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SPECIFIC HUMAN RIGHTS ISSUES

WOMEN AND HUMAN RIGHTS

**Ninth report and final report on the situation regarding the elimination
of traditional practices affecting the health of women and the girl child,
prepared by Ms. Halima Embarek Warzazi***

* This document was submitted late in order to include the most up-to-date information.

Summary

The present report is the ninth report of the Special Rapporteur on traditional practices affecting the health of women and the girl child and is submitted pursuant to resolution 2004/23 of the Sub-Commission on the Promotion and Protection of Human Rights, on the basis of the mandate defined in resolution 1996/19. After 9 years of carrying out this mandate and more than 20 years of campaigning action against harmful traditional practices, the Special Rapporteur has decided that this is the last report that she will be submitting to the Sub-Commission on this issue. She considers that, since these practices have been identified and recognized as forms of violence against women, follow-up could be provided by other mechanisms. This report is meant to provide a synthesis of her previous work. While it is not exhaustive, it does attempt to retrace the origins of certain practices, as well as of the actions taken by the Sub-Commission. The report identifies the main practices which the Special Rapporteur views as calling for close scrutiny by the international community, namely: female genital mutilation; son preference and its impact on nutritional priorities and its consequences, such as female infanticide and prenatal selection; harmful marriage practices such as forced marriage, early marriage and crimes and acts of violence associated with dowries and the inferior status accorded to wives; traditional birth practices; and crimes of honour or passion. The Special Rapporteur attempts to describe and assess the current situation with regard to these practices. She concludes her report with a set of recommendations intended for States and United Nations bodies and specialized agencies with regard to their efforts to combat the above-mentioned practices, as well as violence against women in general.

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Introduction

1. In its resolution 2003/28, the Sub-Commission on the Promotion and Protection of Human Rights decided to renew the mandate of the Special Rapporteur on traditional practices affecting the health of women and the girl child in order to enable her to complete her task, as defined in resolution 1996/19, and at the same time to follow up recent developments at all levels, including the General Assembly. In its resolution 2004/23, the Sub-Commission requested the Special Rapporteur to submit a report to it at its fifty-seventh session. This ninth report is submitted in accordance with the aforementioned resolutions.
2. After 9 years of carrying out this mandate and 20 years of campaigning against harmful traditional practices, the Special Rapporteur considers that the time has come to refer this question to a mechanism of the Commission on Human Rights. In keeping with the final document of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century", which defines crimes and violence against women and includes the broader issue of harmful traditional practices, the Special Rapporteur considers that the mechanism mandated to address the question of violence against women should look more closely at the issue of traditional practices that constitute forms of violence. The Special Rapporteur on violence against women seems the logical and obvious choice, since she already considers certain harmful traditional practices on which the Special Rapporteur of the Sub-Commission has reported.
3. Since the Special Rapporteur decided to use this report to present a synthesis of the information brought to her attention in recent years, she did not consider it necessary to send States requests for information. This decision was also motivated by the fact that States receive similar requests for information for the Secretary-General's report to the General Assembly on violence against women and by the fall-off in replies submitted in recent years. In this connection, the Special Rapporteur wishes to express her gratitude to all the States, international organizations, non-governmental organizations, private individuals and others who have supplied her with information relevant to her mandate. At the same time, however, she would like to express her frustration at the uneven number of replies submitted each year, as well as the silence that has greeted her appeals concerning many traditional practices - such as crimes of honour - that could have been properly addressed in order to raise the awareness of Governments in whose territory such practices are carried out. In spite of the scarcity of replies over the past three years, she notes that there has been some progress in combating certain practices, particularly female genital mutilation. However, the battle is by no means won; throughout the world, women and girls continue to be subjected to practices of a bygone age.
4. The present report attempts, on the basis of previous reports, to describe the historical background to certain traditional practices and to summarize the measures taken by the United Nations to address this challenge, before going on to describe the current situation as regards various harmful traditional practices. The Special Rapporteur concludes by defining the areas that should be given priority in order to combat all these practices in the coming years.

I. HISTORICAL BACKGROUND

A. Origins of certain traditional practices

5. The peoples of the world are distinguishable not only by their nationality, religion, civilization and language, but also by their mentality. This mentality, which has been shaped by habit, custom and social and spiritual values, is the profound expression of the way of life of a people as a whole, of a particular people or of a group of individuals living among a people.
6. Culture, religion, customs and traditions are among the sources of the greatest misunderstanding, contempt and intransigence, and frequently lead to antagonism and tension between peoples.
7. While modernity and industrialization have caused many traditions to fall into disuse in the Western world, thereby altering its way of life, poverty and ignorance, the power of beliefs, respect for family structures and social constraints and - a factor which should not be overlooked - colonialism have, in developing countries, helped to keep alive traditions which in some cases go back thousands of years and to perpetuate practices in which traditional societies engage wholeheartedly and faithfully because they have always formed part of their everyday lives.
8. Female circumcision seems to be one of those age-old customs and traditions whose mysterious historical origins and background have not been properly clarified.
9. Great historians like Herodotus tell us that in the fifth century BC the Phoenicians, the Hittites and the Ethiopians all practised circumcision. Other researchers tell us that the rite of circumcision was practised by pagan peoples in the tropical zones of Africa and the Philippines, by the Incas in Mexico, by certain tribes in the Upper Amazon, and, in Australia, by the Arunta women. Last century some European doctors even resorted to circumcision, on no valid scientific grounds, to treat mental disturbances in women. In other words, the practice has been followed by a number of peoples and societies across the ages and the continents.
10. When one studies traditional practices, in particular female genital mutilation, it must be noted from the outset that these practices are rooted in a whole set of beliefs, values and cultural and social behaviour patterns which govern the lives of the societies concerned.

