

International NGO Council on Violence against Children

Session 3: Legal Prohibition of all Harmful Practices against Children

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History of Harmful Practices at the United Nations

- 1979 – Harmful practices condemned at UN
- 1984 – Agenda item on Commission of Human Rights
- 1995 – WHO Fact Sheet No. 23: “Harmful Traditional Practices Affecting the Health of Women and Children”
- Gender inequality and discrimination focus: Female genital mutilation (FGM) and child marriage



Terminology: HTP or HP?

- Formerly, harmful traditional practices
- Not all practices ‘traditional’; social, cultural, religious
- Harmful practices: inclusive of new and ‘emerging’ practices
- Too broad?
 - *All* children’s rights violations harmful practices



Terminology cont'd...

- Convention on the Rights of the Child, Article 24 (3):
“traditional harmful practices”
- African Charter on the Rights and Welfare of the Child:
“harmful social and cultural practices”
- Propose term: harmful *traditional, cultural, and religious* practices



Human Rights and HPs

- Children protected through non-discrimination and:
 - Right to life, maximum survival and development
 - Right to protection from all forms of physical and mental violence
 - Protection from torture and cruel, inhuman or degrading punishment and treatment
- International and regional instruments specifically reference harmful practices



HPs and the CRC

- CRC Article 24(3): *“to take all effective and appropriate measures with a view to abolishing **traditional practices** prejudicial to the health of children.”*
- *References to HPs in CRC General Comments, Nos:*
 - 3 (HIV, 2003);
 - 4 (Adolescent Health, 2003);
 - 7 (Early Childhood, 2005);
 - 8 (Corporal Punishment, 2006);
 - 9 (Children with Disabilities, 2006);
 - 11 (Indigenous Children);
 - 12 (Child Participation, 2009); and
 - 13 (Violence against Children, 2011).



CRC General Comment 13

- “All forms of violence, however light, are unacceptable”
- “frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence”
- Para 29. Harmful practices. These include, but are not limited to:
 - Corporal punishment and other cruel or degrading forms of punishment;
 - Female genital mutilation;
 - Amputations, binding, scarring, burning and branding;
 - Violent and degrading initiation rites; force-feeding of girls; fattening; virginity testing (inspecting girls’ genitalia);
 - Forced marriage and early marriage;
 - ‘Honour’ crimes; ‘retribution’ acts of violence (where disputes between different groups are taken out on children of the parties involved); dowry-related death and violence;
 - Accusations of ‘witchcraft’ and related harmful practices such as ‘exorcism’;
 - Uvulectomy and teeth extraction.”



HPs and CEDAW

- CEDAW Article 2(f): *“take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, **customs and practices** which constitute discrimination against women”*
- Article 5(a): *“To **modify the social and cultural patterns** of conduct of men and women, with a view to achieving the **elimination of prejudices and customary and all other practices** which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;”*
- *References to HPs in CEDAW General Recommendations:*
 - 14 (*Female Circumcision, 1990*)
 - 19 (*Violence against Women, 1992*);
 - 21 (*Equality in Marriage, 1994*); and
 - 24 (*Women and Health, 2000*).



HPs and the African Charter on the Rights and Welfare of the Child

- Article 21: Protection against Harmful Social and Cultural Practices
 - 1. *States Parties to the present Charter shall take all appropriate measures to eliminate **harmful social and cultural practices** affecting the welfare, dignity, normal growth and development of the child and in particular:*
 - (a) *those customs and practices prejudicial to the health or life of the child; and*
 - (b) *those customs and practices discriminatory to the child on the grounds of sex or other status.*
 - 2. *Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.*



HPs and the Maputo Protocol

- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- Article 1(g): “**Harmful Practices**’ means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;”
- Article 5: Elimination of Harmful Practices
 - “States Parties shall prohibit and condemn all forms of **harmful practices** which negatively affect the human rights of women and which are contrary to recognised international standards.”



HPs and Multiple Legal Systems

- General Assembly resolutions 61/143 and 63/155
 - Multiple legal systems must comply with “*international human rights obligations, commitments and principles*”
- Legal systems in conflict with obligations not permitted under international and regional instruments



HPs and Informed Consent

- Harmful practices often perpetrated on infants or young children
- Children cannot give informed (or refuse given) consent
- Parental consent essential for health; should not extend to harmful practices
 - ***Regardless of parents' cultural, traditional, or religious beliefs***
- Parental 'responsibilities' in best interest of child



Children's Independent Rights to Religious Freedom

- Article 14 of the CRC: *“States Parties shall respect the right of the child to freedom of thought, conscience and religion.”*
 - Parents provide direction *“in a manner consistent with the evolving capacities of the child.”*
- Limitations when involving public safety, health, rights and freedoms of others



Prohibition of HPs

- Remove all forms of discrimination and justifications in legal systems that place less value on lives of children
- Need for identification of specific practices, with explicit prohibition, including:
 - Accusations or branding of children, even when direct violence not involved
 - Practices involving discriminatory or intentional neglect or abuse, but not direct violence
- Once identified, review existing laws, add and amend accordingly.



