

Submission by Minority Rights Group International to the call for papers on Harmful Practices in advance of a Joint CEDAW-CRC General Recommendation / Comment on Harmful Practices

About Minority Rights Group

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG has Consultative Status with ECOSOC.

The specific manner in which women and girls experience multiple forms of discrimination is a key component of our work. This submission draws on research by MRG and its partner NGOs (local minority and indigenous organisations) and presents evidence of harmful traditional practices particularly affecting and disadvantaging minority and indigenous girls. MRG& programmes on minority and indigenous women& rights have predominately focused on Batwa women and girls in the Great Lakes region of Africa, Dalit women and girls in South Asia and Pastoralist women and girls in the Horn of Africa. Many of the examples in this submission come from those communities. A framework on how to address these harmful traditional practices in the context of minority and indigenous rights is addressed in the second part.

Introduction

Harmful traditional practices refer to pervasive practices subjugating and harming women and girls in multiple ways (physically, psychologically, etc.). Anchored in societies and communities, these practices have become part of a given culture. Reflecting existing gender-based discrimination, women and girls are likely to experience different harmful practices across their lifetime. These include, but are not limited to, female genital mutilation (FGM); forced feeding of women; early marriage; the various taboos or practices which prevent women from controlling their own fertility; nutritional taboos and traditional birth practices; son preference and its implications for the status of the girl child; female infanticide; early pregnancy; and dowry price.¹

Women and girls belonging to minority or indigenous communities may be doubly disadvantaged. They often face discrimination based on their gender, discrimination based on their belonging to a minority or indigenous group and intersecting forms of discrimination based on their gender and membership of a minority or indigenous group.

It is very important to remember that harmful traditional practices are not only found in minority or indigenous communities. They may occur in majority communities too. However, the already marginalized position of minority and indigenous communities within many societies may impact negatively on efforts to eradicate those practices, making their prevention more difficult.

While there has been greater awareness of harmful traditional practices over the past twenty years,

the general lack of information on the situation of girls from minority and indigenous communities also extends to a lack of understanding of how they are affected by harmful traditional practices and a lack of understanding of the most effective means of responding to these practices. This results in an increased likelihood that governments and development actors overlook their specific needs and life-situation leading to schemes to eradicate harmful practices being less effective.

1. The interplay between harmful traditional practices and minority girls' rights

This section presents available evidence from MRG¢ research on customary practices which harms young girls and further entrenches their discrimination. The examples of harmful traditional practices discussed below are not solely found in minority or indigenous communities; neither do they convey an exhaustive picture of the situation in these communities (due to the lack of data on the situation of minority and indigenous girls), they serve to illustrate some of the harmful traditional practice they face.

Female genital mutilation (FGM)

 \tilde{o} Pastoralists marginalize themselves further through FGM; this is where I feel the culture is a monster to the girl child \tilde{o}^2

Despite the fact that Female Genital Mutilation (FGM) has been made illegal in a numbers of countries over the past 10 years, the practice still affect young girls belonging to Pastoralist communities in the East and Horn of Africa (Ethiopia, Tanzania, Uganda and Kenya). In Ethiopia and Kenya, women and girls living in pastoralist areas have nearly a 100 per cent chance undergoing FGM³. For example, more than 91 percent of the women in Afar region (Ethiopia) undergo one of the most severe forms of FGM (infibulation or type III). This number is still lower than in the eastern Somali region where, according to the Ethiopia Demographic and Health Survey (EDHS) of 2005, 97.3 percent of the women undergo FGM, against 73.3 percent nationally.⁴ In Tanzania, figures are three times the national average in pastoralist areas. However, in Uganda, very few groups, including Pastoralists continue to practice FGM. In 2004, the Ethiopian Government enacted a law against FGM: "Women have the right to protection by the state from harmful customs. Laws and practices that oppress them and cause bodily or mental harm to them are prohibited.ö To date some districts have banned FGM, including in Afar region (recently it was reported that Pastoralist elders had outlawed FGM in their communities in Amibara and Awash-Fentale districts of Afar region). Studies show some declines in FGM: the 2005 Ethiopian Domestic Household Survey found only 62.1 percent of girls between 15-19 had been cut compared to 73 percent of those aged 20-24 and a 2010 study conducted by the Rohi Weddu Pastoralist Women's Development Organization also confirmed that FGM had sharply declined in local communities over the past decade. For instance, more than 200 children were not circumcised in Gewane woreda, which officially declared it had stopped 6 February 2007.8

