

Introduction:

The patriarchal nature of societies across the world, which sees women as inferior and subordinate to men, has over the centuries devised measures to reinforce women's subordinate status. Some of these measures are similar in all societies, especially those practices relating to women's reproductive roles. While these measures may manifest in different forms across societies they are not dissimilar in their effects, which are perpetuating women's low position in society. Whatever the form of these practices, their effect on women spreads across all areas of life, economically, socially and legally, thus depriving women of available opportunities to develop their full potential. Some of these measures and practices also have detrimental effects on women, both physically and mentally. While these practices usuae. the fose5 -1.15 TD0.00sfeTD0.0012s are notaie

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women continued to exist”. The preamble also recalled “that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity”. The preamble ends with the states parties’ determination “to implement the principles set forth in the Declaration on the Elimination of Discrimination against women, and for that purpose, to adopt all measures required for the elimination of such discrimination in all its forms and manifestations.”

The CEDAW is therefore rooted in the principle of equality and non-discrimination. Article one of the Convention defines “discrimination against women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” This broad definition of discrimination allowed the CEDAW Committee in fulfilling its mandate of monitoring the implementation of the Convention to examine not only de jure equality but also substantive equality, including equality of access and opportunity.

Article 2 in its chapeau under scores state parties’ responsibilities to **condemn** discrimination, **pursue by all appropriate means** and **without delay** a policy of eliminating discrimination against women. The subsequent sub-paragraphs proceed to highlight the details of measures that states are required to take in order to fulfill their responsibilities under the convention. The language of the Convention in article 2 and subsequent articles is not only proactive but also mandatory in the implementation of the provisions by states parties. It also allows states to use multiple strategies including law, in addressing violence and all forms of discrimination.

The Convention is the only human rights treaty that acknowledges culture and tradition as influential factors that shape gender roles and impact on women’s rights. Article 2 (f) enjoins States Parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Again, article 5(a) states:

“States Parties shall take all appropriate measures:

- (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 inferiority or superiority of either of the sexes or on stereotyped roles for men and women”.

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Taken together with article 1, these two articles, 2(f) and 5(a) set the standards by which states are to address the issues around gender roles and stereotypes as well as all forms of discrimination which manifest in culture and tradition.

The CEDAW Committee:

The Convention has the second highest ratifications of any human rights treaty, after the Convention on the Rights of the Child. As at now, it has 185 States parties. Yet the Convention is also the one with the highest number of reservations. The highest number of reservations was to articles 2 and 16, which the Committee considers as core articles of the Convention and which in its view is impermissible. In undertaking its mandate of monitoring implementation of the Convention by States Parties, the large number of reservations was a source of concern to the Committee and it then adopted a General recommendation (GR4) calling on States parties to address the issue at a meeting.

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implementation of article 5. The Committee then went on to urge states parties to adopt education and public information programmes which will help eliminate prejudices and current practices that hinder the full operation of the principle of social equality of women.”

The Convention was silent on the issue of violence against women and consequently, the Committee at its 8th session in 1989 adopted a General Comment (GR12) asking States Parties to provide information on violence against women in their reports to the Committee. The information should include any legislation in force to protect women, other measures to eliminate violence and the existence of any support services for women victims of VAW. The Committee, in formulating this GR had based it on their interpretation of States responsibilities under articles 2, 5, 11, 12 and 16.

The following year, at its 9th Session, the Committee once again adopted GR14 in which it expressed its concern about the “continuation of the practice of female circumcision and other traditional practices harmful to the health of women” and requested States to “take appropriate and effective measures with a view to eradicating the practice.”

The adoption of GR19 in 1992 was the watershed point that galvanized action around the issue of violence against women. The Committee, in paragraph 7 of GR 19 defined violence against women as “ gender-based violence against women is ‘violence that is directed against a woman because she is a woman, or violence that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering or threats of such acts, coercion and other deprivations of liberty.

Gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions is discrimination within the meaning of article 1 of the Convention.”

The importance of GR19 to the fight against violence against women cannot be over emphasized. The first key ingredient of the definition is a gendered definition of violence, which is crucial to showing that the victims could not just as easily have been men. The risk factor for women is their being female. Secondly, the definition identifies physical, sexual and psychological violence and traditional practices harmful to women, recognizing that there are ranges of violence that can be perpetrated. Third, the definition recognized that violence is not a neutral thing, it causes harm and/or suffering.

Finally, and most importantly, the definition situated violence against women squarely within the discourse on human rights. The adoption of GR19 a year prior to the third UN Conference on Human Rights in Vienna in 1993 gave women’s rights activists around the world the impetus to push for the recognition by states of violence against women as a human rights violation and women’s rights as human rights. The outcome of the Vienna Conference and the subsequent adoption by the General Assembly of the Declaration on Violence is history and will not dwell on it.