B. Consideration of the question of traditional practices by the United Nations

11. Female circumcision, which is still practised today, chiefly in Africa, used to be a taboo subject that few, even among the continent's officials and elites, dared to mention. Internationally, no study or positive recommendation could be made on any culturally related practice that carried a high emotional charge.
12. In 1952, the Commission on the Status of Women took up the question for the first time apropos the status of women in Trust and Non-Self-Governing Territories. Its efforts failed and

not without good reason. It must be remembered that, in the colonial era, affected populations rejected all foreign interference as deliberate aggression against their traditional culture and values. The justification for the revolution in Kenya against the English colonialists was, according to Jomo Kenyatta, that they had attempted to force the people to abandon female excision.

13. Even the World Health Organization (WHO), which the Economic and Social Council asked in 1958 to take up the question, failed to act on the request, on the pretext that the rituals in question were based on social and cultural notions, the study of which was outside the competence of WHO.

14. In the early days of independence some African women tried to draw attention to the dangers of excision, but the time was not ripe for such a controversial question and there was a violent public reaction. Since 1970, however, a number of women's associations and non-governmental organizations, International Federation Terre des Hommes among them, have taken a serious interest in the problem. In 1981, while the report of the Working Group on Slavery was under consideration, the question of female circumcision was raised by one non-governmental organization.

15. At the time, the Special Rapporteur was firmly against the Sub-Commission's taking up the matter: she felt that the discussion had got off to a very bad start, with hostile references to a certain religion and community to the exclusion of any other objective information or factors.

16. In 1982, the subject was raised again in the Sub-Commission, but this time it was done properly and objectively. As a result, the Sub-Commission adopted resolution 1982/15 of 7 September 1982 requesting two of its experts to carry out and present a study on all aspects of the problem and how it might best be remedied.

17. In 1983, at the Sub-Commission's request, the Commission decided, in spite of the lack of enthusiasm among African countries where the practice was current, to establish a group to conduct a study on all aspects of the problem, since it would comprise two experts from the Sub-Commission plus representatives from the United Nations Educational, Scientific and Cultural Organization (UNESCO), WHO and the United Nations Children's Fund (UNICEF). The group held its first session at Geneva in March 1985. Although no longer a member of the Sub-Commission, Ms. Halima Warzazi was, exceptionally, designated to represent the Sub-Commission, together with the Indian expert, who proposed that she should chair the Working Group. Many NGOs contributed enthusiastically to the Group's work.

18. At its first session, the Working Group conducted a broad exchange of views on traditional practices affecting the health of women and children. When the time came to select the harmful practices the Group would concentrate on, the representatives of WHO and UNICEF raised objections regarding the priority to be accorded to female circumcision.

19. Their arguments were understandable, but since the NGOs and the Sub-Commission had taken such trouble to put the question on the international agenda, some way had to be found to get around the problem. It was therefore suggested that the Working Group should draw up a list of the most harmful traditional practices for women and children, and arrange them in order of priority according to certain criteria:

- (a) The extent of the phenomenon and the associated mortality and morbidity;
- (b) The possibility of modifying the practice;
- (c) The degree of awareness of the practice among the international community and the documentation available.

20. The list presented to the Working Group by the representative of WHO, who was assigned to produce it, comprised female excision, other forms of mutilation (facial scarring), the force-feeding of women, early marriage, various nutritional taboos and traditional practices associated with childbirth. The problem of dowries in certain parts of the world, crimes of honour and the consequences of son preference were also mentioned.

21. On the basis of the criteria established and the direct effects of the various practices on women's health and development, all members of the Working Group were persuaded to take up excision first. Thus the NGOs, the Sub-Commission and some of the experts on the Working Group accomplished their objective, since the Working Group considered female excision at length on the basis of reliable and worthwhile information, considering all the points it had laid down in order to cover all aspects of the problem.

22. Given the reactions in the Commission on Human Rights, the report needed above all to set out clearly the ill effects of excision on the health of children and women, without passing any kind of judgement that might give offence. Rather than clearly stating that excision was a violation of human rights by the standards laid down in international instruments, it was wiser to let readers, in particular those most concerned, realize the seriousness of the problem by themselves. The report indicated that in the light of those principles, all countries that had ratified the international instruments were confronted with the incompatibility that existed between the obligations they had assumed as States parties to the various agreements and the maintenance of certain traditional practices, especially since the practices had proved injurious to the physical and mental health of women and children.

23. After the report was presented in 1986, the Commission on Human Rights asked the Sub-Commission, in March 1998, to appoint a special rapporteur to study the question closely. This it did through the various reports submitted to it beginning in 1989. At the Sub-Commission's suggestion, the Commission gave its approval in 1990 for two seminars to be held on the question of harmful traditional practices affecting women and children.

24. The aim of the seminar held in 1991 in Burkina Faso, bringing together some 15 experts from around the African continent, was to assess the human rights implications of certain practices such as female circumcision, son preference and traditional birth practices.

25. During a lively debate, factors mentioned were the rigidity of traditions, the sociocultural milieu that perpetuated them, underlying economic factors, the religious factor which gave men preference over women, the inheritance system, disparities between the sexes in matters such as education, the role played by women in perpetuating traditions unfavourable or harmful to them, and the ignorance and poverty from which women in particular suffered.

26. Participants regretted the absence of the Organization of African Unity (OAU) and requested it to take up the question. The seminar would trace the broad lines of action to be followed within the Sub-Commission. It would also show the way for participants at the second seminar, held three years later in Sri Lanka.

27. The second seminar discussed the same problems as the Burkina Faso meeting, including in particular harmful practices affecting women in Asia such as marriage and dowry and their socio-economic consequences on young women, the status of divorced women, and violence, including mutilation and immolation.

