

**WORKING PAPER FOR GENEVA-BASED
NGO COMMITTEE ON FREEDOM OF RELIGION OR BELIEF
AND NGO COMMITTEE ON THE STATUS OF WOMEN**

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**CIVIL AND POLITICAL RIGHTS (RELIGIOUS INTOLERANCE)
Report of the Special Rapporteur on Freedom of Religion or Belief in accordance with
resolution 2001/42 of Commission on Human Rights**

Annexe

**Study on the Freedom of Religion or Belief and the Status of Women
From the Viewpoint of Religion and Traditions**

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Introduction

1. In many countries forms of discrimination against women are based on or attributed to religion and culture and may be tolerated or even legalized.
2. International human rights instruments almost all assume gender equality and proscribe discrimination. However, women's rights to some individual freedoms such as freedom of religion or belief may not have received sufficient attention when set against the collective manifestations of such individual freedoms as those of religion or belief.
3. A basic and sensitive problem arises where the fundamental, universal rights of women are claimed by religious communities to be in conflict with what are seen as their religious obligations, which in turn are difficult to differentiate from the cultural or ethnic dimension.
4. The right to difference and cultural specificity implied by freedom of religion or belief is to some degree incompatible with universal rights, especially those of women, who are often the victims of a certain view of religious freedom, particularly in situations of conflict and identity crisis.
5. This study addresses these apparent contradictions by seeking to define religion, to see the relationship of religion to culture, and of universality to cultural specificities.

A. An Attempt to Define Religion

6. Religion, etymologically, can suggest common bonds of beliefs and practices which link the human, men and women, with the sacred.
7. Later definitions may include references to a "Supreme Being" but this is not required for claiming religion as a common human property.
8. While no complete or single definition exists, one may seek common characteristics, although the sacred, the magical and the profane may be intermingled.
9. Despite differences, many religions define women in terms of fidelity and fecundity and ascribe to them a secondary status.
10. Freedom of "religion" or "belief" in Article 18 of ICCPR is far-reaching and applies to theism, non-theism, and atheism, to ancient and to new manifestations, as well as to individuals and minorities. Sincerity, credibility and respect for public order are criteria for rights to protection.
11. Freedom to manifest one's religion is a collective and individual right but this study will focus on collective aspects of worship and education.
12. Many ritual and customary manifestations of religion such as food or dress laws affect women, but some, such as genital mutilation, polygamy, discrimination for inheritance, "sacred prostitution", preference for male children and attitudes of female inferiority, are a particular challenge to see how religion can and should influence peoples and nations.

B. Religion and Culture

13. Religions did not invent discrimination against women; it stems, world-wide in all ages, from social and cultural behaviour which men could not or would not change.
14. Distant civilizations, including ancient Greece with its predominantly male pantheon, did not esteem women who were often classified as wives or women of pleasure.
15. Monotheistic faiths were often patriarchal, permitted polygamy, divorce, stoning, etc. and saw women as impure, but they also regulated or forbade some forms of discrimination. Some current discriminatory measures were originally intended to emancipate women.
16. Religions can favour or block the emancipation which social and economic evolution bring. Religions may fail to resist patriarchal and oppressive trends; different social conditions affect women, despite a common religion, and different interpretations of religion are made.
17. Culture (comprising beliefs, art, customs, laws, skills and, in part, religion) motivates conscious or unconscious response to history and environment, values, constraints and fears.
18. There is no such thing as pure religion, for its practice is affected by human culture and history. A religion varies across different tribes, classes or sects; a region may be influenced by an ancient or a newly arrived religion. It can be hard to distinguish religion from tradition.
19. The condition of women can be greatly affected where there is a “state religion” or where religion is very influential. Extremist regimes can remove all women’s rights.
20. Custom and culture need not impose themselves; so some Muslim countries are tolerant about head covering or encourage monogamy. Some cultural practices like disinheritance or forced marriage contravene religious teachings. State reforms may have to defy local culture.
21. The wide variety of juridical situations across the same religion creates misunderstandings and tensions; much depends on levels of education, industrialization, etc.
22. Most history, including that of religions, is written from a male perspective and harmful traditions have survived in defiance of both religious and secular law.
23. The difficulty of changing traditions that affect women adversely is made worse by the support given by some women to those traditions.
24. It is hard to distinguish the roles of culture and religion; some industrialized societies retain a negative view and discriminatory practices towards women despite secularisation.

C. The Universality of Women’s Rights and Cultural Specificities

25. “Culture” can appear to obstruct modernity and the universality of women’s rights but traditions can preserve medicine that is beneficial to women’s health, can promote security in marriage, family unity, and respect for elders. Community values in Africa often protect children from prostitution.
26. The Vienna Conference underlined that women’s rights exemplify the necessary tension between identity and difference, between oneself and the other. We are the same but different.

27. Human rights are universal, not international. Racial, ethnic, religious or sexual differences allow for unity and diversity, equal dignity and differences of identity.
28. Differences in inheritance, family responsibilities, child-care, access to political or religious posts may not necessarily be felt as discriminatory when viewed as part of coherent family or social structures or religious requirements. Such justifications (even when women's health or life are at risk) are hard to answer since sacred or irrational beliefs are at issue.
29. Women's rights are incontestably part of fundamental and universal human rights and are inherent to human dignity. Cultural and religious specificities must give way if there is prejudice to women's dignity. Dignity is the common denominator for all peoples.
30. Respect for the human person and equality between men and women take precedence over customs and traditions, whether religious or not. Here there is no room for compromise.
31. This does not reduce or relativize cultural specificities but cultural and religious pluralism can enrich the universality of women's rights and be enriched by that universality.
32. Moral, ethical and also practical reasons support universality. While women in different places are subject to different laws (civil, religious, customary) either supporting or denying their rights, all women can come together in rational loyalty to the principle of dignity.
33. International law may challenge or affect domestic law without infringing sovereignty. Co-operation and co-ordination among nations and international organizations in the protection of women's rights does not imply ideological or cultural domination.
34. The Vienna Declaration reaffirmed the universal rights of women and girls and addressed the possible contradictions between equal rights of individuals and intolerant or extremist application of religious or customary laws.
35. The Beijing Declaration affirmed that women's rights are fundamental human rights, preclude any discrimination, and go beyond cultural and religious diversities.
36. The principle of equity is used by some states to undermine the principle of equality, for example in inheritance law. Equity is too ambiguous as a criterion and is a dangerous notion.
37. There is need for pragmatism, realism, and dynamic compromise in balancing the modern opportunities for technology and for advancement of human rights with respect for religious beliefs and cultural traditions.
38. Religion is impregnated with its historical and geographical development; religious practices vary, and religions bear some responsibility for those forms of discrimination which may essentially be caused by cultural conditions but can be reformed by religions; reformers, including states, must take a prospective role in emancipating women.
39. The aim is not to change religions or to hurt religious sentiments but to restore the reforming role of religions against patriarchal domination.
40. So one must look at juridical factors, at real experiences, and make recommendations.

