addressing the root-causes in law and implementation, including in the context of customary law.

The case of child and forced marriage against girls and boys. The role of different actors including parliamentarians, community- and religious leaders, medical- and social workers, community members and children in preventing and overcoming persisting harmful beliefs and attitudes in communities. Awareness raising and capacity building in support of this process e.g. development of guidelines and training for community justice providers

As moderator, Dr Assefa Bequele began the day by highlighting key issues that were discussed during Day One. He noted that law reform is extremely important, but it needs support from institutions and discourses at the national and international levels. He recalled that Ms Pais referred to the process of law reform as a long process, and noted that there must be effective dialogue at the community level. He also recalled that Prof Julia Sloth Nielsen referred to the concept of due diligence, and also emphasized that there are legalistic concepts that entail a wide range of interventions from prevention to rehabilitation programmes. Such programmes must involve many stakeholders: parliamentarians, religious leaders, community leaders and others. Dr Bequele finally noted that legal reform, especially regarding the rights and well being of the child, should be linked to other movements including women's and human rights movements.

Mr. Stephen Hanmer

Civil Society and Parliamentary Specialist, UNICEF New York

The role of religious leaders in addressing harmful practices and UNICEFs work on changing social norms

Mr Hanmer gave a presentation on UNICEF's history of working with religious communities of all faiths on far ranging issues that affect children well documented in the UNICEF publication, "Partnering with Religious Communities for Children".

http://www.unicef.org/about/partnerships/index_60102.html

UNICEF chose to work with religious communities to address HP for the following reasons:

- Shared values – there is a strong consensus about the inherent dignity of every child. The CRC reflects the values of the major religious traditions; there are also 4 references to word 'spiritual'.
- Moral influence of leadership – religious communities can influence thinking, foster dialogue and set priorities. 74% of polled Africans identified religious leaders as those they trusted the most.
- Reach – 5 billion people belong to religious communities, meaning the capacity for action is large. Religious communities provide a network for the care and protection of children.

In addressing the issue of HPs, UNICEF considers it important to engage religious actors given the critical role they play within many communities. Mr. Hanmer also pointed out that some attitudes and behaviours that are understood to be grounded in religion are, in fact, rooted in other social and cultural norms. These distinctions are important since harmful practices that are based on other cultural values can be challenged and redressed by religious actors themselves. Stephen Hanmer gave the example of UNICEF's work with religious leaders who are against the use of FGM. After engaging with UNICEF, the leaders in return engaged with the wider community, which led to an easier conversation between UNICEF and the community.

Another example is UNICEF's work against corporal punishment of children in Mauritania. UNICEF engaged with religious leaders who could not legitimize corporal punishment. A Fatwa was then issued stating that corporal punishment was not in the Koran. UNICEF also engaged with some Christian communities, who may use the proverb "spare the rod spoil

the child” to justify the use of corporal punishment. The Bible was therefore used to stand against corporal punishment.

In spite of the positive roles religious communities can play, Mr. Hanmer also stated that some beliefs, attitudes and practices associated with religions promote or condone violence and discrimination against children. Whether these are actual religious tenets, or religion is misused to justify harmful beliefs and practices, they can violate a child’s physical, emotional and spiritual integrity and need to be addressed.

Mr. Hanmer presented UNICEF’s strategies of engagement, which include:

1. Understanding values, structures and leadership
2. Focusing on shared values and a rights-based approach
3. Ensuring impartiality
4. Identifying strategic entry points

Q&A Session and General Discussion

Participants commented on the issue of trust. It was felt that in order to engage with religious leaders and be effective, child rights activists also need to be trusted by them. The question is how do we earn that trust? Participants were curious to know if UNICEF had studied this specific aspect.

In his answer Stephen Hanmer pointed out that religious communities are not homogenous. Even within particular denominations there is a contextualization of theology, its interpretation and implementation into action, and a diversity of perspectives among leaders that will provide entry points for dialogue and partnership around even the most sensitive issues. The key point is to acknowledge who we are and this is part of trust. He added that the best way to develop trust is to have a conversation, to listen and learn from each other. It all depends on individuals; moreover the process can also take time. We need to be comfortable also in terms of engaging, listening and responding. Listening should not mean diluting our principles.

Mr. Hanmer quoted UNICEF Executive Director Anthony Lake who stated that “[t]o succeed in deepening our partnerships with religious communities, we must work hard not only to identify common ground and maximize our comparative advantages, but also to encourage open dialogue, even about complex, sensitive issues. This is especially true in addressing attitudes and practices sometimes associated with religious beliefs which harm children physically or emotionally, or exclude them from fully participating in their societies.”

Religious leaders are mainly men, with many women of faith working on the periphery of formal religious structures. In many cases religious leaders justify these barriers – which are characteristic of social norms and cultural beliefs that often pre-date religious traditions – by scripture as well as precedent. It is critical to promote gender equality.

A question was asked about what should be done so that the family becomes a source of protection. It was felt that families needed to be strengthened and to be at the centre of the policy. It was also acknowledged that the practice of strengthening families could be weak if not supported. Strategies often do not address the needs of the family.

UNFPA's commented on the need to influence religious leaders in this region. UNFPA has worked with religious leaders on promoting the ICPD mandate and addressing socio-cultural barriers impacting women's health and rights. UNFPA recognizes that the political position of religious leaders is powerful and they have made a rich contribution to many development processes. For instance, religious leaders were key players during the tsunami and they provided immediate emergency support. Most of the religious leaders' interventions were focused on offering valuable and timely services (welfare) but often they had limited understanding of the rights-based approach. It is also a matter of concern that religious fundamentalism is on the increase in many countries and this has resulted in an increase in HPs that are a violating women's and children's rights (virginity testing, early marriage, honour killings etc.).

Participants agreed that all actors are political. Religious communities are political in a positive or negative manner with, for example, religious actors playing a positive role in peace and reconciliation processes while also play a negative role placing pressure on law reform related issues to address HPs.

In order to support the objectives/strategy of the SRSG, participants were asked to clearly identify the kind of investments they should make in respect of engaging with religious leaders so that they have enduring significance. What can be done by organizations like UN agencies, CSOs and governments to ensure that we have effective communication and have values on enduring basis?