28. Under the seminar's first agenda item, much was said about the consequences of son preference, which is a virtually worldwide phenomenon, female infanticide, selective abortion, the role of women in the persistence of favouritism towards boys, and the socio-economic and religious reasons underlying that preference.

29. Harmful practices associated with pregnancy and childbirth were discussed, as were early marriages, but violence against women and ways of putting an end to it received particular attention. It was accepted that violence was a universal phenomenon, but the forms it took were different. Domestic and social violence, rape, women's lack of control over their fertility, incest, prostitution, women who were battered, burnt or married against their will, and the silence that surrounded such massive and continual violations, were discussed at length.

30. As in Burkina Faso, participants spoke of the need for Governments to demonstrate their commitment by guaranteeing education for women, women's access to political and economic power, the mobilization of well-intentioned people and means of protecting women and girls. Following the discussions and in the light of the two seminars, a draft programme of action was drawn up covering female circumcision, son preference, marriage and related practices, and violence. The programme of action was adopted by the Sub-Commission in August 1994.

31. The same year, by its resolution 1994/30, the Sub-Commission asked for the Special Rapporteur's mandate to be extended for two more years, in order to enable her to undertake an in-depth study to assess, inter alia, the differences and the similarities between traditional practices affecting the health of women and children in many parts of the world, taking into consideration, among other relevant documents and information, the conclusions and recommendations of the two regional seminars and the effects of the implementation of the plan of action. The Special Rapporteur proceeded to disseminate, as widely as possible, the plan of action prepared in the light of the deliberations of the regional seminars and sought information from States on measures taken to implement the plan.

32. The replies to annual requests for information have been uneven. While they were relatively numerous in the first few years, they have tended to fall off in the course of her mandate. The Special Rapporteur takes this opportunity to express her appreciation to all those who replied to her requests for information; she nevertheless continues to regret the irregularity of the contributions, as well as the silence of certain countries whose contributions would have made for a better evaluation of the situation.

33. Since her preliminary report in 1995 (E/CN.4/Sub.2/1995/6), the Special Rapporteur has endeavoured to throw some light on the nature and form of the practices identified in the Working Group's report and at the above-mentioned regional seminars. The Special Rapporteur should like to recall the main practices which continue to require constant vigilance by the international community and wishes to describe the situation as it now stands after almost two decades of efforts to combat these practices.

II. PRACTICES REQUIRING CONSTANT VIGILANCE BY THE INTERNATIONAL COMMUNITY

34. On the basis of the outcome of the two regional seminars, it appears that the major difference between traditional practices in Africa and Asia is the form they take or the nature of practice itself. While the agenda of the African regional seminar provided for detailed discussion of female genital mutilation, son preference and traditional birth practices, the priority concerns at the Asian regional seminar were son preference and traditional practices related to marriage. Given the scale of the phenomena, the Special Rapporteur focused her attention on female genital mutilation in particular. However, she continually recalled the need to combat all harmful practices, such as: so-called crimes of honour; son preference and its consequences, namely preferential treatment as regards nutrition, education, marriage, etc.; female infanticide; traditional practices relating to marriage, such as forced and/or early marriage, violence, and even deaths related to dowries; and early pregnancy and traditional childbirth practices. This latter form of traditional practice is also linked to lack of access to health services and primary health care.

A. Female genital mutilation

35. The Special Rapporteur should like to preface her remarks by expressing concern at attempts to dilute the term "female genital mutilation" in favour of expressions such as "female circumcision", "excision", "female genital surgery/operations", "female genital modification", "female genital alteration" and, more recently, "female genital cutting". The need to respect other cultures has been cited as justification for this semantic shift. While the Special Rapporteur is keenly aware of the need to avoid demonizing particular cultures or groups - and, here, she would like to draw attention to all the reports which she has submitted during her mandate and to the consistent position which she has taken on this issue for more than 20 years - she nevertheless remains convinced of the importance of using the term "female genital mutilation", since it clearly shows that the practice is a violation of human rights and a form of violence against women. Only this terminology reflects the full seriousness and the extent of the damage caused by these practices and captures the element of violence and physical assault

which mutilations entail. At the same time, the Special Rapporteur should like to stress that the practice of these mutilations can in no way be construed as a desire on the part of parents, the family or the community to harm the girls concerned. It is merely the re-enactment of an age-old practice that is deeply entrenched in the lives of the groups concerned.

36. The Special Rapporteur regrets the fact that some United Nations specialized agencies and donor countries appear to have adopted new terminology which, in her view, minimizes the seriousness of female genital mutilation and the suffering felt by victims. She also regrets the fact that these changes have been made without any real consultation, undermining the consensus reached by African women who took the courageous decision to use the term “mutilation” in their communities.

37. In this regard, the Special Rapporteur supports the efforts by the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) to retain the term “female genital mutilation”, which was agreed and adopted after a hard struggle. Indeed, the report of the IAC Sixth Regional Conference and General Assembly held in Bamako from 4 to 7 April 2005 examines this question in detail. All the Committee’s national representatives and those engaged in daily efforts to counter these practices on the ground voiced their opposition to this semantic shift. The term “mutilation” is the result of a consensus reached in Africa and was used at the Fourth World Conference on Women and, significantly, in the recent Protocol to the African Charter on Human and Peoples’ Rights relating to the Rights of Women in Africa (Maputo, July 2003).

1. Forms of mutilation

38. Female genital mutilation, a practice which involves the cutting away of all or part of the external female genital organs, is prevalent mainly on the African continent.