**I JURIDICAL ASPECTS OF THE STATUS OF WOMEN
FROM THE VIEWPOINT OF RELIGION AND TRADITIONS**

41. The first section A is relatively less important than B and C.

A. The inadequacy of general instruments with a universal character

42. The question of discrimination against women from the viewpoint of religion and traditions has not been directly addressed in international instruments. The Universal Declaration itself makes very few specific references to women.

43. The 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief insists on the equal enjoyment of fundamental rights but is not explicit on issues of discrimination against women based on religion or tradition.

44. The 1981 Declaration seems to emphasize the protection of freedom of religion or belief but, like other instruments, is non-specific about women, even if it is because they are women that they are victims of discrimination based on religion or tradition.

45. The ICCPR is of relevance to this study only where an interpretation of the Committee on Human Rights concerns the question of the status of women related to religious practices.

*1. The International Covenant on Civil and Political Rights:
the contribution of the Committee on Human Rights*

46. The Committee's General Comments are of greater relevance to this study than the original text.

47. General Comment 19 on Article 23 requires the consent of both marriage partners and advocates civil registration of religious marriages to prevent abuses such as child marriage, polygamy where it is proscribed, disinheritance, etc. CEDAW provides stronger protection.

48. This Comment advocates equality between spouses but does not adequately or specifically address the issue that it is usually the woman who suffers discrimination because of traditions or religious extremism.

49. General Comment 28 on Article 3 is an important step forward and goes beyond the original article in the light of threats to women's health, female infanticide, immolation of widows, dowry deaths, genital mutilations, forced prostitution, corporal punishment, dress restrictions, freedom of circulation, parental authority over adult young women, husbands' authority over wives, restrictions as witnesses and in property management and inheritance, as well as matters related to rape, marriage to "non-believers", polygamy, divorce, crimes of honour, and discrimination in matters of adultery, employment and salary.

50. Most of these abuses, which are treated equally, are based on or imputed to religion or tradition. Since the principle of equality before the law enshrined in Article 26 is being broken, it follows that the abuses enumerated in General Comment 28 belong to the mandate of the Committee.

51. Other instruments, such as those on slavery, affect women but mechanisms of protection have not been so well elaborated.

D. Instruments related to Slavery

52. The Conventions on Slavery of 1926 and 1956 can be used to address some grave traditional abuses against women such as debt bondage, transfer of widows as new spouses, transfer and exploitation of young people (whether or not parents or guardians are paid), non-consensual marriage against dowry payments to parents, guardians or others... Such abuses need to be treated in the present study.

53. The International Criminal Court sees slavery, which includes sexual exploitation of women and children, as a crime against humanity.

54. Forced prostitution can be seen as a form of slavery and may sometimes be imputed to religious duty.

55. The 1956 Supplementary Convention sees as a form of slavery any subjection of women in marriage, for example child marriage where girls can be treated as merchandise,.

56. Despite solemn proclamation of principles, there is no mechanism to ensure that states abolish slavery, slavery-like practices and servitude; yet it is a fundamental right not to be enslaved.

B. The contribution of specific instruments

1. The Convention on the Elimination of All Forms of Discrimination against Women

a) The Contribution of the Convention

57. The global scope of CEDAW since 1979 has gone beyond the earlier sectoral approach which was limited to situations where women's rights were denied in specific contexts like nationality, political rights or marriage age; it addresses the need for states to implement protection against all forms of discrimination against women in all social and family life.

58. The Convention does not refer to discrimination based on religion or tradition although it refers to prejudices and "customary practices" which attribute inferiority to women. However several states with an official religion made reservations related to concepts or laws about the personal status of women. The Convention does not try to interfere with religions but appeals to states to address models, prejudices and customary practices, as well as negative cultural or traditional attitudes, which may harm women.

59. The Convention shows the paradox between collective rights related to religion and traditions and women's rights as human beings. Despite its ratification by 165 states in February 2000 several Middle East states see the Convention as being too "Western" and as neglecting Islamic values.

60. The large number of reservations lead one to ask about the lack of united jurisprudence among states party to the Convention; there is no unanimity among Muslim states nor has it been exclusively Muslim states that have raised reservations on a particular issue.

61. Most disagreements from or among Muslim countries concern issues of marriage and divorce, parents' or guardians' authority, management of spouses' property, inheritance, nationality etc. There are four categories among these countries:

- a) Reservations about incompatibilities between the Convention and domestic laws or constitutional articles based on religion (e.g. Algeria and Tunisia)
- b) Reservations about infringement of religious laws (e.g. Bangladesh, Maldives, and Kuwait, with Israel and Singapore referring to laws of minorities)
- c) More detailed reservations about non-conformity with shari'a (e.g. Egypt, Morocco and Iraq, with regard to Article 16 on equal rights of spouses)
- d) General reservations related to the primacy of shari'a (e.g. Malaysia and Pakistan, and to some extent Tunisia)

62. One may ask if these reservations, which reduce adherence to the Convention to the least demanding elements, are contrary to its aim; general reservations do amount to contradiction. At the Vienna Conference human rights were seen not as a lowest common denominator but as the essential element in being human.

63. Many states have objected to some of these reservations, especially when they are vague, or when they break the principle that domestic law cannot have precedence over Conventions, to the point that international law related to Conventions is endangered.

64. These reservations raise the issue of the compatibility of freedom of religion or belief, especially for Islam, and the rights of women. Without resolving these apparent contradictions related to beliefs and identities, one can register that there has been progress in international law on women's rights; but it would be disastrous for women and for human rights to deny that some cultural relativism is compatible with the universality of women's rights but only so long as the human dignity of women is not infringed. Otherwise religious and cultural practices, defended under freedom of religion or belief, could justify prejudices to women's health and life itself. Culture, religion, and freedom of religion or belief are relative notions, while respect for life, human dignity, non-discrimination and women's rights are invariants which can serve to unite humanity.

b) The Contribution of CEDAW

65. The UN has considered the status of women from the viewpoint of religion and traditions in the contexts of traditional practices prejudicial to women's health, thus extending the notion of violence against women.

66. Excision is primarily at issue. In 1954 the UN General Assembly addressed customary practices damaging the health of women; other bodies appealed for progressive abolition of practices affecting the physical integrity and dignity of women. Since the 1980s many agencies have addressed this issue.

67. CEDAW is concerned about such traditional practices but government reports contain very few references. Since 1990 resolutions have been passed against excision, forced

marriage, dowry deaths, preference for boys, equality in marriage, child marriage, and the dangers (even of death) during genital mutilation.

68. Violence is a common denominator in traditional practices prejudicial to women's health but the Convention does not link the question of violence to religion or tradition.

69. General Recommendation 19 in 1992 does open a new approach to violence against women.

70. Even if the Convention does not mention violence explicitly, the Committee sees as discriminatory any violence because of gender whether in private or by state action. The state must prevent, punish and ensure reparations for such violence. Violence is also seen as extending to traditional attitudes which make woman an object of submission or give her a stereotype role that encourages violence or constraint.