Based on their national/regional experience participants answered the above question as follows:

1. Experience of Eastern DRC: UNICEF worked with women's group from the Church network. This was a back door entry point, which was effective. Priests and other leaders started raising the issue of HP. The charity aspect of religious work is so political especially in conflict situations that we have to understand that dynamic in order to build capacities and facilitate exposure so that child rights are taken into account. It is also essential to influence madras or Sunday schools to include child rights. We also need to better understand who influences whom. We need to be patient, work carefully with different actors. Carry out assessments and surveys. All stakeholders must be involved (e.g. traditional healers in South Africa)
2. States have to draw a limit (e.g. explicit law) in order to prevent human rights violations (e.g. issue of *talibes* in Senegal).
 - 2.1. We could make use of religious holidays, religious events, in order to put forward issues related to HP.
 - 2.2. In the process of law reform, it is better to converse with religious leaders at an early stage. When leaders are involved in advance they can keep to their words.
3. UNFPA's successful strategy consisted of using census data and presenting them to stakeholders. The idea is to unpack data, simplify them and repack them for advocacy use. Ultimately all religious leaders will use the same data. The second UNFPA successful strategy was to create a space for discussion/information sharing for the development of a joint strategy on sex selection. Such investment in qualitative resources helped reach out to communities and lead to behavior change

Participants felt that it is important to better understand that religion is not monolithic, since there are different schools of thought (e.g. Islam in Nigeria). They noted that it is possible to address the issue of HP with religious leaders without using language of rights. The reality is that in some communities children are not seen as right holders. The language of rights may disconnect people. The use of scriptures can still have the same effect. It is important to speak the language of the community.

Participants also outlined that there is a right to have no religious or other faith. The idea of forcing a child to have a religion can amount to HPs. It is important to define a strategy for such cases.

In conclusion, the session on working with religious communities can be summarized as follows:

1. It was agreed that the spiritual life is important in the development and wellbeing of the child.
2. Religious leaders are in many contexts the most trusted leaders in the community, they are important in the lives of women and children and that we need to engage them. Similarly we must recognize that religion is not monolithic and we need to take that into account. The issue of trust is fundamental: Child rights activists must ensure that they earn religious leaders' trust.
3. There is a need for sensitivity, care, in the language, tone while engaging with them, even when referring to the CRC.
4. We need to start early dialogue on child rights issue with local communities, making law reform better accepted.
5. Importance of data for advocacy. Role of data, statistics should be highlighted.
6. Investment in capacity building, in behavior change.
7. Role of the family. Family is the most important agent in children's life. Families are the most cost effective way of bringing change so they need to be engaged with.

Issues highlighted during the discussion include:

1. Extremism.
2. Speaking out on child rights violations: respect is important while approaching religious leaders but confronting them is also needed in some situations. Using data back-up claims can be helpful. Lesson learned: Working with religious communities is a complex area. All actions carried out have to be context specific.

Session 5: Law enforcement and the role of the judiciary

Country experiences, including civil protection orders and court cases in the context of legal pluralism and harmful practices against girls and boys. The role of para-legal mechanisms, religious- and traditional courts.

Ms Eileen Carter

Department of Justice, South Africa

Protection of the Child: The Children's Court in South Africa

Ms Carter started her presentation by acknowledging that despite the best efforts of the South African Government and civil society to protect children from abuse, neglect and

exploitation, it is a fact that they still remain vulnerable. Therefore, a more intensive effort is needed to fight this scourge.

Ms Carter gave an overview of the South African Children's Rights Framework which include relevant human rights instruments ratified by South Africa, the South African Constitution's baseline, other legislative and policy frameworks, as well as relevant child rights governmental coordinating structures. She placed a special emphasis on the South African Children's Act 38 of 2005, which came into effect on the 1st of April 2010. She informed participants that the Children's Act provides for a coordinated and integrated approach for government departments and civil society organizations to provide an effective response system for child victims and those at risk of abuse, neglect and exploitation. For instance it makes provisions for the child protection register, alternative care orders, orders for early intervention and prevention, etc.

Ms Carter went on to present on the Children's Court, which has jurisdiction on any matter arising from the application of the Children's Act for the area of its jurisdiction. The remits of the Children's Court include matters of maltreatment, abuse, neglect, degradation or exploitation of a child, except criminal prosecutions in this regard, the temporary safe care of a child, the alternative care of a child and any other matter relating to the care, protection or well-being of a child provided for in the Act.

While referring to the Children's Act, Ms Carter outlined the notion of child "in need of Care and Protection" and the various subsequent orders that the Children's Court can take in such case (e.g. the child is placed in a child and youth care centre, in foster care, a person be interdicted from maltreating, abusing, neglecting or degrading or from having contact with the child, etc).

In conclusion, Ms Carter announced the Act is currently in the process of being amended, even though it has proved to play a very important role in the lives of children in South Africa.

As the Children's Court has been operational for the past 2 years, participants asked more information about the process for enhancing the capacity and knowledge of the public on HP. Ms Carter informed participants that outreaches are conducted at schools to inform on the Children's Act. There are also information sessions on the implementation of the Act with presiding officers and court clerks.

Regarding the way the South African Court sensitizes children about their rights and the existence of initiatives to include children's rights issues in the curriculum, Ms Carter pointed out that there is a public awareness branch at the Department of Justice and Constitutional Development, which sensitizes children across the country. The issue of Children's rights is also included in the school curriculum under "life orientation".

Participants were worried that abuse of children is a critical concern in South Africa, even though laws and policies are in place. What is not working? Ms Carter confirmed that South Africa has good laws in place but the main issue is about implementation and compliance. There are challenges indeed but they are being addressed through collaboration between departments. Questions were also asked about the age at which children can be called to speak at the court. How does this function nationwide across variety of communities? Section 10 stipulates that: "any child" that is able to express his/her view can be called before the court. The Children's Court is a child friendly court.

Regarding the relationship with traditional leaders and paralegals in relation to HPs, participants were told that in South Africa, the Department of Justice and Constitutional Development is engaging with traditional leader's bodies in order to inform them on legislation. Moreover the Children's Act calls for reporting of abuse and traditional leaders have been requested to be involved.

On the issue of accessibility for the poorest and the measures are taken to reach out to the more vulnerable, participants were informed that last year the South African Department of Justice went to farm schools and offered laptops to schools so as to have access to more information on the Department of Justice and Constitutional Development's website.

Participants noticed a neutrality of language in Ms Carter's the presentation related to children's gender, even though boys and girls face different realities and challenges, and there is also the issue of participation. What about strategies based on boys and girls differences? Ms Carter indicated that these differences should be taken into account.

