

United Nations  Nations Unies

**United Nations Division for the Advancement of Women
United Nations Economic Commission for Africa**

**Expert Group Meeting on good practices in legislation
to address harmful practices against women**

United Nations Conference Centre
Addis Ababa, Ethiopia
25 to 28 May 2009

**HARMFUL TRADITIONAL PRACTICES AGAINST WOMEN
AND LEGISLATION**

Expert paper prepared by:

Dr Morissanda KOUYATÉ

2.3. Massage of the clitoris

In Central Africa, several populations of the Bantu stock indulge in massaging the clitoris, labia minora and majora of the adolescent girls in order to enlarge them as far as possible. The leaves of the Kifumbe plant are used among other things for this purpose.

2.4. Lips Plates

This practice consists of making a large cut in the lower lip in order to insert a plate of variable size; other tribes add another cut in ears. The operation is done to highlight beauty and its timing

2.9. Domestic violence against women

In many areas of Africa, violence against women and girls is widespread. Gender based violence refers among other things to physical and brutal attacks against women by the husband, husband's close friends/relatives, members of the family including sexually driven attacks and harassment, rape through which women are forced into unwanted sexual intercourse. In some communities,

before the birth of the girl child.

2.14. Widowhood rites

After the death of the husband, his widow is suspected to have been the cause of his death. She is then forced by tradition into a process of proving her innocence, and she must undergo extremely distressing rites, such as drinking the water used to wash the dead body. She is denied sleep, food and appropriate care.

2.15. Other Harmful traditional practices

There are many other traditional practices at family, community or state levels, such as wearing rings on the neck, preference of the boy child over girl child, the use of women as war plunder, etc.

III. Harmful Traditional Practices and Legislation

By considering harmful traditional practices in depth, the extent of their violence and their unwarranted nature, we came to the conclusion adoption; popularization and enactment of legislation were indispensable tools of the struggle to put an end to these plagues.

But there is need to acknowledge that the link between Harmful Traditional Practices and Peoples' cultures is strong and delicate, and that simple deliberation and blind enforcement of legislation lead too often to undesired outcomes or to results running contrary to expectations.

deeper knowledge and consideration of the historic and cultural background of communities. For example, in most West African countries, the aunt and the sister is a “sacred” person by all accounts. All the brothers and nephews love and respect her, and she is protected together with her children. As a result of that, using her for sensitization and/or advocacy for protection of the rights of women would enhance adoption of socio-communal regulations.

3.2. National Legislation

Countries adopt legislation protecting or promoting human rights of women and get them enacted by acts of their national parliaments. Here, it is important to take note of the achievements recorded in terms of the existence of legal provisions, even though the enforcement is well below expectation. These laws which are part of the penal codes or proclamation concerning families in the respective countries deal especially with:

- Early/forced marriages;
- Female genital mutilation
- Women and children trafficking;
- Kidnapping and rape of women and girls;
- Domestic violence, etc.

For example, in the fight against female genital mutilation, 16 countries have developed specific

ENGLISH only

protection of women are concerned as it is assumed that these are issues to be settled amicably inside families. But gradual and positive change is emerging owing to the pressure by organizations and individuals who are committed to the defense of human rights of women.

3.3. Regional Legislation

At this level, there are two important legal instruments, namely:

- The African Charter of Human and Peoples' Rights (Banjul, 1981); and
- The Protocol to the African Charter of Human and Peoples' Rights on the rights of Women in Africa (Maputo, 2003).

States have committed themselves to outlaw all forms of traditional practices which have negative impact of the rights of women and which run contrary to international norms. They have pledged to adopt legislation, and all other required measures to eradicate these practices, including;

- a. Prohibit with sanctions, all forms of female genital mutilations, scarification,

- Population, 1994;
- Beijing Declaration and Plan of Action, 1995;
 - Regional WHO Plan for the Acceleration of the Elimination of FGM. 1997;
 - Joint declaration of WHO/UNFPA/UNICEF for the Elimination of FGM, 1998;
 - United Nations Resolution A/RES/53/117 on FGM, 1999;
 - Millennium declaration and Millennium development objectives, 2000;
 - Inter Institution declaration on FGM, 2007;
 - Resolution WHA61.16 OMS on FGM, 2008

Many countries have signed and ratified these international instruments. However, one can only notice that they are not all rigorously enforced at national level. Their integral enforcement remains therefore a challenge that needs to be lived up to for protection and promotion of women's rights in general and the fight against harmful traditional practices (HTPs) in particular.

4. Best practices in legislating against harmful practices

In consideration of the above mentioned levels in legislation, the following are examples of best practices:

- Community regulations (public declaration and interdiction of early marriages, female genital mutilations and other harmful practices) especially in Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Ethiopia, The Gambia, Guinea, Kenya, Mali, Niger, Senegal, Tanzania and Togo.
- In view of the difficulties of having the parliament vote legislation against FGM in Mali, NGOs and other social structures resorted to the signature of community regulations bearing the signature of village chiefs, religious leaders, the local government authorities, youth and women associations and NGO working in the area.
- In Burkina Faso and Ghana, vote and implementation of anti FGM legislation were

- parcel of their mores and traditions;
- Inadequate commitment of magistrates and attorneys in delicate issues concerning harmful practices;
 - Inadequate courage and political will to confront these practices in communities which are reservoirs of votes in time of elections;
 - Discrepancy between context and repressive measures. As highlighted earlier, it is needed to take into account the environment, context and history of the community, to determine and develop the appropriate legislation, be it communal, national, and regional or international legislation.

IV. Conclusion

Legislation is part and parcel of strategies for the elimination of practices which are harmful to the health and rights of women, for in consideration of the fact that these plague being deeply rooted and cultural, sensitization on its own will not do.

Protection of the rights of women cannot be left to the whim or compassion of society; more than that, it must be a legal obligation which is binding for all, at all levels.