39. Although the practice is prevalent in 26 African countries, the types of female genital mutilation vary considerably across the continent. Infibulation, which is the most extreme form of sexual mutilation and which causes the most damage to girls’ and women’s health in the immediate and long term, is practised predominantly in Djibouti, Somalia, the Sudan, some parts of Egypt and Ethiopia, whereas total excision, involving the removal of the clitoris and the labia minora, and partial excision, involving the removal of the clitoris, represent approximately 85 per cent of mutilations practised in West, Central and East Africa. The sexual mutilation of women is also found in some parts of Asia, such as Indonesia, Malaysia and Yemen. Contrary to the African practice, however, in Asia there exist communities where the ritual is performed in a purely symbolic manner by placing a knife on the clitoris of the woman without actually using it or by marking the clitoris lightly with a reed. Female genital mutilation is practised for a number of reasons, including for psychosexual, sociological, hygienic and aesthetic, religious or other reasons:

Psychosexual reasons: to diminish women’s sexual desire, preserve chastity and virginity before and fidelity after marriage, and to increase male sexual pleasure;

Sociological reasons: out of respect for cultural traditions, to initiate girls into womanhood, to ensure social integration and to maintain social cohesion;

Hygiene and aesthetic reasons: in some communities the external genitalia of girls and women are considered dirty and ugly and are removed for reasons of hygiene and aesthetic appeal;

Religious reasons: some communities practise female genital mutilation/excision in the mistaken belief that the practice is a religious prescript;

Other reasons: the mistaken belief that the practice will increase a woman's fertility and improve a child's chances of survival.

40. Differences may also be detected in the average age of the girls on whom the practice is carried out. In West Africa, where genital mutilation is seen as a "rite of passage" from childhood to womanhood, the age at which the practice is performed tends to be around 14 or 15, the age of puberty. Elaborate rituals are generally associated with the act. In East Africa, female genital mutilation is traditionally practised in order to control sexual desire and to preserve virginity, and frequently girls have to undergo the procedure at the age of 7 or 8. According to WHO, the average age is generally falling, which would appear to indicate that female genital mutilation is coming to have less to do with initiation into adulthood. In addition, the differences in age from region to region also appear to be linked to whether legislation prohibiting the practice is in force.

41. The practice is spreading among immigrant communities in Europe, Australia, Canada and the United States of America. The Special Rapporteur considers that it is necessary, not to say vital, to hold a seminar, similar to the African and Asian seminars of 1991 and 1994, for Europe, Australia, Canada and the United States of America. Although progress in combating female genital mutilation has been made in Africa, as the Special Rapporteur's reports show, girls are now being excised in host countries or, often, in their country of origin during holidays. The affected countries were initially caught unawares by what was a relatively new phenomenon for them, but have since responded with varying degrees of alacrity through different measures that have had variable success.

42. In this connection, the Special Rapporteur has received some alarming reports that call for vigorous and rapid action. It seems that there has been a downside to the success of campaigns against female genital mutilation in many so-called countries of origin and host countries, thanks to criminal laws, education, information and public awareness campaigns targeting different actors, particularly girls. In order to forestall any resistance or protests from the girls concerned, which is an increasingly common trend, some parents decide to have their daughters excised at the age of three days. This has disastrous consequences for the health and survival of the infants concerned, who struggle to survive the pain of this practice, which is carried out without an anaesthetic.

43. The Special Rapporteur also takes note with concern of a study carried out in Yemen in January 2005 which shows an increase in the practice of female genital mutilation. Although the Government has reportedly taken firm action, especially against medical personnel, it seems that the operations are mostly performed in secret.

2. Combating female genital mutilation

44. More than 20 years of intensive work and dedication by different actors have produced tangible results in the fight against harmful practices, particularly female genital mutilation. These accomplishments are the result of advocacy aimed at influencing all levels of policy through research. Other achievements include the enlistment of young persons, the socio-economic reorientation of excisers, the involvement of opinion leaders and religious leaders in campaigns against female genital mutilation, coordination of the efforts of the main actors, and strengthening of action and campaigns at the grassroots level. Advocacy led to the adoption by the member States of the African Union of an instrument on the protection of women and children (the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa) and of legislation in more than 16 African countries and in Western countries affected by this phenomenon. International mobilization led to the adoption by the Council of Europe, the European Parliament and the European Commission of guidelines and resolutions on female genital mutilation. It was also mobilization that brought about the adoption, by the Inter-African Committee, of 6 February as the International Day of Zero Tolerance of Female Genital Mutilation and of a joint programme of action for the elimination of female genital mutilation by 2010.

(a) Legislative measures

45. In her seventh report to the Sub-Commission (E/CN.4/Sub.2/2003/30), the Special Rapporteur reviewed national legislative measures and programmes based on information contained in her previous reports, the reports of the Secretary-General on the same subject, and other sources. Methods of combating harmful traditional practices appear to differ greatly from one region to another and depending on the practice concerned. The main practices referred to in legislative measures and programmes are female genital mutilation and, more generally, violence against women. Crimes of honour are also listed among the practices that must be combated.

46. While all Western countries (Western Europe, the United States of America, Canada and Australia) appear to be mainly concerned with combating female genital mutilation, two separate trends may be discerned. On the one hand, the Scandinavian and the English-speaking countries tend to adopt specific legislative measures on the subject, either by drafting criminal laws or by inserting new articles into their penal codes. Most of these legislative measures recognize the principle of extraterritoriality, and thus provide for the prosecution of anyone committing such crimes abroad. Other European countries tend to use their existing criminal law to make female genital mutilation, and other harmful traditional practices, an offence.