71. The Committee refers to specific examples of prejudice to the status of women (not merely health) which are based on or imputed to religion and tradition. The physical and mental integrity of women and their equal enjoyment of fundamental rights are violated by forced marriage, dowry deaths, acid attacks, or excisions; food restrictions on pregnant women, genital mutilation, crimes of honour, and economic dependence on husbands are mentioned in establishing threefold causal links between discrimination, violence and religious/traditional practices.

72. Even if religious or cultural practices do not cause violence they can affect the status of women, as do polygamy, discrimination in inheritance, and some marriage practices. General Recommendation 21 of CEDAW, concerning equality in marriage, sees how culture and traditions can affect attitudes which deny fundamental rights; examples of discrimination include witnessing, choice of domicile, polygamy, forced and arranged marriages demanding payments, family responsibilities, women's control of their childbearing, choice of family name, inequalities in control of property (also after divorce), unequal succession rights, early marriages affecting the personal equilibrium of women and their families as well as women's employment opportunities.

E. The Convention on the Rights of the Child

73. The Convention is an essential two-fold element for the protection of girls against prejudicial cultural and religious practices:

a) General definitions refer to the right to life, to birth registration, to health, to protection from economic and sexual exploitation, and against violence, torture, cruel, inhumane and degrading treatment as well as the right to freedom of religion. Protection is also specified against early marriage, infanticide, and genital mutilation and in favour of freedom to wear or not to wear distinctive dress.

b) More direct forms of protection concern abolition of traditional practices prejudicial to girls' health which are based on cultural or ancestral interpretations of religion.

74. Almost all states have ratified the Convention but some reservations are based on religious considerations. General reservations concern particularly freedom of religion or belief, adoption (considered by Islam as forbidden), family planning, nationality transmitted by the mother and succession rights. Some reservations have been seen as calling into

question the very goal of the Convention as well as the Vienna Convention of 1969 on Treaties.

3. Other texts, instruments and specific mechanisms

75. The 1993 General Assembly Declaration on violence against women refers to certain traditional practices and enumerates physical, sexual and psychological violence in the family, violence related to dowries, genital mutilations and other prejudicial traditional practices. The Special Rapporteur on traditional practices prejudicial to women's health sees violence as a crucial mechanism to subordinate women to men.

76. The Vienna Conference extended violence to prejudicial cultural practices and the Plan of Action called for elimination of violence against women consequent upon cultural prejudices and religious extremism; in particular states should combat female infanticide.

77. The Beijing Conference refers to traditional practices such as violence related to dowries, female genital mutilations, female infanticide and prenatal selection based on gender. The Special Rapporteur on violence against women insists that violence cannot be neglected or justified for reasons of tradition, culture or social conformity. States cannot evade obligations to eliminate such violence by appealing to custom, tradition or religion.

78. The Sub-Commission, in its struggle against discrimination and for the protection of minorities, has established a working group on traditional practices which affect women's health, and has held regional seminars in Burkina Faso and Sri Lanka; a Special Rapporteur is addressing this issue.

79. The Human Rights Committee has addressed this issue, especially female mutilation, relative to several states in Africa. What shocks some societies appears as essential moral values for other traditional societies. It is necessary to demonstrate the damage to women's and children's health, and the incompatibility of such practices with fundamental rights. One must avoid a debate on the validity of a particular culture or religion or on its relationship to ethical values which may appear alien or hurtful to traditional societies.

B. Regional Experiences

80. It is mainly in Africa that legal instruments have been developed on behalf of the status of women from the viewpoint of damaging cultural traditions.

1. The African Charter on the Rights and Welfare of Children

81. This charter, adopted in 1990, provides protection for girls from torture, inhuman and degrading treatment, physical or mental abuse, sexual mistreatment etc.

82. Article 21 is especially relevant to this study and refers to negative social and cultural practices, appealing for their abolition when they threaten the health or life of children as in the case of female genital mutilation. Protection against early marriage and betrothal should be effective and legally binding; the age of 18 is stipulated for marriage. Discrimination against children, including on the basis of gender, is deplored but efforts are desired to

reinforce African cultural values in the spirit of tolerance, dialogue and consultation and as a contribution to inspire respect for all human rights instruments.

2. *The draft protocol to the African Charter on Human and People's Rights with regard to women's rights in Africa*

83. The draft protocol adopted in 1999 addressed inadequacies in the 1981 African Charter for the protection of women. The draft protocol distinguishes between positive and negative cultural practices and sees the role of women equally with men in safeguarding traditional principles of equality, justice and democracy. Practices which damage the physical and moral integrity of women such as female genital mutilation should be eliminated. Significantly the universality of women's rights is affirmed.

84. The draft protocol proscribes forced marriage and polygamy and demands shared property rights in marriage, equal rights for all children, etc.; women should be protected from violence and should control their own childbearing, including choice of contraceptive method. The right of education, setting up of literacy programmes, removal of stereotyping of women in textbooks etc. are urged.

85. This is an ambitious draft which, if adopted, could fill many gaps in other instruments in Africa and the world as well as taking forward the principles of Vienna and Beijing..

86. The obligatory factor and effectiveness vary greatly between different international instruments and mandates according to their nature.

87. Pressing issues such as concern about violence against women, notably female genital mutilation, can stimulate legal action. However the Conventions and other instruments refer much more to traditional customs than to religion. States must have the will to address negative practices which are based on or imputed to religion and which are not in conformity with women's human rights. In order to act one must first take stock of the facts.

II FACTUAL ASPECTS OF THE STATUS OF WOMEN FROM THE VIEWPOINT OF RELIGION AND TRADITIONS

88. The study covers all religions and beliefs, but certain religions, or rather certain practices based on or imputed to those religions, may be given more prominence because of cultural factors, human rights concerns in a UN context and availability of credible sources. Citing a religious or cultural practice does not imply a value judgement on the religion or culture for which people's deeply held beliefs must be totally and equally respected.

89. To understand religious discrimination against women one must look at basic texts, historical and actual practices, and socio-cultural contexts.

90. There are variations across countries and continents: female genital mutilation is found notably in sub-Saharan Africa and some marriage practices apply mainly in Asia. Some practices wrongly associated with a particular religion or culture do exist elsewhere.

A. The persistence of cultural stereotypes prejudicial to women

1. Some general considerations

91. States and social groups often cite religion or culture to justify delay in implementing women's rights; CEDAW points to widespread stereotyping for socio-cultural reasons.

92. Stereotypes are reinforced by persistent patriarchal attitudes and assumptions that women's place is in the home supported by men. Male superiority prevails, also in industrial societies, and can amount to an ideology regardless of legal provisions, of a state's laicity, of ethnicity, of religion or of developmental level.

93. Religion can be wrongly interpreted, instrumentalized or manipulated to control women, their movement, education and social contacts. Women's absence from the public sphere (including religion) allows men to make these false interpretations, but women are also often seen as guardians of tradition and they themselves can prejudice their own rights.

2. Preference for boys

94. Patriarchal values and economic factors lead to a preference for boys on all continents; one finds this in Islam, Christianity and Judaism and it can lead to discrimination against girls, neglect of education, disappointment at birth, a status of transient in the family till marriage...