It was noted by participants that the Department of Justice and Constitutional Development did not aim to be 1st point of contact for children. Community based organizations are intended to be more accessible. Participants therefore asked to be informed about the challenges faced by the court, for instance in terms of staff shortages. Ms Carter responded that the Department of Justice and Constitutional Development is endeavoring to move towards specialization of courts for sexual offences.

When asked if the current draft law on traditional courts addresses the issue of HPs, Ms Carter explained that the Bill had been referred back for consultation at this stage.

Participants asked what rules can magistrates use for a better implementation of the law and how we can help empower the judicial actors in South Africa. Ms Carter noted that all courts must always consider the best interest of the child. In 2000, the court ruled against the use of corporal punishment in Christian schools.

Session 6: The international and regional human rights normative framework for the protection of girls and boys from harmful practices

Dr Hirathi Wijemanne

UN Committee on the Rights of the Child

The international human rights framework for the protection of girls and boys from harmful practices

Dr. Wijemanne commenced her presentation by highlighting that it was children, and in particular girls, who were most affected by harmful practices. She also drew attention to the fact that when such practices occur in childhood, it is difficult to change set behavior patterns which then tend to reoccur from one generation to the other. Reporting and identification become difficult. She then referred to the normative framework, which includes the Universal Declaration on Human Rights; the International Convention on Civil and Political rights, CEDAW, and the CRC. These international instruments can and should be used as effective tools to eliminate harmful practices against children. This also includes

universal declarations at the UN General Assembly such as the World Fit for Children Declaration of 2002.

Monitoring of both the CRC and CEDAW reveals that harmful practices tend to be perpetrated at certain ages, being most often practiced on very young children who are most vulnerable. Puberty and adolescence are particularly vulnerable periods for harmful practices in the life cycle of children. But the impact is not only grave and harmful from a physical aspect, but from a psychological too, with both a short and long term impact.

She drew attention to the importance of identifying practical strategies to address the issue, including the identification of the practices specific to each country situation and region, the importance of changing attitudes at community level, the role of traditional leaders, including religious leaders, importance of reporting systems and establishing a data base. She also emphasized the importance of addressing gender stereotyping and patriarchal attitudes in societies where harmful practices are most prevalent. She also mentioned the value of prevention, support to victims, inputs to implement laws to prevent harmful practices, victim protection, extraterritorial jurisdiction, and the importance of promoting a minimum age of marriage for girls, including mandatory birth registration.

Dr. Wijemanne said that a General Comment on Harmful Practices was currently under preparation by CEDAW and CRC. This will aim at clarifying the obligations of State Parties to relevant provisions in CEDAW and CRC on harmful practices, specifically those affecting girls. But it will also be indicative of the obligations of state parties to the CRC with respect to harmful practice affecting all children, including both boys and girls. It will also define State Party obligations to CEDAW with respect to the elimination of harmful practices affecting adult women directly or in their childhood. Other important areas of emphasis include: legislation and its effective implementation and enforcement; empowerment of girls including education, awareness-raising, capacity building of the infrastructure in relation to the delivery of services at all levels; protection services, including prevention, data gathering and monitoring. There is also emphasis on the importance of quality education for girls, and the economic empowerment of women. It will call for a holistic approach as the problem is multidimensional.

Ms Grace Atim, UN Women

The regional frameworks for the protection of girls and boys from harmful practices.

Ms Grace Atim started her presentation by clarifying the notion of harmful practices and by briefly presenting different forms of harmful practices (HP) in Africa as well as their impacts. She noted that HPs took their sources from cultural practices, values and beliefs held by members of a community, from generations. These cultural practices can be positive (i.e. beneficial to all members, such as those which sustain society, provide cohesion and solidarity, and promote development) and also negative (harmful to specific groups – young girls, women).

Ms Atim presented some specific forms of HPs including early marriage and dowry, female genital mutilation/cutting, early pregnancy, nutritional taboos and practices related to child delivery as well as acts of violence against women and girls (VAWG). The impacts of these practices are serious; they include health complications (considering the unhygienic

conditions under which they take place), psychological and physical impacts or even death of the child.

Ms Atim went on to present the various regional frameworks for the protection of girls and boys from harmful practices. These include the ACRWC (articles 3, 16 and 21). Ms Atim also made reference to the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa which obliges States Parties to prohibit and condemn all forms of harmful practices which have a negative effect on women's human rights (article 5), as well as other initiatives such as the Maputo Plan of Action on Sexual and Reproductive Health, the African Women's Decade, the AU Campaign for Accelerated Reduction of Maternal Mortality in Africa (CARMMA). She outlined the role of treaty bodies in the implementation of international and regional human rights instruments. She provided some examples of national legislative measures to prohibit HPs (e.g. Uganda), and called for more states to engage in law reform.

Ms Atim identified target groups, which will bring about change through dialogues, awareness raising and behaviour change. These include: government, youths, health workers, media and institutions such as mosques, churches and schools. In her conclusion Ms Atim called on governments to undertake more research on HP and ratify relevant international and regional conventions. She ended her presentation by asking how states could be held accountable and whether there were sufficient resources allocated to national action plans.

As moderator, Dr Marta Santos Pais closed this session by acknowledging that in all regions we have an agenda endorsed by States. The biggest challenge is that the regional frameworks need to be converted into national agenda.

Ms Ann-Kristin Vervik, SRSG Office - *Developments in the Council of Europe Member States*

The Council of Europe is an international organization which comprises 47 European countries covering 800 million people. It was set up to promote democracy and protect human rights and the rule of law in Europe.

Since the 1990s, the Council of Europe has undertaken several steps to promote the protection from gender-based violence and harmful practices have been included under this umbrella. From 2006-2008, the Council of Europe organized a campaign to combat violence against women and domestic violence. Parliamentarians played a unique role in the campaign. In several countries parliamentarians lobbied for new laws, engaged the media and raised awareness at different forums.

The Council of Europe developed a number of national reports, studies and surveys that revealed the magnitude of violence in Europe. The studies showed that the legislation and responses in different countries across Europe varied considerably. There was an expressed need for legal standards that ensured the same level of protection among all Member States. The campaign increased awareness on HPs FGM and forced marriage in particular and put these issues on the political agenda.

The research conducted by the Council of Europe can also provide normative guidance to countries outside Europe. For example, a study from 2005 on forced marriages in all

Member States found that forced marriage was seldom a specific criminal offence, but sometimes classified under sexual offence and sexual violence. The study showed that it is often difficult to ascertain if a genuine consent to marriage has been granted. Anxiety and fear can rule out all thought of resistance and it is difficult to get proof for such emotional pressure. In the case of child marriage and early marriage, lack of maturity makes a valid consent impossible. The study argues that a child under 18 is incapable of making an informed consent to marriage and that there is a case for regarding child or early marriage as a form of forced marriage. In all child marriages, at least one of the partners lacks physical, intellectual or emotional maturity and most importantly, they are unable to give full consent.

