

International Expert Consultation to address Harmful Practices

With a Specific Focus on the Interplay between Children's Right to Protection from all forms of Violence and Customary and Religious Laws

Concept paper

Background

In 2002, General Assembly Resolution [56/138](#) requested the Secretary General to conduct an in-depth study on the question of violence against children, following a recommendation of the Committee on the Rights of the Child. The UN Secretary General's Study on Violence against Children ([A/61/299](#)), called for urgent action to prevent and respond to all forms of violence and presented a set of strategic recommendations. To promote dissemination of the Study and ensure effective follow up to its recommendations, the UN Secretary General appointed a Special Representative of the Secretary General on Violence against Children (SRSG).

The United Nation's Study on Violence against Children urged states to "prohibit all forms of violence against children in all settings." The Special Representative of the Secretary General on Violence against Children (SRSG) has identified the prohibition of all forms of violence, as well as an appropriate legal framework for prevention and response to violence when it occurs, as one of her three priority focus areas.

On 6 and 7 July 2011, the SRSG, the Office of the High Commissioner for Human Rights (OHCHR), the Inter-Parliamentary Union (IPU) and the NGO Advisory Council on Violence against Children hosted an expert consultation on law reform in Geneva. The Consultation addressed what kind of legislation is required to prohibit, prevent and respond to all forms of violence against children, and identified what can be done to accelerate law reform in this area.

On October 5-7 2011, the African Union organized a Pan-African Conference on celebrating courage and overcoming harmful traditions. The rationale behind the conference was that all social groups all over the world have specific practices and beliefs, which often have strong cultural underpinnings.

As a follow-up to the Geneva Consultation, and building upon the African Union Conference, the SRSG, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and Plan International, in cooperation with the Committee on the Rights of the Child, UNICEF, OHCHR and the NGO Advisory Council will co-host an international consultation on how to effectively address harmful practices against girls and boys within plural legal systems.

The consultation will bring together experts from different regions for cross-regional learning and partnerships. It will be organized in the Africa region and will benefit from previous developments, recommendations and good practices within the continent.

Legal pluralism is the existence of multiple legal systems within one country. Plural legal systems are particularly prevalent but not limited to former colonies.¹ In Africa, for example, the legal system may entail common law (deriving from colonialism), statutory law (often developed after independence), customary law and religious law (such as Christianity, Hindu law, Sharia law and Judaism). Legal pluralism also occurs when different laws govern different groups within a country. In some countries there are traditional courts and religious courts. This is, for instance, the case of Islamic courts, which address issues in Muslim communities, while secular courts deal with the issues of non-Muslim communities. In many cases such a system is good and fair, but in other cases, particularly those concerning women's and children's rights, legal pluralism can be complex, challenging and confusing to implement. The Committee on the Convention on the Rights of the Child (CRC), the African Committee of Experts (ACERWC), CEDAW and other treaty bodies have been consistently concerned about the use of discriminatory customary laws and practices, despite laws enacted to protect women and children from violence.²

All forms of harmful practices, such as FGM/C, early- and forced marriage, widow inheritance, breast ironing, son preference, female infanticide and prenatal sex-selection, virginity testing, honor killings, degrading and harmful initiation rites, the offering of young virgin girls to priests (*Trokosi*), the "replacement" of a person that has been murdered by another person (child), forced feeding and nutritional taboos, children accused of witchcraft, the sacrifice of children for organs to be used in witchcraft, the use of dowry price and a great number of less known or emerging harmful practices should be fully prohibited by law.

Very few states have a comprehensive and effective prohibition against all forms of harmful practices. Although several harmful practices are protected by general legislation on assaults, they are rarely perceived as such and therefore not applied or enforced. Most of the practices have been entrenched in communities for so long that they are considered part of accepted cultural/religious practice. Often, the result of such practices is death, disability, health complications, psychological and other types of harm for millions of children throughout the world.