95. This can lead to criminal and prejudicial acts such as abortion of female foetuses, girl infanticide, non-declaration or abandonment; in some states unplanned children suffer discrimination. This leads to demographical imbalance in favour of men especially in Asia where family planning (including foeticide) can be based on gender.

96. The cross-cultural prevalence of preference for boys has no clear religious sanction; Buddhism deplores it and monotheistic faiths have forbidden extreme aspects, but economic considerations and frequent exclusion of women from religious ceremonies, certain

professions and public life exacerbates the discrimination especially where religious extremism exists.

3. Religious extremism

97. A common denominator of all forms of religious extremism or fundamentalism is often violent rejection of gender equality. Groups or states, as in the case of Afghan Taliban, can create an apartheid for women, excluding women from society, employment and education, prescribing dress or restricting travel. Women are non-citizens with no rights, submitted to men in the name of God.

98. Extremism, especially in a state, institutionalises discrimination against women. In the early days of the revolution Iranian women were excluded from some functions or activities of education and can still be seen as the chief victims of extremism.

99. In some supposedly tolerant countries like Bangladesh electoral campaigns have exploited issues such as religious dress; in some countries exposed to extremism women are flogged or ostracized.

100. Some extremists, as in Algeria, terrorize populations during conflicts by raping women. In situations of genocide women are often the first victims and the International Criminal Court therefore treats cases of rape, sex slavery etc.

F. Prescriptions on clothing

101. Women are often subjected to strict codes of clothing; this applies in some Islamic countries to restrictions in the teaching and other professions.

102. In other situations women themselves desire a form of dress approved by their religion; but the veil, for example, can be used in both puritanical and coquettish ways.

B. Practices prejudicial to women's health

103. Female genital mutilation has particularly alerted public opinion to the gravity of practices prejudicial to women's health and must be analysed, as must many other examples.

1. Female genital mutilation

104. Female genital mutilation, excision or circumcision, are the best known abuses which have long been on international agendas. WHO reports 85 to 115 million women genitally mutilated in Africa and Asia, and estimates 2 million more girls each year in 26 African countries, in Asia, in immigrant communities in Europe and America, and among Ethiopian and bedouin Jews in Israel. The origins of these practices are mysterious but are not prescribed by religion; they appear from Pharaonic times in Africa, but also in the Philippines, Mexico, Amazonia and Australia; the purpose seems to be to promote chastity and femininity.

105. The Special Rapporteur on traditional practices points to a complex of beliefs, values and socio-cultural behaviour which explain the need for prudence in approaching a highly emotional subject.

106. The most complete and cruel and dangerous form, infibulation, is practised in Somalia, Djibouti, Sudan, Mali, Egypt and Ethiopia; clitoridectomy is practised in West, Central and East Africa; excision (sometimes in a purely ritual form of incision) is practised in Yemen, Indonesia and Malaysia.

107. The age when mutilation occurs varies from a few days (among Jewish Falasha in Ethiopia and Sudan) to anything between 7 and 15 years (partly to respect local customs or legislation); excision is a rite of passage to adulthood. Sometimes girls or mothers desire the mutilation for social integration. In some countries education has led to the disappearance of the practice.

108. It is wrong to associate female genital mutilation with religion or, particularly, with Islam. It is practised by people of various faiths, Muslim, Christians of all denominations, Jews, animists, non-believers. Some Muslims regard excision as religiously sanctioned but other Muslims are shocked by this practice and this justification.

109. An Egyptian Ministry of Health prohibition of excision in 1996 was first overruled by an administrative court in 1997 but upheld the same year by the State Council even if the girl or parents consent. Public order and health override harmful traditional cultural norms and the State Council has exposed erroneous and politically manipulative appeals to religion

110. Mutilation can lead to death or grave medical and psychological conditions. Mutilation, like polygamy and rape, increases risks of HIV/AIDS infection.

2. Traditional obstetric practices and food taboos

111. In some countries, notably in Africa such as Ghana, traditional obstetric practices and food taboos can harm both mother and child, but it is difficult to separate religious and cultural elements.

C. Forms of discrimination arising from the status of women in the family

112. Despite widespread legislation and acceptance of international instruments on the equality of the sexes, discriminations and patriarchal attitudes persist. Sometimes legislation is hampered by respect for cultural or religious diversity; four examples will be given.

1. Practices linked to marriage and divorce

113. In several religious traditions marriage values the man above the woman as is illustrated by

(a) Child marriage and some traditional marriage practices:

114. Child marriage is a tradition that need not have a religious basis; it reflects the attitude that a girl is only a mother and wife and that virginity is an economic asset. This applies to many countries on many continents, usually where there is low literacy and extreme poverty; early marriage leads to early motherhood and problems with health, education and life expectancy.

(b) Consent to marriage

115. Marriage is sometimes arranged as an alliance of families so that an adult woman may need the consent of third parties; women who express their own choice can be cruelly beaten for dishonouring their family. Forced marriage should be seen as a barbaric practice that has nothing to do with religion; it resembles rape, or even collective rape as when Taliban abducted Afghan girls.

116. Some traditional, temporary forms of marriage (mut'a) are virtually forms of prostitution, while recognition of a relationship (mysiar) may protect widows who remarry from losing their children but may cloak polygamy, where it is forbidden, or may evade dowry requirements, and in all cases leaves women particularly vulnerable.

117. Marriage may be prohibited because of differing religious allegiances in the partners; Muslim women may not marry a non-Muslim and could be considered by some as apostate if they do so; in Egypt a writer condemned for apostasy had his marriage to a Muslim annulled. Such a case violates women's rights in marriage and divorce.

(c) Dowries

118. Various human rights organizations denounce dowries as prejudicial to women's rights; sometimes dowries can be seen to compensate for the low value of women who in consequence cannot ask for divorce; non-payment can lead to violence, murder, acid attack, etc. Dowries are prejudicial to women's dignity.

(d) Non-registration of marriage and other traditional practices linked to marriage and family life

119. In several countries there is no requirement to register marriages; India cites the impracticability of this because of cultural diversity, illiteracy, etc. Where registrations take place in cities they may not do so in rural areas where child marriage and polygamy are thereby hidden. Failure to register births makes for sexual exploitation, illegal work and inheritance disputes.

(e) Practices connected to divorce

120. Some religions allow only the man to seek divorce; despite Quranic injunctions about equality, some Muslim countries like Saudi Arabia, Egypt and Morocco quote other Quranic verses to restrict or deny women's rights to divorce.

121. Where social and cultural prejudices mean that there is no legislation about divorce, women may suffer economically and socially; several countries with differing religious traditions still refuse liberalization of divorce.

122. Divorce pronounced unilaterally against women can create intolerable insecurity and injustice; dowries can be used to block divorce; remarriage to former spouses invites abuses and can destabilize families.

123. Some legislation punishes adulterous women more severely than men; stoning is a case in point, but the strict Quranic conditions to prove adultery are very difficult to apply.

(f) The sharing of responsibilities and relations within the family

124. By taking a religious text out of its context, women are often marginalized in family responsibilities and in education.