In December 2008, the Committee of Ministers set up an expert group to prepare a draft convention, which was finalised in December 2010. The Council of Europe Convention on Preventing and combating violence against women and domestic violence is informed by positive developments in Member States and case law from the European Human Rights Court. It opened for signature in 2011. At present, the convention has 20 signatures. Turkey has ratified, and 9 more ratifications are needed for the convention to enter into force.

Some of the key features of the convention are:

- The convention makes it clear that violence against women and domestic violence can no longer be considered as a private matter. States Parties have an obligation to prevent, protect and respond to violence through a number of measures that include law reform, practical measures and allocation of resources
- While it does not explicitly address violence against children, the Convention covers violence against girls and violence in the family. Forced abortion and female genital mutilation only affects girls and women. Sexual violence and rape, stalking, sexual harassment, domestic violence, forced marriage, and forced sterilisation affects women disproportionately. However, gender-neutral language is used to ensure that protection from certain forms of violence such as forced marriage and domestic violence also cover boys and men.
- Domestic violence is defined to include physical, sexual, psychological or economic violence that takes place within the family. It also includes violence that occurs between a boyfriend and girlfriend.
- The convention requires that State Parties take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of the Convention that are perpetrated by non-State actors (art 5.2). The due diligence standard has normally been applied to violence against girls and women, but since the scope of the Convention includes domestic violence, this provision could mean an expanded protection also for boys and men.
- The convention defines and criminalises various forms of violent intentional conduct such as FGM and forced marriage, while other forms, such as sexual harassment may be addressed through “criminal or other legal sanction”. Domestic law has to define what is “intentional” (Ch. V). Aiding, abetting or attempt is also an offence for most forms of violence (art. 41)
- The law must provide civil remedies, such as compensation to victims, measures to ensure that custody rights do not put children at risk of violence and the possibility to annul forced marriages without any burden on the victim.
- State Parties must ensure that culture, tradition or so-called “honour” are not regarded as a justification for any of the forms of violence (art. 42).

- States must match sanctions with the seriousness of the offence (proportionality) and the consequences for the victim.
- Prevention measures include regular awareness-raising campaigns, treatment programmes for perpetrators, work with NGOs and involvement of the media and the private sector in eradicating gender stereotypes (Ch. III).
- Protection measures include restraining and protection orders (removal of perpetrator from the victim(s), ensuring victim's access to adequate information on available services, access to shelters and state-wide 24/7 telephone helplines free of charge and accessible crisis or referral centres (Ch. VI).
- The Convention seeks to establish jurisdiction that is broader than their own territory, including in situations where the offence is committed against a national or habitual resident in another territory and where the acts are not criminalised in the territory where they were committed (art. 44).
- States shall co-operate closely and share information with other states without delay in cases where reliable information implies that a person is being at immediate risk of violence (art 62 and 63).
- A monitoring mechanism will be established to ensure compliance: both with independent experts and a committee representing governments that are parties to convention (ch IX).

**Professor Chuma Himonga, Professor of Law and National Research Foundation
Chair in Customary Law, Cape Town - *Legal pluralism and the protection of
children's rights from harmful practices with special reference to customary law***

Mr Benyam Mezmur presented a paper on behalf of and written by Professor Himonga, who was unable to make it to the consultation. The paper summarized ideas on legal pluralism in African legal systems, looked at positive developments regarding children's right to protection from harmful practices and the challenges of protecting this right.

Advocates of human rights protection should be aware of the different levels of legal pluralism. These are:

1. Multiple systems of customary laws in line with the many ethnic groups of any given country
2. A legal system connected to the apartheid system in South Africa, applying to different racial groups
3. A system when official customary law is distinguished from living customary law
4. The human rights system related to the binding international agreements countries are parties to
5. Deep legal pluralism, which suggests the co-existence of diverse normative systems or legal orders, including those not recognised by the state.

Professor Himonga argues that people pick and choose the systems that serve their interests, dismantling the neat boundaries that the state attempts to draw around each system to separate it from the others.

Negative consequences of legal pluralisms for the protection of children's rights can include children's interests falling between the cracks to their disadvantage. Human rights advocates should avoid focusing on one legal system as this could have a detrimental effect on the

rights of the child. They must be aware of the different legal order existing in a given country.

On a positive note, new developments for the protection of children have occurred at three levels:

- The recognition of customary law by international and constitutional law
- The children's rights legislation intersection - countries incorporate harmless customary law norms into domestic legislation
- The internal conflicts of law intersection – when the best interests of the child principle is used to determine conflicts of the law questions

Professor Himonga further suggests that living customary law, compared to official customary law, is more human rights friendly because of its adaptability to changing circumstances. Research performed by the Women and Law in Southern Africa Research Project (WLSA) in 6 Southern African countries found that women were allowed to inherit through living customary law as opposed to the official version which only allowed for male inheritance.

One of the challenges in working with living customary law is that it is not written, making it difficult to ascertain its content. Prof. Himonga stated that this must be solved through empirical research as a major priority to improving child protection systems.

Q&A Session

One participant referred to the danger of relying on old data because things can change and old data will not reflect what is happening at the grassroots level.

Dr Wijemanne responded to a participant's question about whether children's voices will be included in the joint general comment by promising to suggest this idea to the other CRC committee members.

One participant informed that there is a UN Women baseline study on violence against women and girls in 7 African countries, which highlights countries making progress, those lagging behind and where the gaps are.

Ms Pais offered a summary of the session's main points:

- It is the state's responsibility and accountability to monitor and report on the implementation of international and regional human rights standards.
- State interventions can influence the roles of non-state actors.
- New protocols and developments have led to evolving reality on the ground
- The importance of bringing together widest range of stakeholders available
- A better understanding of data is required
- The need to carry out research on customary law and existing practices

Session 7: Protection from harmful practices through the national child protection system

Specific focus on access to counseling, reporting and complaints mechanisms, legal aid and support for children who are at risk, or who are victims of harmful practices. The role of independent national human rights institutions for children's rights.