47. Interestingly, Canada, the United Kingdom and New Zealand have introduced one exception to their law. Although the three countries make excision, infibulation or any other form of mutilation, involving either the labia majora or minora, or the clitoris, punishable by law, if the operation is carried out by a person legally authorized to practise medicine with a view to protecting the patient's health, the act is not punishable. Canadian law states that the physical health of the individual must be taken into account while the law of the other two countries also refers to mental health.

48. African countries are concentrating their efforts on tackling the practice of female genital mutilation.¹ Most of these countries are crafting laws with criminal effect or amending articles of their penal codes to criminalize genital mutilation directly. In these laws, excision is defined in different ways. Some countries prefer to describe in detail the types of female genital mutilation constituting a criminal offence. Others have confined themselves to a more general definition, criminalizing violence involving genital mutilation.

49. As well as making laws, some of these countries have developed programmes focusing mainly on awareness-raising, education and information. Very few African countries are taking action to address harmful traditional practices other than female genital mutilation. Ghana, however, has amended its Penal Code to criminalize customary or ritual enslavement of any kind, in particular the practice of *trokosi*, whereby families give virgin girls to priests as appeasement for past crimes committed by family members.

50. Latin American countries are taking action to combat violence against women in general, without focusing on female genital mutilation in particular. The same can be said of Asian countries, although some do target a specific practice. For example, Nepal states that it has passed a law banning the practice of *deuki*, which involves dedicating girls to a god and making them temple prostitutes. No common theme emerges from the actions undertaken by Arab and North African countries to combat harmful traditional practices. Each country appears to legislate and tackle harmful practices in different ways.

(b) National awareness campaigns and programmes to combat female genital mutilation

51. Most Scandinavian countries, and some English-speaking countries, back up the national measures that they have taken by making financial contributions, through their national development agencies, to programmes of action in developing countries where female genital mutilation is practised.

52. At the national level, Canada, which in 1994 established the Federal Interdepartmental Working Group on Female Genital Mutilation, has carried out various activities in order to gain a better understanding of, and to resolve, the problems to which this practice gives rise. In 2000, the Group published a document entitled “Female genital mutilation and health care - Current situation and legal status: Recommendations to improve the health care of affected women”. Canadian officials have pledged to continue to raise public awareness of this practice and, through dynamic collaboration, to mobilize women’s groups and encourage the work of all non-governmental organizations involved in combating female genital mutilation.

¹ Botswana, Burkina Faso, Central African Republic, Côte d’Ivoire, Democratic Republic of the Congo, Djibouti, Ethiopia, Gambia, Ghana, Guinea, Mauritius, Niger, Nigeria, Senegal, Sudan, Togo, United Republic of Tanzania.

53. Most countries in which this phenomenon is particularly rife have set up awareness, information and other action programmes to combat female genital mutilation. Interestingly, countries which are sometimes reluctant to enact a specific law are more amenable to establishing local programmes. In her previous reports, the Special Rapporteur has listed all the international, national and local programmes which have been brought to her attention.

3. Regional and international measures

54. In the context of action by European bodies to counter female genital mutilation and other harmful practices, the Special Rapporteur received additional information on the DAPHNE project, which was launched in 1998 and to which reference was made in her fourth report (E/CN.4/Sub.2/2000/17, paras. 30-34). Jointly funded by the European Commission and Dutch institutions, this project was set up primarily to publish a study prepared by the International Centre for Reproductive Health in Ghent, Belgium, on the question of female genital mutilation in Europe. Pursuant to the project, three organizations - the African Women's Organization, based in Austria; the Refugee Organization Netherlands (VON); and the Swedish National Association for Ending Female Genital Mutilation (RISK) - received European Union funding for a two-year project intended to prepare an education package on female genital mutilation and to establish a training programme for trainers from member countries of the Union. The three organizations decided to form a support committee to assist them in implementing the project. As mentioned in her report to the Sub-Commission at its fifty-fifth session (E/CN.4/Sub.2/2003/30), the Special Rapporteur accepted an invitation to be a member of the Committee, which consisted of, in addition to herself, Ms. Barbara Prammer, a member of the Austrian Parliament and Goodwill Ambassador of the Inter-African Committee to the European Union, Mr. Ndioro Niage, Director of the International Organization for Migration, Ms. Khadidiatou Diallo of the Women's Group for the Abolition of Sexual Mutilation (GAMS) in Belgium, and Ms. Berhane Ras-Work, Chairperson of the Committee. The Special Rapporteur regrets the fact that she has not received any recent information about the implementation of the project, which seemed particularly interesting. She would have liked to have been able to provide the Sub-Commission with information on the progress achieved, if any, in this area.

55. The adoption in 2003 of the Protocol to the African Charter of Human and Peoples' Rights relating to the Rights of Women in Africa, article 5 of which deals with the subject of female genital mutilation and harmful traditional practices, is an extremely encouraging sign of Africa's determination to counter these practices. The Special Rapporteur regrets, however, that this instrument has not been disseminated sufficiently widely and deplores the lack of political will of some countries to proceed with ratification. As of 7 March 2005, 37 countries out of 57 had signed the Protocol and only 10 had ratified it. The Special Rapporteur takes this opportunity to appeal for wider ratification of the Protocol.

56. In addition to article 24, paragraph 3, of the Convention on the Rights of the Child, which invites States parties to take appropriate measures with a view to abolishing traditional practices prejudicial to the health of children, and article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, concerning the elimination of prejudices and harmful traditions, the Vienna Declaration and Programme of Action adopted by the World Conference

on Human Rights stressed the importance of working towards the eradication of any conflicts that might arise between the rights of women and the harmful effects of certain traditional practices (A/CONF.157/24, para. 38). In 1994, one year after the World Conference on Human Rights, the Programme of Action of the International Conference on Population and Development called for the adoption of measures to eliminate child marriages and female genital mutilation (A/CONF.171/14/Rev.1, para. 5.5). Finally, the Beijing Declaration strengthened condemnation of certain traditional, customary or modern practices that violate the rights of women (A/CONF.177/20/Rev.1, para. 224).