At national level, there is still a gap in the data-collection and identification of practices, customs and traditions that constitute violence against children. As a consequence, these issues remain inadequately addressed in the law reform process. One of the reasons for this gap could be that different forms of violence have been compartmentalized as "practices" rather than focusing on commonalities and shared root causes and identifying and integrating them into a holistic strategy. One example, given by the Special Rapporteur on Violence against Women, Yakin Ertürk, concerned the suppression of female genital mutilation in West Africa.³ The example illustrated that due to campaigns and denunciation by senior government officials, the practice slowly declined. At the same time, however, another harmful practice that also seeks to control the sexuality of women (and girls) through violence, referred to as "breast ironing", was reportedly on the rise in several countries.

¹ Legal pluralism is also prevalent in Western countries such as Norway. See Prof. Dr. Juris, Hellum, A. Available online (Norwegian) at <http://kilden.forskningsradet.no/artikkel/vis.html?tid=38506>

² UN Secretary General's In-depth Study on all Forms of Violence against Women, 2006, A/61/122/Add.1, p. 79

³ A/HRC/4/34, para 34, 2007

In order to bridge the gap between the women's rights- and the child rights agenda it is important to bring together experiences from both fields. The expert consultation will significantly benefit from work done in this area, including the UN Women's work on the Handbook for Legislation on Violence against women and its supplement on harmful practices against women,⁴ the draft CEDAW and CRC Committees' joint General Comment on Harmful Practices and the efforts made by regional mechanisms.

Purpose

The Consultation will focus on sharing of good legislative examples, 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. Particular attention should be given to less known or emerging harmful practices. Amongst significant legislative developments, attention will be given to:

- Examples of Constitutional provisions that state that customary, religious- or other legal systems must ensure conformity with human rights/children's rights standards
- Examples of laws that prohibit harmful practices (both specific practices and general provisions) against girls and boys and laws that address root-causes and prevent any custom, tradition or religious consideration be invoked to justify any violence against children
- In cases of conflict between national laws and customary/religious laws, good examples of legislation clarifying the relationship between the formal justice system and the customary- and religious law system and providing criteria for determining which system of law should be applied (in line with human rights standards and the best interest of the child)
- Examples of court cases dealing with internal conflict of laws and harmful practices against girls and boys.
- Examples of countries that have developed appropriate guidelines and provided training for traditional customary- or religious leaders acting as community justice providers
- Identification of countries that have integrated harmful practices against girls and boys into their national strategies on violence against children and child protection systems.
- Existing counseling, reporting and complaints mechanisms for children who are in danger of or who have been victims of harmful practices
- Available data and research

Expected Outcomes

1. A thematic Report with concrete recommendations for the law reform process and its effective enforcement, and for social mobilization in support of its implementation and promotion of abandonment of harmful practices.
2. The consultation will provide substantive inputs to the draft CRC/CEDAW General Comment on harmful practices and support an AU report on harmful practices in Africa.

⁴ Handbook for Legislation on Violence against Women, Division for the Advancement for Women, UN, New York 2010. Available online at <http://www.un.org/womenwatch/daw/vaw/v-handbook.htm>

3. Strategy for follow-up in different regions and at international level, which includes awareness raising and advocacy efforts (and possibly the promotion of a handbook on harmful practices).

Suggested participants

1. SRSR/VAC, OHCHR, UN Women, UNICEF, UNFPA, WHO, CRC Committee
2. AU, SRSR to the AU, African Committee on the Rights and Welfare of the Child, African Child Policy Forum
3. Other regional child rights mechanisms and organizations, including the Council of Europe, EU, South Asia (SAIEVAC), national governments
4. Relevant Special Rapporteurs, such as the special rapporteurs on violence against women and indigenous peoples rights
5. NGO Advisory Council, civil society, including grass-roots organizations
6. Academia
7. Parliamentarians
8. Judiciary, women's and children's rights lawyers
9. Religious leaders
10. National human rights institutions on children's rights

Participants will have

- Experience from law reform processes in plural legal systems and have knowledge of how laws that protect children from harmful practices can be effectively enforced.
- Experience from implementation of such laws at the local (community) level

Time and Venue

June 13, 14 and 15th 2012, (2 ½ days). *tbd.*

AU Headquarters, Addis Ababa