Dr Hiranthi Wijemanne - *Protection from harmful practices through the Child Protection System*

We need to have institutions and services that help implement the law, Dr Wijemanne suggested. Services for women and children who are victims of harmful practices should include:

- Emergency medical services where violations are physically severe such as honour killings and FGM. Psychological, psychiatric and surgical support should be offered while protecting the identity of the victim. Long-term services are also important; for example management of pregnancy, childbirth and underage pregnancies.
- Child friendly helplines and other methods for reporting violations. Accessibility, safety and confidentiality are important. They also have to be linked to the services e.g. shelters
- Counselling services have to be safe, secure and knowledgeable about available services.
- Secure shelters
- Protection in the form of another family member

Quality education and awareness-raising can have a protective role for children. Literacy and education for girls and boys is a powerful tool in itself in dealing with harmful practices.

Mr. Michael Kakatera, Acting Director of Gender and Women's Rights Directorate Malawi Human Rights Commission - *The role of independent national human rights institutions*

Mr. Kakatera made a general presentation of national human rights institutions which are state funded bodies, usually seen as symbols of good governance in a democratic country. They are generally established through Constitutions and Acts of Parliament and guided by the Paris Principles²; they are independent and non-partisan.

In Malawi, the mandate and roles of the National Human Right Commission can be summarized as follows:

- Protect and promote human rights in the broadest sense possible (strategic plans, programmes, relevant directorates)
- Investigate human rights violations on its volition or upon receiving complaints from individuals or group of people (vulnerable groups in particular)
- Make recommendations to relevant duty bearers e.g. Central Government, Parliament, President, prisons, the Police, the Judiciary, NGOs.

² Paris Principles were adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992, and by the UN General Assembly in its Resolution 48/134 of 1993 and relate to the status and functioning of national institutions for the protection and promotion of human rights.

- Provide human rights information to the public through annual reports, investigations reports, monitoring reports, public inquiry reports, open air campaigns, human rights newsletters, etc
- Monitor compliance with international human rights instruments: State Party reporting to monitoring bodies
- Submit reports to Parliament and stakeholders

Mr. Kakatera noted that in Malawi the Human Rights Commission is also responsible for protecting children's rights. In this regard it can conduct research, visit prison, police and detention centers to check the status of child cases, recommend adoption of new laws on children's rights and comment publicly on matters concerning children i.e. where necessary condemn bad practices. The Human Right Commission may also contribute to the submission of State Party reports, co-operate with international and regional treaty bodies for the protection and promotion of children's rights and play an educational role on child rights issues.

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One participant noted that In Zambia for instance, the power of the Human Rights Commission (ZHRC) is limited to making recommendations. When matters are reported to the Commission the public has expectations but they end up disappointed. The government's funding to the ZHRC was limited and the same government had to approve external funding. They wanted to know if this was the case in Malawi.

Mr. Kakatera confirmed that in Malawi, the HRC can only make recommendations. The HRC mandate is publicized so the public is aware of its limitation. The HRC does not need Government approval to seek donor funding and the Commission has signed a Memorandum of Understanding with agencies such as UNDP. The Government is simply informed as a matter of courtesy.

Participants noted that the credibility of NHRIs can be compromised in the instance of monitoring country's compliance with HR instruments. Mr. Kakatera acknowledged that the NHRC reminds the government of its obligations to submit reports and also develops alternative reports, although it has its limitations. Other stakeholders produce their own shadow reports and media plays an important role in monitoring compliance by the Government.

Ms Odette Houedakor

Gender Specialist, Plan's West Africa Regional Office

Protection from harmful practices through the child protection system at community level

Ms Odette Houedakor introduced Plan's activities in West and Central Africa, which include developing child protection frameworks and standards, providing support to the public and child protection mechanisms for the family, child participation, developing partnership with civil society organizations, as well as database development. Some of these activities are implemented in partnership with Save the Children WARO and UNICEF.

Ms Houedakor went on to present Plan's specific experience in fighting FGM in the region of Guinee Forestiere in Guinee Conakry. The practice of FGM is widespread across Guinee Conakry. She explained that Plan initially faced resistance from the community. Plan chose to work in close partnership with women's associations with a special focus on the health sector since these women were performing FGM.

Plan's main activities in Guinee Forestiere included sensitization, IEC, training of stakeholders, boys, girls, teenagers, girls who did not go through FGM, intergenerational dialogue, summer camps, etc. There was also a public celebration of non-circumcised girls in order to empower them and guarantee their safety. Ms Houedakor noted that after three years, the campaign resulted in a total abandonment of FGM in some communities through public declaration of abandonment. Women who performed FGM were prosecuted. An alternative FGM ritual was set up; it involved women formerly performing FGM and traditional midwives, and moreover issues around sexual health, child and women's rights were discussed during this ritual. There is also a follow up mechanism for non-circumcised girls in order to avoid pressure from the in laws.

Despite these positive outcomes, Ms Houedakor highlighted some challenges, which include socio-cultural barriers, religious leaders' resistance, limited financial resources and other support to the girls, political and religious manipulations. All these challenges lead us to reflect on the most appropriate intervention method to combat such HP.

Q&A Session

Regarding how the women practicing FGM cope with loss of income, Ms Houedakor stressed that Plan does not fund income-generating activities. She informed participants that the women have other activities so they do not lose income. Since they work with the association, the income of the association is shared with them. The women are healers, and do not rely on incisions for their income. They train young girls on practical skills, so the community supports them. Many act as guardians and protect the girls to ensure that this practice is abandoned.

Session 8: Group work to identify future opportunities and suggestions to follow-up on the expert consultation at national, regional and international levels

Participants divided into 3 groups to cover the 3 different levels (national, regional and international)

DAY 3

Feedback from the 3 groups and discussion on the strategy for follow-up

Recommended actions – National Level Group

1. Improve stakeholder coordination at national level between Departments and NGOs
 - At current, these stakeholders work in silos
 - Consolidate and synergize services already available

2. Conduct National debates on country specific key issues relating to harmful practices
 - RSA: corporal punishment
 - Zambia, Malawi, Mozambique, Zimbabwe: forced marriages
3. Strengthen relationships with traditional and religious leaders
 - Specific focus on chiefs and headmen
4. Consider the possibility of furthering the Children's Court Model in other countries
 - Example: South Africa
5. Examine the role of the Children's Rights Ombudsman and/or the Human Rights Institutions and strengthen their effectiveness
6. Promote child participation through community outreaches
7. Promote capacity building amongst the Judiciary
8. Public education and information to be made accessible at all service level points
 - The use of vernacular language to promote better understanding and accessibility
9. The establishment of national advisory councils on harmful practices
 - These counsels should be sector and issue specific
10. Strengthening of families
 - Best interest of the child
11. Developing and/or strengthening support/remedies available to child victims exposed to harmful practices