125. Ignorance or lack of information leads to neglect of laws protecting women's rights, Jordanian women rarely claim their right to determine the contents of a marriage contract and are forbidden the right to choose family name, profession, divorce dues, etc.

126. However women in Egypt and elsewhere use marriage contracts to dissuade polygamy. Guardianship of children, however, falls to the father in many states.

(g) Polygamy

127. This study does not seek to debate or judge polygamy but to categorize practice in various Muslim and non-Muslim countries. Polygamy may be illegal in some countries but there are no legal or social sanctions against it. Elsewhere it is practised in conformity with laws or ancestral practices, but these laws and practices are sometimes seen as outmoded. In other countries polygamy is both illegal and socially unacceptable.

128. Attitudes vary widely between Muslim countries. Local customs, culture and political will are more decisive than religion; but one need not be a prisoner to culture.

129. Even in a religious context, polygamy is seen as an exceptional practice. It is neither prescribed or recommended in the Quran, which reforms and restricts existing practice by conditions so difficult that monogamy becomes the norm. Arab women are affected more by tradition than by Islam; Christians, Jews, animists and adherents of new religions also practise polygamy. Some see depenalization of adultery as a form of polygamy.

130. Polygamy violates women's fundamental rights and dignity, and women are often the only victims as when Muslim men unilaterally repudiate their contractually equal partner.

(h) Abortion and control of family-planning

131. Abortion is widely considered as contrary to tradition and illegal even if the mother's life or health are in danger or even if there has been rape or incest; elsewhere abortion is legally restricted and cultural factors often affect such laws. Differences exist among countries of the same religion; Tunisia provides for voluntary termination of pregnancies, unlike some other Muslim countries, but debate ranges widely in the absence of precise religious prescriptions.

132. In other cases religious hierarchies condemn abortion and contraception even when minors are raped or women are exposed to rape in armed conflicts.

133. Against a backdrop of dangerously retrograde attitudes to women, women in countries like Zimbabwe, Kenya, Ghana, Peru and Mexico may hide their contraceptive pills for fear of violence from husbands who wish to control their fecundity.

(i) Levirate

134. An originally Jewish mythology requires that where there is no male descendant a widow must marry her brother in law.

135. This originally Hittite and Assyrian practice is also found in Congo, Burkina Faso (until recently), Kenya, Chad and Cameroon where transmission of HIV/AIDS is thereby exacerbated as well as there being limitation of women's right to free consent.

136. In Senegal and in some Sioux tribes an unmarried sister must marry her deceased sister's husband. While strengthening family bonds it increases dangers of HIV/AIDS.

2. *Forms of discrimination related to nationality*

137. In many countries mothers have fewer rights than fathers to transmit nationality; this has led to reservations mainly from Muslim countries concerning the Convention on the Rights of the Child.

3. *The role of witness*

138. In some mainly monotheist cultures women have less credibility as witnesses. Taken out of context, such religious prescriptions are discriminatory; but originally religions like Islam were innovating rights for women to be witnesses. It was only in 1951 that Israel allowed women witnesses. However in Tunisia women and men have the same weight as witnesses. Societies can evolve as is seen in early Islam.

4. *Inheritance and independent management of property*

139. Cultural prejudices often limit women from managing their own property or that shared with their husbands. Nepal has failed to implement constitutional principles of equality and rights to inherit; Jordanian law has forbidden women to conclude contracts in their own name, to travel alone or to choose their place of residence; other states also restrict married women.

140. Sometimes a religion like Islam recognizes rights of property management by women which are disallowed by some states.

141. Inheritance by women is a sensitive subject and varies widely across religions and cultures. For example, Hindu personal status may exclude women from inheritance in Bangladesh, and elsewhere customary or written law may be discriminatory to women when husbands or fathers die, as where indigenous law applies in Guatemala.

142. Precise precepts and codes make this issue particularly sharp in Muslim countries; male children inherit twice as much as female; depending on there being children, husbands inherit a quarter or a half from their wives, whereas wives inherit an eighth or a quarter; nor can a non-Muslim wife inherit from her Muslim husband.

143. While Islamic law improved on pre-Islamic, it can be modified by the will of a state or by local culture to either exacerbate or reduce discrimination.

144. Sometimes, despite religious laws, women are excluded from inheriting a share of land, although compensation may be given in moveable goods; customary or colonial laws may deprive women of rights protected by their religion.

145. Laws of habous/waqf/charitable trust can be used in some Muslim countries to disinherit women but can also be overruled on the basis of the religiously prescribed rights of women to inheritance.

146. States can give positive interpretations to religious laws. For example:

(a) Tunisia has used technical dispositions to reinstate women's rights to inheritance by giving primacy over collateral descendants to daughters and grand-daughters in the patrilineal line, thereby protecting the nuclear family and showing will for dynamic interpretation of law.

(b) Some countries allow donations and bequests on an equal basis to males and females or to non-Muslim wives and may even exonerate such non-discriminatory gifts from taxation..

147. Religious texts should be analysed in their historical context where they may be reducing discrimination.

148. Just as religions had the will for making reforms, laws and traditions can be changed to reduce discrimination against women in matters of inheritance.

D. Prejudices to the right to life

149. Several cultural practices, whether or not sanctioned by religion, tolerate or fail to take seriously violence against women including various forms of threat to their lives.

1. Infanticide

150. Preference for boys leads to criminal infanticide of girls; in India culture, poverty and ignorance lead to the smothering or poisoning of baby girls. Selective abortion according to sex occurs in various countries.

151. Early Islam forbade female infanticide and this principle must be maintained and pursued by states today to combat all forms of discrimination against women

2. Cruelty to widows

152. Widows are disparaged in many countries and cultures, and, like "witches", can be treated inhumanly. Cruel practices such as suttee (voluntary or forced immolation), although banned in 1829 and 1987 in India, are still tolerated; widows can be regarded like witches as bringing bad luck, can be sexually exploited or refused remarriage. It is far from sure that these practices have religious origin.

153. Religions are not the only value systems which lead, for example, to killing of witches or to the deaths of 200 women in India each year, usually widows with property or undesired pregnancies.

154. In Pakistan too burning alive is a customary form of domestic violence going beyond widows.

3. *Crimes of honour*

155. Crimes of honour are committed with varying degrees of intensity in the Middle East, South America and Southern Asia, as in the past in the Mediterranean basin; a man has impunity to kill any woman suspected of dishonouring his family; she is seen as a symbol or a piece of property rather than as a human being.

156. Lebanese law allowed attenuating circumstances in crimes of honour but may stiffen this law; there are 20 victims in Jordan each year but attempts to end impunity laws are resisted lest public morals suffer. Crimes of honour are widespread in Pakistan; 850 such assassinations took place in Punjab in 1998 and 1999.

157. The Special Rapporteur on extra-judicial, summary or arbitrary executions addresses this issue and mentions women driven to suicide or disfigured by acid; the perpetrators are rarely or only symbolically punished.

158. Crimes of honour violate fundamental rights and justice and offend religious principles such as those Islamic rules that reject suspicions or rumours as grounds for accusation. Motives often include jealousy, problems of inheritance or arranged marriage, divorce, marital rape or cover for other crimes. Religious extremism in Bangladesh has made women particularly vulnerable to discriminatory fatwas that threaten their lives and security.