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The appointment of a Special Rapporteur on violence against women: its causes and consequences by the Commission of Human Rights in 1994 and renewing the mandate continuously up to now can be directly attributed to the work of the CEDAW Committee in bringing violence against women into the human rights agenda. The work of the first and the second Special Rapporteurs, Radhika Coomraswamy and Yakin Erturk has complemented the Committee's work in deepening understanding of violence against women, its causes and consequences. In her preliminary report to the Commission of Human Rights in 1994, the Special Rapporteur, Radhika Coomraswamy identified certain cultural factors that may precipitate violence against women to include female genital mutilation, early marriage and dowry related violence and other practices such as widow-burning or sati in India. Subsequently in 2002, she focused her work on cultural practices in the family that are violent towards women. (see E/CN/2002/83)

Since the adoption of GR 3, 12, 14 and 19, the CEDAW Committee has consistently raised issues on harmful practices and violence against women in the constructive dialogues with States parties. The Committee has also made wide-ranging recommendations, from legal and policy reforms, to awareness raising and sensitization of various stakeholders, including state agencies. Recommendations have also included increasing budgetary allocations and strengthening national machineries where they exist in order for them to fulfill their mandate of promoting women's rights in the various countries. In formulating questions during the constructive dialogue, the Committee members have generally relied on articles 1, 2(f) and 5 (a). But sometimes questions relating to practices which have health implications such as FGM could be raised under article 12 or where they are related to family life and marriage under article 16.

Since time will not permit, I propose to focus on two countries whose reports were considered between 1987 and 2008 to see how the Committee dealt with the issue of harmful practices in those countries. The two countries selected, Nigeria and Bangladesh are from two different geogra

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including awareness-raising and education directed at men and women, civil society groups, traditional and religious leaders and the media.

Bangladesh:

Bangladesh's initial report was considered at the Committee's 6th Session in 1987. At the time of ratification, Bangladesh made reservations to articles 2, 13 and 16 (1a) and (1f). The representative identified traditional values in society as obstacles to women's enjoyment of their rights in spite of laws. Experts were very concerned about the reservations made by Bangladesh upon ratification of the Convention, particularly to article 2. The committee experts found it difficult to understand why a reservation had been made to article 2 since the Bangladeshi Constitution granted equality between men and women. In replying to the questions and comments, the representative of Bangladesh informed the committee that their comments on the reservation on article 2 had already been conveyed to the government and assured them that there would be positive action to be reported in the next periodic report. She stated that the government was aware of the discrepancies in the constitution and steps were being made to remove them.

The second periodic report was considered at the 12th session in 1993. At the time of the constructive dialogue, Bangladesh had still not withdrawn the reservation to article 2 and it continued to be a matter of concern to the Committee which the representative of the State party explained was problematic because of personal and religious laws.

By 1997 when it presented its fourth report, Bangladesh announced it was withdrawing articles 13 (a) and 16 (1f).

In presenting the 5th report at the 31st session in 2004, the representative of Bangladesh announced that the reservations were before Cabinet for a decision to be taken. The committee expressed its concern over the government's remaining reservations to articles 2 and 16 paragraph 1 (a) and noted that it regarded article 2 as a fundamental and core provision of the convention, while article 16 was critical to the full enjoyment by women of their rights. It also pointed out that prevailing stereotyped attitudes and practices justified on social grounds create a social environment for the acceptance of discrimination against women, thus impeding the full implementation of the Convention. It urged the state party to expedite decision on the withdrawal of the remaining reservations within a concrete time frame. The Committee also asked the State Party to bring the definition of discrimination in its legislation in line with article 1 of the Convention.

In examining the concluding comments over the years, it emerged that there is no clear pattern in addressing the harmful practices. It appears that harmful practices have been subsumed under gender roles and stereotypes or violence generally and no specific reference is made to a specific harmful practice unless it is a major problem even though the practice may have been raised in the constructive dialogue. This may be as a result of

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the Committee's efforts to reduce the concluding comments and to prioritize the issues due to complaints from some States Parties that the comments tend to be too long.

Conclusion:

The objectives of the expert group meeting are to:

- Analyze existing approaches, in particular legal approaches, for addressing harmful practices against women;
- Assess lessons learned regarding different approaches to addressing harmful practices against women, including the development and implementation of legislation;
- Identify effective approaches and good practices to address harmful practices against women, with a focus on legislative responses.

What this presentation has sought to do is to use the reports of the two countries to see the approaches the CEDAW Committee has used over the years in addressing harmful practices against women. It should be noted that even though only two countries reports were used as case studies, reference was made to other reports in drawing the following conclusions.

First, that the most popular approach by states in addressing traditional practices is education and awareness-raising. States have found this an easier option to satisfy their obligations under the Convention rather than use legal measures for fear of antagonizing powerful forces within the country, such as traditional and or religious leaders.

Secondly, from the reports no particular legal approach for addressing harmful practices against women was identified. While some states may have specific legislation against a particular harmful practice, for example legislation against FGM, others may fall on general legislation, such as legislation on gender based violence or general anti-discrimination legislation. Even where specific legislation existed, it was no guarantee that the practice will be eliminated. The legislation has to be coupled with a strong commitment to implement, including committing adequate resources, building capacity of the state agencies with the mandate to enforce the laws as well as educating women especially on the law so they could use the law to protect themselves.

While it is easier to enact legislation to eliminate practices such as FGM, honour killings, acid burning or dowry-related deaths, it may not be so easy use legislation to address harmful practices such as forced feeding of young girls, or deprivation of certain foods during pregnancy even though their effects can be harmful or other gender roles and stereotypes whose effects may have negative effects. Any le

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in nature . The CEDAW places an obligation on states to promote and protect women against discrimination and take measures to enable women fulfill their rights under the