57. The Special Rapporteur should like to recall the excellent initiative taken by the Government of the Netherlands in 1999 to educate international public opinion about the damaging effects of traditional practices, particularly female genital mutilation. After the Special Rapporteur and the Netherlands delegation had conducted an awareness campaign among delegations to the Third Committee of the General Assembly, a resolution with 79 sponsors, including many African and Asian States, was adopted. This was a record number in the annals of the General Assembly. Resolution 52/99, entitled “Traditional or customary practices affecting the health of women and girls”, was adopted without a vote. In the resolution, the General Assembly emphasized, inter alia: (a) the need to improve women’s position in society and to promote their economic independence; (b) the need for national legislation and/or measures prohibiting harmful traditional practices; and (c) the responsibility of Governments to use education and information to raise awareness, in all sectors of society, of the serious consequences of such practices.

58. In 2003, in its resolution 58/185, the General Assembly requested the Secretary-General to submit to it at its sixtieth session in 2004 a report to which would be annexed an in-depth study on all forms of violence against women. The Special Rapporteur regrets, however, that the General Assembly failed to allocate additional resources for the conduct of the study. In spite of appeals from the Secretariat (the Division for the Advancement of Women) for contributions at least to begin the preparatory phase of the study, only the Netherlands and France offered to provide funds for the study. Thus far, a schedule of activities and a list of partners who can supply information have been drawn up and a preliminary draft has been submitted to the Special Rapporteur on violence against women. The schedule needs to be revised and corrected, however, in order to take account of the scarcity of resources, particularly human resources.

59. In the context of the adoption by the Inter-African Committee and other actors in Africa of 6 February as the International Day of Zero Tolerance of Female Genital Mutilation and of its programme of action aimed at the total elimination of female genital mutilation in Africa and globally by 2010, the Special Rapporteur should like to recall the 11 objectives of the common agenda: (1) to determine, by means of operational research, the extent and nature of female genital mutilation for purposes of targeted intervention; (2) to produce information, education and communication brochures appropriate for the campaign against female genital mutilation; (3) to establish training and information campaigns for the groups concerned; (4) to organize special programmes for religious leaders; (5) to encourage young people to be heavily involved in the process of eradicating female genital mutilation; (6) to organize training programmes for information and media professionals; (7) to establish retraining programmes for health professionals; (8) to identify viable alternatives for former excisers; (9) to conduct

awareness-raising campaigns among decision makers and facilitate the identification and adoption of laws against female genital mutilation; (10) to strengthen cooperation between the government departments concerned, the World Health Organization, the specialized agencies of the United Nations and other bodies with a view to adopting a comprehensive approach towards the elimination of female genital mutilation; and, finally, (11) to provide assistance and advice to the victims of female genital mutilation.

60. The Special Rapporteur furthermore recalls that for each of the 11 objectives, the common agenda identifies a series of activities and the population group to be targeted by these activities. Thus, mobilizing the traditional and modern media and providing excisers with microproject management training are some of the activities designed for religious leaders, young persons, excisers, media professionals, decision makers and members of the different communities in the context of information and training campaigns. Similarly, the common agenda must be implemented and followed up by a large number of actors, in particular the United Nations system, the World Bank, regional organizations, and, more particularly, the African Union, the Inter-Parliamentary Union, national aid and development agencies, schools and universities, among others.

61. When this programme of action was adopted, the Special Rapporteur, who has always supported this initiative, offered to report, within the framework of the programme's annual evaluation mechanism and her own mandate, on the progress achieved and the obstacles to be overcome. She hopes that the Special Rapporteur on violence against women will refer in her reports to the findings of the annual evaluations carried out by those working in the field.

62. In this connection, the Special Rapporteur has received information about the implementation of the common programme of action. She is impressed by the number and quality of the measures implemented and especially by the determination that the Inter-African Committee and its national committees have shown by taking a critical approach to their initiatives in order to ensure that each and every one of them is effective and has an impact.

63. Many ceremonies and activities were organized to mark the International Day of Zero Tolerance of Female Genital Mutilation. The ceremonies, some of which were local and some international, were attended by senior politicians from African countries, religious and political leaders, former excisers, young people and journalists.

64. This year, advocacy work was done in Benin, Burkina Faso, Cameroon, Ethiopia, Kenya, Liberia, Mauritania, Niger, Nigeria and the United Republic of Tanzania. The national committees of the Inter-African Committee ran local awareness and information campaigns. The fact that growing numbers of young people are getting involved in action to counter female genital mutilation offers hope for the future. Tomorrow's leaders are clearly committed to this cause.

B. Son preference and related practices

65. The practice of son preference was treated in detail at the two regional seminars (Burkina Faso in 1991 and Sri Lanka in 1994) and is common to both Africa and Asia. The Working Group on Traditional Practices affecting the Health of Women and Children, which

was established in 1985 and which submitted its report to the Commission on Human Rights at its forty-second session in 1986, defined son preference as the preference of parents for male children, which often manifested itself in neglect, deprivation or discriminatory treatment of girls to the detriment of their physical and mental health (E/CN.4/1986/42, para. 143). Son preference was generally recognized to exist in most countries in Africa and Asia - perhaps to a more marked extent in the latter - as a transcultural phenomenon which varied in intensity and expression from one country to another.