E. Prejudices to Dignity

159. All continents are affected by the numerous practices where religion and culture play ambiguous roles in prejudicing women's dignity, for example by tests for virginity, by foot binding or by slavery-like practices.

1. Prostitution and slavery-like practices

160. The "oldest profession in the world" stems from negative cultural attitudes to women. States attempt formal prohibition or regulation but also see it as a way to preserve family life. When prostitution is justified by religion or culture it is all the more damaging to women.

(a) Deuki

161. Deuki, sacred prostitution, still found in Nepal, originates in sacrificing girls to deities.

(b) Devadasi

162. Devadasi is a variant which started 1500 years ago in South India and dates from Hammurabi; young girls are offered to temples to win divine favours but are often forced or sold into prostitution. Badi, seen as an ethical practice, forces girls into prostitution in Nepal.

(c) Ritual slavery

163. In Ghana and neighbouring countries *trokosi* (slaves of God) girls are offered, as appeasement to deities, to sorcerers who use them as agricultural labourers and sex slaves; this was prohibited by the Ghana civil code in 1998.

164. The practice of trokosi was intended to educate virgin girls in spirituality and nobility until their marriage but was abused by base interests and instincts; NGOs which have tried to release girls are obstructed by parents who fear magical reprisals.

2. Rape and sexual abuse

165. Rape is extreme abuse of women's physical and mental integrity and of their dignity. In many varying religious and traditional cultures the aggressor is unpunished if he marries his victim. Such amnesty effectively lowers the age of marriage as in Mexico, Costa Rica, Lebanon, Peru, Uruguay or Korea. Religions may insist on free consent but, by giving low esteem to women, may indirectly help such abuse. The caste system also favours sexual abuse as low caste Dalit women and girls experience, for example in Kashmir.

166. Aggravated discrimination often uses rape as in threats or practices against tribal minorities being forcibly assimilated in Bangladesh. In situations of extremism and civil conflict, whether or not they have a religious or genocidal dimension, women are primarily at risk. Rape is a tool of ethnic cleansing.

167. Rape was long considered as an attack on a man's "private property" but later as an attack on a woman's own person. This explains why marital rape was not seen as such; men could impose on their wives outside menstrual periods regardless of their consent.

168. Marital rape is linked to patriarchal values and has deep roots in cultures that relegate women to a servile status. Some states do not recognize marital rape; it is a form of domestic violence or torture and must be treated as such.

169. Certain paedophile practices are made yet more reprehensible and dangerous by being sanctioned by old or new movements claiming to be religious. With or without parental consent some "life communities" in Europe have subjected children to forced sex on the grounds of freedom of expression; condemned by the Council of Europe, such practices must be prevented by education and information as well as be legally repressed.

F. Social Disqualification

1. Prejudice to the right to education

170. Traditional cultures and sexist stereotypes diffused by media and religious extremists often affect girls' access to education, drop-out rates, professional or higher education opportunities; expulsion of pregnant girls also limits their rights.

171. In access to and content of education women suffer discrimination; textbooks may represent women in a way that undermines respect and tolerance among young people. Forcing women to stay at home or excluding girls from schools violates principles of international law.

1. Prohibition from performing some functions

172. In Observation 23 CEDAW noted in 1997 that it was the cultural framework of religious values and beliefs (alongside men's failure to share in housework and education of

children) that most hindered women's part in public life; such discrimination is based on abusive interpretations which assume gender inequality and male supremacy.

(a) Public functions

173. The Quran does not forbid women to play an important role in society; it is jurists, clergy and politicians who have forbidden women to take up political functions and created a principle about this.

174. A draft law in India reserving legislative places for women was defeated by Muslims' objections; some even tried to insist that a Muslim woman must be veiled for her vote to count.

175. Shocking examples of discrimination should not divert attention from more subtle means of discrimination such as blocking legislation or public debate to protect women. There is a striking paradox that in some Asian countries women have inferior status but may attain to the highest office.

176. Cultural or religious stereotypes prevent women from exercising their vote in some countries; men try to influence them or even vote in their name; so many women lose interest in politics.

(b) Religious and judicial functions and public religious practices

177. Religious and priestly functions are reserved for men in most religions including traditional beliefs of many tribes on all continents. Men take the public, solemn, official roles and women are content with private observances at home or within sanctuaries.

(i) Christianity

178. Many Christian sensibilities and religious practices agree that women should have no responsible functions. Roman and Mediterranean culture attributed limited roles to each sex: the man represents sacramental authority, and the woman is in the image of the Virgin, Bride and Mother of Christ. Exclusion from priesthood implies exclusion from church government.

179. Protestant churches are more supple but women have only recently become pastors after theological training.

(ii) Judaism

180. Basic religious texts see men and women as different in essence. Girls study different matters from boys; women have a caring and teaching role; only in Liberal Judaism can a woman be a rabbi. Some communities in Israel forbid women to be judges in religious courts.

(iii) Islam

181. There is no clergy in Islam but women are excluded from functions of interpreter of law, judge, caliph, and prayer leader. Women's sphere is private and domestic. However in Tunisia a court upheld gender equality in authorizing a woman lawyer to practise.

182. In some countries women do not take part in certain rituals such as public prayer in mosques; they may be in an adjacent room neither seen nor seeing the preacher but sometimes there is no place at all for them in the mosque. Menstrual “impurity” is cited as a reason, as in other religions.

G. Forms of aggravated discrimination

183. Women may suffer discrimination as women and as member of a minority tribe or religion.. Such sexist, religious and ethnic discrimination can even lead to genocide and ethnic cleansing. Economic crisis or religious extremism can expose women in minority communities to multiple forms of discrimination.

184. In northern Sudan Coptic Orthodox women have had their religious, ethnic and sexual identity abused by being flogged and imprisoned for selling or consuming alcohol, subjected to forced Islamization, or required to wear Islamic dress.

185. Chinese women in Indonesia have been gravely persecuted during civil disturbances; in 1998 many women were raped.

186. Extremism in Afghanistan affected especially women; for example during ethnic cleansing forced marriages were used to strengthen Taliban Pashtun and to humiliate other tribes; women were thus attacked as women and for their tribal adherence.

187. Sex tourism is aggravated discrimination in some ways combining contempt for women and for other nationalities or races.

188. The existence of a state religion can lead to aggravated discrimination against women of minority communities if that state imposes its perceptions of women on those who do not hold the official, majority faith.

III CONCLUSIONS AND RECOMMENDATIONS

189. The condition of women from the viewpoint of religion, beliefs and traditions appears under many forms, but human rights remain an imperious necessity as religion, ancestral customs, secular traditions (whether based or not on religion), pressures of modernity and legal questions about tradition all co-exist. Factual aspects show great variety as women can be threatened in their life and health, in their juridical status and by social discrimination; other more diffuse and pernicious threats include patriarchal attitudes based on culture or fed by particular interpretations of religion but without any precise religious considerations.