Going Forward

1. A strong assertion of the urgent need for a continuing, detailed, and high-profile global analysis of harmful practices affecting children and of the legal and other measures needed to prohibit and eliminate them - taking throughout a *children's* rights perspective;
1. Recognition that harmful practices:
 - Affect both girls and boys of all ages, in every state;
 - Are in some cases “home-grown”, while others have spread with migration and through technology, etc.;
 - Threaten and affect certain groups of children disproportionately, including children with disabilities, and that these children require special attention;



Going Forward, cont'd...

3. Promotion of systematic and rigorous children's rights-based reviews of harmful or potentially harmful practices affecting children, and particular groups of children, across every state and region and within every faith/religion;
4. Categorisation of harmful practices with the primary purpose of identifying the appropriate legislative, administrative, educational, social, and other measures required to eliminate them;



Going Forward, cont'd...

5. Formation of a web-based clearing house of:
 - Models of legislation framed or used to prohibit and eliminate harmful practices, and that provide individual children and their representatives with effective remedies, including compensation;
 - 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;



Going Forward, cont'd...

6. 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.



Good Practice Example: HPs against Women

- Good practice examples from Division for the Advancement of Women (DAW, now under UN Women)
 - Two expert meetings on good practices in legislation
- Vienna 2008: on violence against women
 - Model framework for legislation
 - Comprehensive, human-rights legislative approach
 - Criminalization, prevention, empowerment, support, protection, and implementation mechanisms
 - Handbook for legislation on violence against women



Good Practice Example: HPs against Women cont'd...

- Addis Ababa 2009: on harmful practices against women
 - *“States are obligated under a comprehensive international legal and policy framework to enact, implement and monitor legislation on all forms of violence against women, including ‘harmful cultural or traditional practices’...”*
- Outcome document: *“Good Practices In Legislation On ‘Harmful Practices’ Against Women”*
 - FGM, ‘honour’ crimes, dowry-related violence and harassment, stove-burning, acid attacks, forced marriage and child marriage; bride price; polygamy, ‘payback rape’
- **Similar exercise needed focused on children**



Harmful Practice Examples

- **Acid attacks:** Used against girls for retribution or revenge. Reasons include a refused marriage proposal, or issues related to family property, jealousy, and “honour”. More recently associated with attacking girls’ education in Afghanistan.
 - Are acid attacks on girls’ education a harmful practice?
- **Treatment of children with albinism:** Considered cursed, contagious, evil omens, or possessing magical powers, and may be murdered, sacrificed, accused of witchcraft, or dismembered for trafficking (belief their organs are magical).



HPs Examples cont'd...

- **Male circumcision:** Very widespread practice, until recently largely neglected in mainstream debates on harmful practices.
 - Serious invasion of physical integrity
 - Can result in psychological and sexual health problems
 - Issues of consent
 - Right to freedom of religion
 - Suggestions that may help to prevent transmission of HIV do not in themselves support the practice.
- More information and resources in submission



HPs Examples cont'd...

- **Food taboos for pregnant/lactating women:** Pregnant women abstain from foods/nutrients, resulting in their under-nutrition, starvation, and increased labour risks. Taboos dictate what and when to start feeding, including breast milk. Infants denied important nutrients or fed inappropriate foods as a result.



HPs Examples cont'd...

- **Sexual slavery:** Children – both girls and boys – are used as sexual slaves, either by their owners, or are exploited and used as child prostitutes.
 - Bacha bazi, or dancing boys: Ancient, resurging practice in Afghanistan where wealthy men buy young or adolescent boys to train to use as sexual slaves and to ‘dance’ for gatherings of men.
 - Wahaya: Girls are bought and sold by owners, who consider it a sign of prestige, and at times their families, to serve as sexual slaves and domestic workers. Practiced in Niger and Nigeria.



HPs Examples cont'd...

- **Child 'witches'/Witchcraft:** Children accused of witchcraft or branded as witches may be ostracized, abandoned, exorcised, or killed. Particular groups more vulnerable, including:
 - Children of 'bad births',
 - children born with disabilities,
 - children with albinism,
 - children who are orphaned or living on the streets,
 - children who exhibit unusual behaviour patterns, or
 - children whose families experience misfortune shortly after their birth.



Thank You

Questions?



International NGO Council on Violence against Children

- Established in 2006
- 18 member organizations: nine international NGOs; nine regional representatives
- Works to ensure recommendations of UN Study on Violence against Children are effectively implemented through partnerships with:
 - NGOs: national, regional, international
 - SRSG VAC
 - Governments
 - UN