66. In various studies, the historical roots of the phenomenon are attributed to the existence of patriarchal systems. Furthermore, participants at both seminars felt that economic considerations, such as the traditional role of men in agriculture and as property owners, underlay this type of discrimination against women. Whereas in Africa it was recognized that religion or an erroneous interpretation of religion might also be one of the causes of the practice (because, for example, women were not allowed to perform certain religious functions and ceremonies), it is interesting to note that in Asia it was clearly stated that the practice was not based on religion. Buddhism, which promotes egalitarian societies and hence non-discriminatory social policies providing for free food, education and health care, was cited as an example in that regard.

67. Son preference frequently takes the form of a preference for sons over daughters in nutritional matters. The physical and psychological consequences for girls are often disastrous, especially if we remember that girls are married off at a very early age and become pregnant far too early. Maternal mortality and morbidity rates remain high in countries where this phenomenon is particularly common.

68. Preference for male children can even give rise to criminal behaviour, inducing parents to dispose of their daughters at birth. The use of modern techniques to guarantee the birth of a boy allows parents to find out the unborn child's sex and to practise prenatal selection. The Special Rapporteur notes with regret the misuse of these modern techniques, which were supposed to improve the quality of life for all, particularly women, and to help reduce risks during pregnancy and childbirth.

C. Harmful marriage practices

69. These practices range from forced marriage to early - and also often forced - marriage, crimes and violence relating to dowries or the inferior status accorded to the wife and sexual and all other forms of exploitation within marriage.

70. The issue of traditional marriage and related practices was considered much more extensively at the Asian regional seminar. It was stressed that in the Asian region both marriage and motherhood were mandatory. Women were generally required to marry at a very young age and were frequently subjected to virginity tests. Early marriage and resulting early maternity adversely affected the health, nutrition, education and employment opportunities of women and lowered their life expectancy. As a result, maternal and child mortality rates were extremely high in the region, with South Asia recording the highest maternal mortality rate of 650 maternal deaths per 100,000 births.

71. At the seminar, it was stated that marriage and procreation were affected by religious, social and economic factors such as unequal access to education and training; however, economic security for women was cited as one of the main reasons why the practices were condoned.

72. As mentioned above, son preference, which is widespread in Africa, also frequently leads to early marriages. Although in Africa harmful traditional marriage practices were not as prevalent as in Asia, in some countries, notably in East Africa, the number of girls married at an early age was increasing, as young virgins were less likely to be infected with HIV/AIDS and, therefore, were seen as fit and healthy brides.

73. The Special Rapporteur has been informed that in some regions of Ethiopia the abduction of girls is a cultural practice whereby a man who wishes to marry a girl has her kidnapped and then rapes her in order to force the parents to agree to the marriage. Under the Criminal Code in force until July 2004, anyone who committed such a crime would elude prosecution by marrying his victim. However, after many years of negotiations, the Ethiopian Parliament has amended the Criminal Code and introduced harsher penalties for rape of a girl, whether or not the act is followed by marriage. The Special Rapporteur hopes that practical steps have been taken to implement this reform.

74. Other practices related to early marriage and pregnancy which are detrimental to women's well-being are acknowledged to exist, in particular in South Asia, for example in the form of dowry payments to compensate for the woman's inferior status. When the dowry is not paid, the husband's family will often resort to physical violence, which in the worst cases can lead to death, sometimes in the form of immolation by burning. It should also be mentioned that the younger the bride is the lower the dowry is, which encourages families to marry off their daughters early. A further difference in marriage-related practices is the fact that in Asia, young brides are frequently at the command of their mother-in-law, which leads to confrontation, and even ill-treatment and oppression by the mother-in-law or the extended family, whereas in Africa the young bride is more likely to be subjected to ill-treatment by her husband and the immediate family. Either way, for women, the consequences are the same.

D. Traditional birth practices

75. It has been observed that traditional birth practices presenting risks to safe motherhood are prevalent throughout Africa. This has been attributed not only to cultural values but also to the difficulty in obtaining adequate health care, education and information with regard to childbirth. Births assisted by traditional midwives and the acute lack of hygiene and precautions often endanger the health of women and newborns. In addition, in some countries in Africa, such as Ghana, nutritional taboos during pregnancy weaken the woman, leading to complications at delivery. In Asia, childbirth assisted by traditional untrained birth attendants has also been recognized as being widely practised. However, certain traditional practices related to delivery, including "rooming in", have been identified as beneficial to the mother and child.

76. For example, the head of the United Nations Population Fund (UNFPA) in the Sudan reportedly announced in March 2005 that the maternal mortality rate in that country was the

highest in the world, claiming the lives of 509 women per 100,000 every year. This figure is as high as 2,248 in one region, owing to a shortage of midwives, female genital mutilation or early marriage and early pregnancy.

E. Crimes of honour or passion

77. So-called crimes of honour often refer to crimes committed by a male member of a woman's family or her family by marriage, or even by her community, as expiation for what the family or group concerned considers to be an offence, adultery, an immoral or indecent act or conduct which the group regards as reprehensible. It is a particularly arbitrary form of individual justice, whereby the men (and sometimes the women) of a family, clan, group or village act as judge, jury and executioner. Some courts deal with these crimes leniently, accepting the motives for the crime as attenuating circumstances and thus applying two different standards of justice, one for women and another for men.

78. The Special Rapporteur notes with interest that the first General Assembly resolution on traditional practices, which was adopted at the initiative of the Netherlands, has now become a much more wide-ranging resolution that encompasses the various forms of violence against women (General Assembly resolutions 57/181 and 59/167). While the Special Rapporteur recognizes that the practices forming the subject of her mandate are a manifestation of violence against women, it nevertheless remains the case that these practices still differ from one another and require different kinds of action and countermeasures. She appeals, therefore, for vigilance and an effort by all concerned to avoid the temptation to lump all these practices together. At the same time, she welcomes the fact that so-called crimes of honour form the subject of separate resolutions (General Assembly resolutions 57/179 and 59/165).