190. While some practices originate in religion, it is generally cultural interpretations of religion, sometimes even opposing religion, which lead to abuses, especially when accompanied by illiteracy of women and men, absence of women from public life, lack of information and cultural fatalism before what is wrongly considered to be the realm of the sacred. Decrease in discriminatory practices largely depends on the will of a state to tackle the cultural roots of these practices through reforms in social and family life.

191. A global effort is possible and necessary through education, information and training. Long established and deeply rooted cultural practices cannot simply be treated as violence against the girl child. Prevention must precede protection; one must attack mentalities in order to rehabilitate the image of women in family and society. This in no way hides the need for measures of protection by states and the international community. The rights of women and the girl child to equality and protection against discrimination coexist uneasily with the collective manifestation of the rights to freedom of religion which are sometimes exercised in a way which is harmful to women. Prevention and protection must go alongside each other at both domestic and international levels lest the cultural dimension of freedom of religion be used against women's rights.

A. Internal Measures

1. *Prevention*

192. Prevention requires recognition of cultural practices that harm women; states must make exhaustive studies and prepare strategies to eliminate prejudicial practices especially where they are deeply rooted. Measures can be targeted or may have a global dimension.

(a) Education and training

193. Programmes of education, information, training and consciousness-raising have been a key factor in reducing abuses in some countries, as the Special Rapporteur on traditional practices affecting the health of women has underlined.

194. Governments should lay down legal requirements for literacy strategies at all levels of society, making education compulsory, forbidding employment of girls during school hours, avoiding early marriages and pregnancies. Removing illiteracy among women and promoting equal access to education for girls as to boys are vital. A later marriage age allows educational and professional aspirations and priorities. Educated women can better defend themselves against harmful traditional practices. Stereotypes of women must be removed from textbooks, including those in ethnic and religious schools.

195. WHO shows reduction of genital mutilation in urban and educated contexts. Campaigns of education and consciousness-raising have proved their worth and are needed to target religious leaders, midwives, practitioners of excision, local officials and healers. The media have an important role.

196. In Egypt, for example, the fundamental role of religious leaders has been seen especially in exposing cultural practices contrary to religion.

197. In some countries police and judiciary help to preserve and protect harmful traditional practices, for example in covering up murders dressed up as crimes of honour. Judges may fear to interfere with custom or culture but must be convinced that such practices and crimes must be stopped. Strategies of information and training for police, judges and all involved in law enforcement can be very useful and may benefit from international help.

(b) Legislative measures.

198. In response to the historical General Assembly resolution of 12 December 1997 on traditional or customary practices affecting the health of women, and to the Beijing Declaration and Plan of Action, states must take legislative and other measures:

- (i) Laws should eliminate discrimination against women; genital mutilation should be forbidden; a minimum marriage age for girls should be instituted and applied;
- (ii) Penalties should be imposed for crimes like ritual slavery which deny women's dignity;
- (iii) Religious and cultural customs should not block equal rights in marriage and divorce;
- (iv) Marriages and births, notably those of girls, must be registered;
- (v) Laws should be abrogated or amended to conform to international provisions on abortion, property, nationality and civil status;
- (vi) Economic and social rights of women should be affirmed since lack of property rights excludes women from decision-making in family and society;
- (vii) Preferential treatment for women should be legislated to redress imbalances in equality.

(c) Measures of substitution and rationalization.

199. CEDAW has recommended that practitioners of excision, often midwives, should be retrained to find other sources of income; temples can be shown alternative sources of revenue to ritual slavery of women and girls.

200. States, helped by international organizations, NGOs, and particularly religious and cultural bodies should promote alternative forms and public ceremonies of initiation to avoid cruel and humiliating treatment. Financial help should be sought from UN agencies and donor countries.

(d) Measures related to health

201. Religious convictions of medical personnel should be no obstacle to treating female illnesses; women should not be sent to personnel who have such objections. Training should be provided for women doctors, midwives etc. who perform harmful practices such as genital mutilation, who show preference for boys, or who perpetuate food taboos.

202. Prenatal techniques should be regulated to prevent selective abortion based on foetus gender. The medical profession must be alert to traditional practices prejudicial to women, and should refuse abortions based on gender; these have negative repercussions on demographic balance.

(e) Consciousness-raising of public opinion.

203. Governments, NGOs, media and intellectuals should develop specific programmes of information and consciousness-raising to change mentalities in favour of emancipating women. Regional NGOs have a vital role in denouncing harmful cultural practices especially where sensitivities apply to practices prejudicial to women and where changes in cultural attitudes perceived as religious traditions demand patience and time. One must be careful not to hurt deeply felt beliefs, but must recognize that they can be dangerous.

204. Pressure groups, study groups and social action should be encouraged by states, and means of mass communication, cinema, theatre, TV, etc, should expose dangers to women and girls from some traditional practices.

(f) Religious teaching and dialogue with religious leaders

205. Dialogue between religious leaders and medical personnel, politicians, experts in modern and traditional communications, educational authorities and the media can provide an important preventive measure as regional and sub-regional networks are created with customary and religious leaders. Strategies can be defined against genital mutilation showing that this is often a cultural and not a religious issue or even goes against religion. Enlightened religions can inform women of their rights and how they may be abused by culture.

206. Religious teaching whether in public or confessionnal schools should give a positive image of women. The state should control the content of such teaching and ensure that the training of religious teachers promotes tolerance and non-discrimination towards women.

(g) Gender equality

207. Women are one half of society and cannot be treated as a minority or specific group. Inequalities based on cultural traditions have kept them out of public life and decision making. In order to implement equality of opportunity there may have to be positive discrimination for women in health, employment, elections, public office etc. with a state organ to ensure this.

(h) Struggle against extremism

208. A merciless struggle against extremism based on simplistic and obscurantist notions is needed. States must guard against religion's being instrumentalized, even by the government in place, in order to damage the condition of women.

2. Protection

209. In trying to protect human and women's rights the state cannot reach some ancestral practices but it has a responsibility, as shown by the 1993 Declaration on elimination of violence against women, to prevent, examine and punish according to national legislation acts

of violence whether perpetrated by the state or by individuals. So protective measures are needed.

(a) Application of laws

210. States should be vigilant in applying existing laws such as those against polygamy, practices damaging to women's health and selective abortion. Religious precepts protecting women should not be manipulated in relation to marriage consent, mutual respect, divorce and inheritance whereby religious extremism, or patriarchal and phallocratic attitudes divert or neglect women's rights. Some religions promote women's emancipation today less than when they were founded.

(b) Constitutional and legislative consecration of gender equality.

211. In many states the basic law does not forbid discrimination. Constitutions should consecrate the principle of gender equality and should forbid gender discrimination. Many states have laws about the family, shared parental responsibility, etc. This can help to overcome cultural stereotypes and improve the status of women and the condition of families. Single mothers need protection for guardianship of their children and for rights to register them when the father does not recognize them.

(c) Protection against violence to women

212. States, including those to which people emigrate, must protect women from violence, including family violence, marital rape and harmful traditional practices. A body specialized in psychological help should receive complaints and work to protect women, including immigrants.