Recommended actions – Regional Level Group

Against the backdrop of the UN study on violence against children and the draft thematic report on addressing harmful practices against children in plural systems with a special focus on Africa, it must be noted that regional level coordination plays a critical role in making the linkages with national actions and linking them to global initiatives. With this in mind the regional level group made the following 7 key recommendations:

1. Strengthening the evidence base:
 - Ensure that quantitative and qualitative studies are carried out in the region and analysis of findings is made available at all levels.
 - Promote collection of data through regional hubs.
 - Promote collection of data at global level in collaboration with the office of the Special Representative on Violence against Children.
 - Office of the SRSG to act as 'clearing house'/information hub and promoting quality control and disaggregation of data.
2. Identify and advocate at strategic opportunities: to influence and ensure that issues are raised at:
 - Global forums, eg. ACERWC, CSW, Day of the African Child
 - To be included on standing agenda of regional bodies eg. AU, SAARC; and ASEAN

3. Undertake evidence based advocacy: provide analysis of research findings and good practices to key target stakeholders:
 - Government departments
 - Parliamentarians
 - National independent HR institutions
 - FBOs
 - CSO coalitions
 - Children's and young people's networks
 - UN agencies
 - Traditional leaders
4. Support and provide technical expertise for mapping of harmful practices at national level: to develop a list of HPs and to enable prioritisation per region.
5. Facilitate consultations: undertake similar consultations in other regions.
 - Going to happen in South Asia through SAIEVAC (apex body of SAARC)
6. Establish regional hubs: identify regional structures that are accountable to follow up on agreed national, regional and global commitments e.g. SAIEVAC, Council of Europe, League of Arab States, MERCOSUR, ASEAN Commission on Women and Children.
7. Engage with monitoring bodies: e.g. ACERWC to provide support and mechanisms for assistance with monitoring and reporting on international frameworks.

Overall structure must be rights based, gender inclusive and follow an integrated approach

Recommended actions – International Level Group

Building on national and regional efforts and recognizing the globalization of harmful practices, political leadership should be engaged at the international level through the following actions:

- Request for the next special focus theme of the Omnibus Resolution on the Rights of the Child in 2013 to address harmful practices
- Host a side event on harmful practices during the next Human Rights Council on the right to health (March 2013)
- Establish minimum standards based on international human rights frameworks
- Secure champions to support this effort
- Work to be scaled up to include other regions with plural legal systems
- Launch the thematic report during the commemoration of the Day of the Girl Child (October 11th) in New York with an accompanying dissemination plan
- Recognizing the CSW theme on violence against girls and women, hold a side event to raise awareness of this theme and the subsequent thematic report
- Encourage similar expert consultations in the Americas and Asia (and possibly Europe), recognizing the need for issues to be contextualized globally but also locally, nationally and regionally
- Engage with the Forum on Indigenous People's Rights
- Feed into the Child Protection Working Group draft minimum standards particularly (1) Physical violence and harmful practices. (Next draft for comment coming in July)

Ensure coordinated efforts through:

- Among others the NGO Group's working group on VAC (in Geneva) and the NGO council on VAC (NY) on harmful practices

Actions need to be evidence-based:

- Undertake research on different mechanisms and enforcement to address harmful practices in different regions including witness and victim protection, and linkages with the child protection system

Work in partnership with the Committee on the Rights of the Child:

- Contribute to the development of the General Comment on Harmful Practices, including reference to cultural, political and economic rights through sharing the conference report, including recommendations and requesting drafts to be shared
- Ask the CRC/CEDAW to ensure the meaningful participation of children and young people in the development of the General Comment. Ensure that they are engaged in the dissemination of the General Comment in ways designed by them
- Following the GC, if requested by the CRC/CEDAW support the development of a handbook for implementation

Support the office of the SRSG on VAC

- Influence Secretary General's report on Right to Health to include harmful practices
- Request the SRSG and UNICEF to bring this discussion to the Tanzania meeting plus World Day of Action and Prayer for Children and Religion for Peace
- To support the renewal of the mandate of the SRSG

Presentation by Dr Moushira Khattab

Lessons from the process of law reform and social mobilization in Egypt

Dr Moushira Khattab started her presentation by outlining the two forms of HPs which mainly affect Egypt; these are FGM and child marriage. She noted that these practices are performed with love and care by parents, caregivers in certain marginalized communities and they are blessed by the entire local community. It is therefore difficult to start a debate on these issues as it would be seen as a Western agenda. FGM is generally performed to protect the girl and child marriage is justified by the fact that the girl needs someone to provide for, and look after her, the girl must be raised to be a good obedient wife. Education is therefore not perceived as necessary.

Dr Khattab emphasized the need to be extremely sensitive when it comes to culture and religion. People will interpret the religion (including Islam, Christianity, and Judaism) to justify the use of HPs. They may also use health justifications. The campaign against HPs had to be religious and culture-sensitive. It started in early 2000, building on the work done by CSOs. At the turn of the 20th century, doctors started to address the issue of HPs and the reasons to stop it.

Dr Khattab noted that it was important to have a multi-disciplinary strategy, focus on a number of issues, use a rights based approach, and moreover the process could not start with criminalization. It was a bottom up process implemented at grassroots level, in the most marginalized remote villages. A societal movement started by addressing the issue of the value of the girl child for her family and society (as opposed to addressing FGM): it tackled three issues at once, the right to education (e.g. Education for All) protection from early marriage and FGM. It therefore created benefit for all. The societal movement starting

point was to provide information (research) about the harmful effects of HTP. It was noted that each context/village was different and research was conducted through the local community. The research was conducted to prove that all religions are against FGM as well as doctors. This was backed by doctors as well as two important religious alliances (Muslims and Christians).

In short, the focus of the societal movement included: research, information, education, awareness-raising using a rights based approach.

Ultimately the decision against FGM came from the villages. There were village declarations against FGM through a public celebration. Such events were attended by media and gradually the voices of FGM supporters started fading out while voices against FGM emerged and became stronger.

Some of the lessons were:

1. Encouraging youth movement: involving both sexes and male voice was more important.
2. Media: played a great role by publicizing the voices against FGM. Spread their voice nationally and became contagious.
3. Monitoring, data collection: a child helpline was established in 2005. Victims reported threat of violation (prevention role). In 2008, marriage counseling lines were introduced to combat child marriage.
4. Promoting a liberal religious discourse: Families relied on religious leader's opinions, including books written about Christianity and Islam and how they were against the practice.
5. Working with Members of Parliament (MPs) who helped in the law reform process as well as working with doctors and lawyers at local level was important. Creating a male lobbying agenda against such practices was also crucial.

