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**Harmful Traditional Practices
in Three Countries of South Asia:**

culture, human rights and violence against women

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I. INTRODUCTION

This study documents and analyses the manner in which harmful traditional and cultural practices contribute to violence against women in the three South Asian countries of Nepal, Bangladesh and Sri Lanka.¹

The study uses a human rights framework to determine whether traditional and cultural practices are harmful and constitute violence against women. The universality and indivisibility of women's human rights and the norm of equality and non-discrimination as set out in international human rights standards provide the basis for identifying those practices which can be described as both harmful and contributing to violence against women.

These human rights standards consider violence against women as a phenomenon that infringes on a range of women's human rights, including through gender-based discrimination. Harmful traditional practices that contribute to violence against women are thus closely linked with the concept of gender-based discrimination and cannot be separated from it in documentation and study. The interventions and policies to address these harmful traditional practices, however, can vary according to the extent to which they infringe on women's human rights and the significance and impact of that infringement.

Each country study describes the incidence of violence against women perpetrated through generally accepted customs, traditions and practices in that country and analyzes the broader implications of such practices in infringing on women's human rights. The paper discusses factors that reinforce or undermine these practices and makes recommendations for interventions to respond to the situation and work towards eliminating the practices.

A. Harmful traditional and cultural practices as violence against women

International as well as regional and national responses to the phenomenon of violence against women have helped to focus on a problem that was largely unrecognized for many centuries. The 2006 United Nations Secretary-General's in-depth study on all forms of violence against women based on General

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Assembly resolution 58/185 in particular highlighted the global incidence of the problem and its negative impact on development and peace. Traditional and cultural practices that contribute to violence against women therefore must be perceived today as harmful. They can no longer be explained, justified and legitimized on the argument of respect for cultural diversity or that they are immemorial customs that are a positive influence in society.

Yet cultural relativist approaches to violence against women are in fact adopted by scholars and women activists. The right to enjoy one's own culture and respect for cultural diversity are used as arguments to challenge the universality of human rights norms. The very use of the phrase "harmful traditional and cultural" practices sometimes provokes a defensive reaction in gender advocates from developing countries in the South, who argue that there is an exclusive negative focus on southern cultures and traditions only. This has prevented wider partnerships and solidarity efforts, especially among women's movements in the North and South, to eliminate those practices on the basis that they constitute violence and infringement of women's human rights. The notion of family privacy and the traditional view that non-State actors in the family and the community are not responsible for infringement of women's human rights under international, regional and national standards has also reinforced cultural relativist approaches. In this environment, new developments in national and international human rights law have provided an important values framework for identifying customs, traditions and practices that are harmful and contribute to violence against women. A human rights approach reinforces the universality and applicability of common standards to determine violence against women across cultures and the relevance of both civil and political and socio-economic rights in developing interventions.

The human rights approach also underscores a reality that surfaces in this study. Culture, customs and traditions are never static in any society. They are transformed by many influences and value systems. Human rights norms can therefore impact and help to reinforce aspects of culture and tradition that are positive, undermining those that contribute to violence against women and infringement of their human rights. The transformative nature of culture indeed suggests that values and norms on human rights can be internalized in different societies in the same manner as have other values been internalized over a period of time to become what are described as "traditional cultural practices". Recognizing that human rights norms must be internalized if they are to be implemented only means that cultural ethos should be transformed by initiatives that help to harmonize these values.

B. International law and standard-setting

Early international initiatives on harmful traditional practices focused on the practice of female genital mutilation and other practices that impacted adversely on the health of women and children. The World Health Organization thus took this agenda on board from the early 1960s. The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children was formed in the late 1970s in order to encourage governments to eliminate these practices. The Commission on Human Rights and Sub-Commission on Prevention of Discrimination and Protection of Minorities gave priority to the issue in the 1980s, and in 1985-1986 a Working Group on Harmful Traditional Practices Affecting the Health of Women and Children was appointed by the Sub-Commission with the Commission's approval. By a resolution of 1988, the Commission on Human Rights requested the Sub-Commission to report on measures to be taken to eliminate these practices. The Sub-Commission then appointed a member, Ms. Halima Warzazi, as Special Rapporteur to study and report on the problem. Regional conferences were held, and a national plan of action developed in 1994 at a regional conference in Sri Lanka was adopted by the Sub-Commission. At the Sub-Commission's request, the Special Rapporteur continued her work, studying the issue and monitoring implementation of the plan.

A focus on the harmfulness of traditional cultural practices exclusively from the perspective of women's and children's health is seen in the initial international human rights norms on the subject. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 adopted a universal rather than relativist approach to culture and custom. Governments which were States Parties to the Convention were obliged to "modify or abolish customs and practices which constitute discrimination against women" (article 2(f)). This was reinforced by the State's obligation under the Convention "to modify social and cultural patterns of conduct of men and women, with a view to eliminating ... customary and other practices" conducive to discrimination against women (article 5(a)). However, the 1990 general recommendation No. 14 of the Committee on the Elimination of Discrimination against Women, intended to interpret Convention standards, refers to the studies of Ms. Warzazi, the Special Rapporteur, and the Working Group and focuses primarily on the elimination of female genital mutilation and cultural practices that are harmful to the health of women and children. The 1989 Convention on the Rights of the Child (CRC) recognizes in a specific provision that a child of a "minority or indigenous" community has a right to enjoy his or her own culture" (article 30). However, achievement of the child's rights to the "highest attainable standard of health" requires States Parties to "seek effective and appropriate measures to abolish traditional practices prejudicial to the health of children" (article 24(1); article 24(3)).

The development of an agenda on the elimination of violence against women has radically changed international standards on harmful traditional and cultural practices from the original limited perspective of harm to health.

One of the earliest documented initiatives on violence against women is general recommendation No. 12 of the Committee on the Elimination of Discrimination against Women. At its 8th Session in 1989, the Committee adopted a general recommendation on violence against women, interpreting articles 2, 5 (referred to above), 11 (employment) 12 (health) and 16 (equality in family relations) as creating the obligation of States Parties to protect women from violence. Violence against women was recognized as an infringement of women's rights to equality and freedom from discrimination in all the specific areas referred to. This general recommendation identified violence against women as a common phenomenon that infringed on the human rights of women all over the world. It recognized that violence against women impacted to deprive women not only of their right to health but of other rights, such as to employment and equality in the family, reinforcing the indivisibility and universality of human rights under international law.

This broad interpretation of violence against women as an infringement of human rights was strengthened by general recommendation No. 19, adopted at the 11th Session of the Committee on the Elimination of Discrimination against Women in 1992. The Committee clarified that violence against women could be described as gender-based violence since it was linked closely with discrimination perpetrated against women through social attitudes and practices based on the biological differences between men and women. Violence against women was also perceived as infringing on women's rights under both general norms of international law and the specific norms of the Convention on the Elimination of All Forms of Discrimination against Women. Consequently, violence against women was

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