213. An effective struggle against harmful traditional practices must respect people's cultural heritage and sense of cultural and religious values; there is no place for contempt, value judgements, demonization or amalgam. In countries where immigrants are condemned with value judgements they can turn in on themselves and cling to these practices as part of their cultural identity; penal condemnation should be a matter of last resort.

214. Children who are victims of abuse in purportedly religious communes need to be protected by legislation penalizing non-assistance by those with parental, community or medical authority

215. Governments should adopt strategies to protect women against crimes of honour, illegal so-called protective detention, or attempts to gain impunity by financial compensation.

216. The causes of violence against women must be addressed in their deeply embedded layers; for example, in the absence of a social security system, poverty or dependence on sons in old age can provoke female infanticide. There is no place for defeatism and action must be undertaken to identify causes which produce traditional practices, particularly in disadvantaged situations.

217. Wives beaten by their husbands for reasons linked to cultural or religious traditions are less vulnerable if they are financially independent. Women's human rights must have primacy over the interests of private life and family autonomy.

B. International Measures

1. Prevention

(a) Collaboration among states, organizations and international bodies

218. Cultural traditions and traditional practices harmful to women and girls, despite the variety of cultures and religions, often stem from the same roots; so international co-operation can be valuable, as is seen in the plan of action of the Sub-Commission, in its struggle against discrimination and for the protection of minorities, through its seminars in Africa and Asia.

219. Bodies like WHO need to be strengthened to combat genital mutilation, including a campaign against the medicalization of this practice; WHO should inform states of the harm caused by levirate, polygamy, forced marriage etc. in spreading diseases and the AIDS virus.

220. Bodies like UNICEF should be strengthened for consciousness-raising and changing of attitudes to women and girls. In the field of education UNESCO can be very useful in the improvement of the teaching of biology and showing the dangers of genital mutilation.

221. Some practices persist because of lack of government will or lack of information or education; international organizations and bodies should conduct campaigns against recourse to arguments of cultural or religious relativism; financial and logistical support should be given to local and national women's movements, to political and health officials, religious leaders, civil society and media leaders to promote abolition of abuses against women.

(b) Collection of information

222. Except in the case of genital mutilation, there is a lack or absence of official information about traditional and cultural practices, with or without a religious basis, such as crimes of honour, dowry practices, preference for boys, etc. The Special Rapporteur on traditional practices affecting the health of women and girls has often deplored this and has to depend on NGOs and media articles.

223. All parties including states should be encouraged by international bodies to make a systematic and exhaustive study on existing practices, their cause and extent, and the degree of harm done to women. It would be interesting to know how far traditions have evolved from their ancestral functions and to verify with the help of enlightened religious people how far the origin of these traditions is religious.

2. Protection

(a) The reinforcement of instruments

224. There is no lack of international jurisprudence or texts. The Secretary General affirms that definition is less urgent than adoption and application. There is however a nuance in so far as the protection of women's rights is relatively recent.

225. There is no global instrument with direct bearing on the freedom of religion and the condition of women from the viewpoint of religion and traditions. There are dispersed

instruments which must be re-read; a gigantic work has been done in the Conventions on women and on the rights of the child, and there are useful interpretative General Comments on these texts. However the adoption of a text, for example in the form of a declaration, would send the issue back to all parties concerned and could be especially useful where there is opposition between the freedom of religion and women's rights, necessitating a difficult argument because of the sensitive sphere of religious beliefs or beliefs considered to be religious.

226. States should be encouraged to sign, ratify and publicize human rights instruments, notably the Convention on discrimination against women and the related regional conventions. International norms should be incorporated in domestic legislation and when a state has ratified the Convention it should allow it to be invoked in its courts.

227. States should reinforce structures of control, official bodies and civil society organizations in order to promote human rights over against harmful practices. As far as possible they should avoid making reservations, or should withdraw reservations already made to international instruments, particularly the 1979 Convention, lest their essential substance and object suffer.

228. The High Commissioner for Refugees has rightly asked for respect for the cultural and religious traditions of refugees but sees genital mutilation as a form of torture and asks states to recognize refugee status for victims; similarly women who fear crimes of honour or forced marriage should have the right to claim asylum in another state.

229. Regional efforts to create specific and binding instruments should be encouraged. An African protocol or charter eliminating harmful traditional practices and violence against women could inspire national legislations and could spread to other continents.

(b) Reinforcement of existing bodies and mechanisms.

230. States should report on their implementation of international human rights instruments (CEDAW, Human Rights Committee, Committee on Rights of the Child) on harmful cultural practices, on de jure and de facto forms of discrimination, and on their efforts to end these.

231. The optional protocol on the Convention on women's rights is to be welcomed for the protection of women against harmful cultural practices; a complaints mechanism could be established for life-threatening practices, practices which amount to torture, degrading and discriminatory treatment, extra-judicial executions, or failure by states to take adequate measures where laws exist.

232. Special Rapporteurs (notably on violence against women, freedom of religion or belief, traditional practices affecting the health of women and girls, and extra-judicial and arbitrary executions) should systematically seek precise information on the condition of women from the viewpoint of prejudicial cultural traditions especially if founded on or imputed to religion. The means and mandates, especially of CEDAW and of Special Rapporteurs, should be strengthened in terms of financial and human resources and methods of work.

233. Several bodies and mandates are concerned with practices such as genital mutilation, crimes of honour, sacred prostitution, etc. Co-ordination is desirable and a harmonized approach would help the understanding of the condition of women from before birth to

extreme old age. The appointment of a Special Rapporteur on all questions concerning women could strengthen protection for women.

234. Concerning slavery and modern forms of servitude, mechanisms are needed to control existing conventions; certain traditional slavery-like practices could be controlled by the Human Rights Committee or by a Special Rapporteur on all questions concerning women.

C. Conclusion

235. Ancestral and historical norms in all religions have generally discriminated against women; there is a tendency to describe and accommodate such abuses as being “cultural”; when they are attributed to religion debate is foreclosed – a less than honourable approach from the victim’s point of view.

236. Many religions have opposed cultural practices which are harmful to women and have successfully suppressed, redirected and regulated some while tolerating others. This dynamic was initiated and driven by religions, but also involved interactions among cultures and between them and religions. It is the responsibility of States and the international community to take account of this dynamic, as of the universality of women’s rights.

237. All policies must take account of culture and change negative cultural practices, whether or not based on religion, without affecting cultural specificities or the universality of human rights. The task is made harder by attacking not only laws, regulations and policies but often harmful cultural practices which are rooted in collective memory, in deep ancestral belief, and among women too, and which, though often contrary to religion, are also perpetuated in the name of or imputed to religion.

238. Not all traditions have value and some are contrary to human rights and must be combated. One must distinguish between necessary tolerance and blindness to degrading treatments and violations of human rights. For freedom of religion not to be contrary to women’s rights the right to difference inherent in the former must not become a right to indifference to the condition of women. Eleanor Roosevelt said that universal human rights start everywhere close to one’s home.

Note : The full original text has extensive footnotes which have occasionally been reflected in the above unofficial summary translation into English.