Networking: Use of umbrella NGOs at local levels and entrusting them with empowering smaller emerging CDA's. Networking with the international community, inter-African community, as well as European countries with migrant communities etc. has been key. Significant interaction with other African countries, programme with UNDP, UNICEF, WHO, Plan International, USAID, EU, UN Women, Study on VAC, appointment of SRSG, and strong partnership between UN agencies and national bodies, etc.

The societal mobilization process culminated with the Parliament adopting a law prohibiting FGM and child marriage. The process of mobilization around law reform took 8 years. The law reform consisted in the amendment of the child law, the civil status law and the criminal code. Article 7 of the Child law prohibits physical and harmful practices. The amended Penal code criminalizes the action of cutting, the intention and the instigation (including causing a scratch). The amended civil status law raised the minimum age of marriage from 16 to 18. The law enforcement has been very positive thanks to cooperation with CSOs and media who reported cases. A free helpline also helped in terms of data. The Prosecutor's general support was fundamental as he took prompt measures against any violation. There was also training of stakeholders: doctors, religious/community leaders, judges, etc.

Success indicators include: the rates of FGM and child marriage dropped over the years; media silence was broken; village against FGM became heroes; strong hype against HTPs and voices of its supporters became mute.

However, Dr Khattab noted some challenges to the current achievements; these include the negative role played by some ultra conservative forces which emerged following the Arab spring. These forces became more present in the media and publicly supported FGM and child marriage. A law was proposed to decriminalize FGM, bring down the age of marriage to 14 years, etc. It is hoped that with the new elections more progressive MPs will be on board.

Q&A Session

When asked about her experience in carrying out research in diverse communities, Dr Khattab explained that Egypt has small variations/nuances in villages due to social contexts and these must be taken into account. This can have a huge impact in the implementation of the campaign. It is therefore important that each village drafts its own action plan, timeframe, etc. As for plural legal systems, Dr Khattab informed that there are no religious laws in Egypt even though positive laws are guided by Sharia (Islamic) or Christian religion. She also added that in order to avoid the challenges of pluralism it is important to bring people together, under the same laws and umbrella.

Participants stressed that it is important to understand the community perception and treat it with respect (e.g. some families practices FGM with love and care). Providing information that will help the family abandon such practice must take into account the religious and health myths.

Regarding the support from the international community, Dr Khattab noted that they experienced long term and short term success. Local partners have a responsibility to take the lead, to be credible and train other partners. Now there is better coordination within the international community; UNICEF and the CRC Committee work together and the role of the SRSG on VAC is crucial in assisting such efforts. The costs of the campaign were quite high. The higher cost is related to training. It is an investment in human development that has its benefits in related areas such as girl's education so the costs decrease over time.

Dr Khattab also confirmed that Egypt has a reservation on articles 2 and 16 of CEDAW because of inheritance issues related to the Koran.

Dr Khattab shared criticism related to the fact that Egypt's National Council on Human Rights did not have a committee on women and children. However, it now has an entity for women, which is a positive step, but it does not yet have a strategy on children or women. She also noted that UN Women played a crucial role to support the women's movement in Egypt after the Arab Spring. Youth are not homogenous. Experience in Egypt showed that some of the young women that led the revolution did not see women's rights as a priority.

Dr Khattab finally praised the rich and vibrant African movements (e.g. Pan African Forum, etc.). She praised the debates triggered by the AU and the ACEWRC. However she noted that the following question remains to be answered: why are these rich debates not translated at national levels?

Session 9: Conclusions from the plenary discussions and the way forward

Ms Marta Santos Pais

Special Representative on Violence against Children

Ms Marta Santos Pais thanked all participants for their fruitful contributions, supported by their various expertise and backgrounds including academia, government and activists from Africa and beyond. She recalled that the objective of the meeting was to emphasize the importance of law reform, recognizing national realities (customary law, perceived values, etc), which hopefully will be captured in the thematic report.

In her summary, Ms Santos Pais recognized that harmful practices represent a complex and multi-dimensional issue. Inadequate compliance, contradictions and inconsistencies in legal regulation, lack of adequate resources, attitudes of personnel at all levels, lack of awareness in communities, lack of capacity and competency on children's rights among law enforcement, the judiciary, traditional leaders were among the challenges that were discussed during the consultation. Due to some beliefs, for example in relation to witchcraft, fear was also identified as a cause for non-compliance.

Some of the conclusions from the discussions were;

Firstly, law reform has a crucial role to play in addressing harmful practices against children. The obligation to harmonize all laws to prevent and address harmful practices implies that all relevant domestic laws, including customary and religious laws are brought in compliance with children's human rights. Ensuring that the definition of a child is in line with the CRC is of paramount importance for the protection from all forms of harmful practices.

Secondly, at national level, there is still a lack of recognition of the tension between international human rights standards and customary and religious laws and the ability to address the tension to protect children from harmful practices. And although international standards have developed during the last few decades, the approach by most states has been fragmented, focusing on one or a few forms rather than all existing and emerging harmful practices. All State Parties should send a clear message that ending harmful practices is under no circumstance in conflict with the right to culture, nor is it a family- or private matter. Due to gender-based discrimination, girls are disproportionately affected by harmful practices. However, early-and forced marriage, violent initiation rites, harmful practices in early childhood etc. also affect boys.

Thirdly, law reform must be an on-going process that follows and accelerates developments in society. The fundamental dignity of the child is non-negotiable and cannot be compromised or justified. The law reform process should ensure that justifications in the name of honour or tradition and any exceptions, such as parental consent to marriage or other harmful practices are removed to protect the best interest of the child.

Fourthly, the law reform process should be complemented with prevention measures, such as birth registration, education, awareness-raising and training. Engaging communities, including children, religious- and community leaders to get their views on the issues and giving them space to actively dialogue about them is indispensable to ensure respect and compliance of the legislation. Reports from a number of countries have shown backlashes and in some cases the law reform has been inappropriate or tried to regulate too much with the result of not achieving the purpose. The discussion at community level can contribute to reaffirmation of positive cultural values, provide information about the harm caused by certain practices, encourage the identification of alternative practices where this is appropriate, and achieve community commitment to change attitudes and behaviours that are harmful to children.