79. She also notes with satisfaction that this issue is addressed in a specific section of the Secretary-General's report to the General Assembly at its fifty-ninth session (A/59/281, dated 20 August 2004). The report assesses information supplied by 23 Member States on measures taken to combat these kinds of crimes. From the replies submitted, it appears that while most countries indicate that crimes of honour do not exist, many of them make no distinction between crimes of honour and other forms of violence against women. Thus, all crimes are dealt with under the relevant provisions of the criminal code. It is worth noting that some countries object to the fact that so-called crimes of honour are considered separately in the General Assembly resolution and the Secretary-General's report, while other forms of violence against women are ignored. Most of the countries which provided the Secretary-General with information draw attention to numerous measures and programmes established to combat crimes against women. Countries which view this phenomenon as being more prevalent among immigrant communities take action to combat them within the context of integration policies. Some countries have even provided training to give their officials a better understanding of what "honour" means in this context.

80. Some Western countries have set up programmes and awareness campaigns to tackle crimes of honour. Those which have not enacted legislation against this kind of crime declare that crimes of honour are punished under their existing criminal code. The United Kingdom is one of the rare countries in this group to have taken action to deal with the problem of forced marriage.

81. At the international level, the Government of the Netherlands continues to play an active role. It tabled General Assembly resolution 57/179 on the elimination of crimes against women committed in the name of honour, while the Government of Sweden organized international expert meetings in 2003 and 2004 on crimes of honour. A plan of action against violence committed in the name of honour was also drawn up.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

82. For years, the Special Rapporteur has situated the debate on harmful traditional practices within the framework of the status of women in society. She therefore welcomes the fact that recent developments seem to view harmful practices as a socially legitimized form of violence against women. It is becoming increasingly clear that female genital mutilation, crimes of honour, forced marriages and other practices will not be eradicated until women are considered as full and equal participants in the social, economic, cultural and political life of their communities. The various policies and actions aimed at terminating harmful practices must necessarily be directed towards raising the status of women in society from the earliest age.

83. In this, her final report, the Special Rapporteur should like to express her gratitude to the Inter-African Committee for its unfailing support for her mandate and for the fight against harmful traditional practices.

84. The work and dedication of various actors at the national, regional and international levels have helped to achieve progress in countering traditional practices. Nevertheless, it must be noted that this progress has been uneven, depending on the practice and the region. While in some countries, particularly Western countries, progress has been made against female genital mutilation, which is often replaced by alternative rites, the same practice is becoming more widespread. Another particularly alarming trend is the lowering of the age at which girls are excised: for some, this happens before the age of one, sometimes when they are just a few days old. The elimination of these practices is a twofold challenge: explaining that while those who carry out these practices do not intend to cause injury, what they are doing is in fact a violation of human rights, and changing a traditional practice without attacking a people's culture.

85. More and more girls and young women, including in Western countries, are being forced to marry the man of their family's choice. Women from the second generation of immigrants are increasingly being coerced into marrying against their will. The ceremonies are often held in the country of origin. This issue requires the international community's particular attention. The Special Rapporteur notes with interest that the arguments often adduced to justify these unions are the same as those used to justify female genital mutilation, namely family honour and the preservation of family and community values.

86. The question of crimes committed in the name of honour or passion also deserves the close scrutiny of the international community. These are the most extreme forms of violence against women and the perpetrators too often benefit from complete impunity.

87. States have continued to reinforce their legislation on various aspects of violence against women, while national plans of action remain important tools for the establishment of a global initiative to combat violence against women.

B. Recommendations

88. It is important to continue to pursue efforts to condemn all forms of violence against women and girls, which constitute a violation of their fundamental rights and a form of gender-based discrimination.

89. States should accelerate the drafting of legislation that outlaws all forms of violence against women and girls, including harmful traditional practices, and prescribes penalties that are commensurate with the gravity of such acts. These measures should, however, be accompanied by national information and awareness campaigns.

90. It would also be useful to verify and analyse the effectiveness and impact of the measures that have been taken and to determine how far legislation, policies and programmes help to achieve the objectives that have been set.

91. It is important to stop playing with words and to retain the terminology relating to "female genital mutilation".

92. Member States of the African Union should make a stronger commitment to combating harmful traditional practices by ratifying, as soon as possible, the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa.

93. All studies and discussions on the question of harmful traditional practices should respect the culture of the populations concerned. Stereotypes and the facile stigmatization of specific communities or groups should be avoided.

94. The Special Rapporteur of the Commission on Human Rights on violence against women should continue to examine within the framework of her mandate, the question of harmful traditional practices. It would be useful to include in her report a special section on these matters. The Special Rapporteur should work closely with the Inter-African Committee, which has unique experience in these areas, and she should support the Committee in its activities.

95. More attention should be paid to the Secretary-General's report on violence against women and more financial and human resources should be made available for its preparation. The report should pay special attention to the question of harmful traditional practices.

96. **The independent expert for the study on violence against children is encouraged to address the question of harmful traditional practices and to deal with such practices as a form of violence against children.**

97. **Likewise, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions should continue to draw attention to the issue of crimes of honour.**

98. **The human rights treaty bodies, particularly the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, should continue to consider questions relating to harmful traditional practices.**

99. **The Commission on the Status of Women might like to reflect on the possibility of including in its agenda an item on harmful traditional practices, including female genital mutilation, crimes of honour, crimes relating to marriage and dowries, the consequences of son preference, and related topics.**

100. **UNICEF, WHO and UNFPA should enhance the follow-up to their joint statement on the eradication of female genital mutilation and should take joint action on the ground.**