It is equally important to engage parliamentarians and different parts of government, ombudspersons and human rights commissions, health workers, teachers, the media, law enforcement and the judiciary, who all have a crucial role to play in creating an enabling environment and supporting community processes to end harmful practices.

Fifthly, harmful practices affect both girls and boys of all ages throughout the world. Across regions there are a number of commonalities; most evident is the way that harmful practices are related to discrimination of vulnerable children and unequal power relations. The low status of children and perceptions that children are not important or of less value leads to inaction by governments and society. At the same time, various harmful practices may also have very different and complex causes and beliefs that need different approaches and solutions. Communities are not homogeneous and transforming social norms and practices can take a long time. Further data collection, research and analysis is urgently needed in order to identify the appropriate legislative, administrative, educational, social and other measures to eradicate them.

Lastly, cross-country and cross-regional sharing of good practices in legislation, enforcement and implementation should be promoted in order to replicate them and scale up the successes.

Ms Santos Pais stated that she remained hopeful that all participants will continue to contribute advice and be committed to continue the network that was established in the consultation. The SRSB team is committed to providing support, especially through the thematic report, which will be a policy and advocacy tool. The thematic report will be made available and discussed at all levels. The highlights of the meeting and the presentations will be placed on the SRSB website within a few weeks' time.
(<http://srsb.violenceagainstchildren.org/>)

The SRSB announced that she will attend the fourth Forum of the Global Network of Religions for Children in Dar Es Salaam, Tanzania, on June 16-18, 2012, which will also include issues related to VAC. She informed participants that the SRSB will contribute to the CRC/CEDAW joint General Comment and confirmed that the thematic report will be launched during the Commemoration of the Day of the Girl Child on 11 October in New York in collaboration with Plan International, UN Women and other partners.

Finally, she expressed special thanks to the planning group, Plan International, the CRC, ACERWC, UNICEF, NGO Council, ACPF, Fiyola Hoosen-Steele and Ann Kristin Vervik.

Mr Benyam Mezmur

Research Fellow, Community Law Centre, University of Western Cape

Dr Benyam clarified the process of drafting the thematic report on HP. He explained that there was already a draft thematic report (draft 0), which will go through changes that incorporate the meeting discussions. The current version focuses on African realities, but ultimately the final version will include a global picture. Participants were asked to submit HPs examples from Africa and other parts of the world. Only some specific HPs will be included in the report, such as HPs with a certain severity, practices that are cross cutting (across regions) and HPs that affect both girls and boys.

Furthermore, there is a need to clarify the notion of harm and the notion of due diligence.

Participants were invited to provide case law on due diligence. The aim is to have an ownership of the report with effect at the grassroots, by policy makers and at all levels.

Mr Gezahegn Kebede

Regional Director, Plan's Regional Office in Eastern and Southern Africa

In his closing remarks, Mr Gezahegn Kebede noted that the issues of children and Protection of children is very important to Plan International. Plan International believes that the change has to happen on the ground. For instance, Plan Eastern Africa sub-region has chosen to focus on sexual exploitation, while Plan Northern Africa sub-region has chosen to work on FGM.

Mr Gezahegn Kebede stressed that Plan aims to take a step forward to protect girls and boys against harmful practices. He recognized the need to engage at grassroots level and to listen to the victims. Plan will also take into account the issue of trust at community level and make sure that the goal is not seen as a foreign agenda. Mr Kebede finally announced that Plan is committed to subscribe to the thematic report and the consultation's follow-up activities.

ANNEXES

PROGRAMME

Wednesday 13 June

- 08:00-09:00 Registration of participants
- 09:00 **Opening Remarks**
- 10:00 **Session 1 – Legal pluralism and the protection of children’s right to protection from harmful practices.**
- Country examples of the interplay between international human rights standards, national legislation and customary and religious law. Positive developments, tensions, challenges and gaps
- 11:10 Coffee & tea Break
- 11:30 **Session 2 – Legal prohibition of all harmful practices against children**
- Legal reform to prohibit harmful practices against girls and boys in penal codes, family law and other laws. Removal of justifications and exceptions, consideration of customs, traditions or religious dimensions incompatible with the CRC/CEDAW/UNVAC Study recommendations. Considerations concerning criminalization and the principle of the best interest of the child. Country experiences from different regions.
- 13:00 Lunch
- 14:30 **General Discussion Session**
- 16:00 Coffee & tea break
- 16:30 **Session 3 – Invisible and emerging forms of violence. Gaps in data systems and identification of harmful practices, customs and traditions**
- Identification and discussion of responses to harmful practices that have not yet been adequately addressed in law and/or policy (e.g. harmful or degrading initiation rites, children accused of being witches, psychological violence against children with disability, breast ironing, harmful practices in early childhood, etc).
- 18:00 **End – Group Dinner**

Thursday 14 June

- 09:00 **Session 4 – Law reform and the process of social change. Addressing the root-causes in law and implementation, including in the context of customary law.**

The case of early and forced marriage against girls and boys. The role of different actors including parliamentarians, community- and religious leaders, medical- and social workers, community members and children in preventing and overcoming persisting harmful beliefs and attitudes in communities. Awareness raising and capacity building in support of this process e.g. development of guidelines and training for community justice providers

10:45 Coffee & tea break

11:15 **Session 5 – Law enforcement and the role of the judiciary**

Country experiences, including civil protection orders and court cases in the context of legal pluralism and harmful practices against girls and boys. The role of paralegal mechanisms, religious and traditional courts.

13:00 Lunch

14:30 **Session 6 – The international and regional human rights normative framework for the protection of girls and boys from harmful practices.**

General overview of harmful practices in different regions. Definitions of various harmful practices as forms of violence against children.

16:00 Coffee & tea break

16:30 **Session 7 – Protection from harmful practices through the national child protection system.**

Specific focus on access to counseling, reporting and complaints mechanisms, legal aid and support for children who are at risk of, or who are victims of harmful practices. The role of independent national human rights institutions for children's rights.

18:00 **Session 8 – Group work to identify future opportunities and suggestions to follow-up on the expert consultation at national, regional and international levels**

Participants will divide into 3 groups to cover the 3 different levels.

18:30 End

Friday 15 June

08:30 **Presentation – Lessons from the process of law reform and social mobilization in Egypt**

09:00 **Feedback from the 3 groups and discussion on the strategy for follow-up**

10:30 Coffee & tea break

11:00 **Session 9 – Conclusions from the plenary discussions and the way forward**

13:00 End/Lunch

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