Attitudes towards FGM however demonstrate that there is still a long way to eradicate the practice. A study in Mille district, Afar region and Fentalle district, Oromiya region of Ethiopia found that 82.1 percent of boys say they would not marry girls who had not undergone FGM and 70 percent men and women would not allow their son to marry a woman who did not undergo FGM: õlf Afar women are not infibulated, if happens at all, they would not get a husband so they must [be] infibulated.ö⁹

In the East and Horn of Africa, many Pastoralist girls undergo FGM when they reach adolescence, in preparation for womanhood. FGM represents a prerequisite to marriage, as well as full participation in public life. The considerable health risks associated with FGM have been largely documented. For instance, FGM places girls under immediate risks such as bleeding, and more longer-terms risks related to pregnancy (see early pregnancy section below). With fewer medical

facilities in pastoralist regions than in other regions, ¹⁰ pastoralist women and girlsøability to access timely and appropriate health care in case of complications as a result of FGM is undeniably jeopardized. Unavailability of care can lead to fatalities or permanent disabling conditions.

The practice of FGM further compromises Pastoralist girlsøability to remain and succeed in school. Limited educational opportunities within the Pastoralist areas of Ethiopia, Tanzania, Uganda and Kenya present a serious impediment to accessing education. For instance, in predominantly Pastoralist areas, primary school gross enrolment rates compiled by the government of Kenya for 1998 indicate that the (predominately pastoralist) North Eastern Province has by far the lowest level of school enrolment at only 32 per cent for boys and 16.8 per cent for girls. It was also recently reported that the primary school enrolment rate in Karamoja (Uganda) was only 35 per cent, although no gender-disaggregated information is given¹¹. Few of the girls who underwent FGM return to school, as they are now prepared for married life.

Early marriage and dowry price

The practice of giving young girls in marriage at the age of 11,12 or 13 years of age is highly motivated by the cash value received in exchange for the bride as well as the social constructions of womenøs roles as wives and home managers.

The precarious conditions in which Batwa communities in the Great Lake regions live underpin the practice of early marriage and bride prices. Short life expectancy in these communities also reinforces the practice. Batwa community members interviewed by MRG partners in the Democratic Republic of Congo (DRC) described the situation where Batwa ÷women encourage their daughters to get married quickly so that they can get a few goats to eat as a dowry.ø¹² Poverty in Pastoralist Communities also contributes to increase the likelihood of early and forced marriages. Most marriages are arranged during adolescence or even earlier.¹³

The financial implications of marriage also further entrench Batwa girlsøability to access education. Attitudes of Parents in Batwa communities in the DRC are informed by the specific roles attributed to women and girls and thus restrict their abilities to remain and succeed in schools: *Women were created to be married, have children and to look for food and not to spend time in front of men studying.* Another parent interviewed said that *According to the Pygmies, a girl who goes to school and reaches secondary level is considered a free woman, i.e. a whore, because she might not get a husband within the community.* A similar situation is observed in Batwa communities in Burundi. Data shows that early marriage is also a barrier to Batwa girlsøeducation. In two communes, more than 40 per cent of Batwa girls cited it as a reason preventing them from going to school and, in the same two provinces, 35 per cent and 38 per cent of parents mentioned it. In one commune, Mwakiro, only 6 per cent of parents thought early marriage a problem in contrast with 25 per cent of Batwa girls. In all communes, Batwa girls thought early marriage a greater problem than the parents did. 15

Marriage arrangements involving dowries also tend to reinforce other harmful traditional practices, such as the forceful abduction of girls, as is the case in Ethiopia. According to surveys conducted by the National Committee on Traditional Practices of Ethiopia (NCTPE), the prevalence of marriage by abduction is 80 percent in Oromia Region... and as high as 92 percent in Southern Nations Nationalities and Peoples Region (SNNPR), with a national average of 69 percent. Aarriage by abduction occurs when a mange family does not have enough money to pay the girlge family a ÷bride price@ He abducts her, holds her for a period of time, rapes her and then negotiates to pay a small amount to the girlge family so he can marry her. Adolescent girls are particularly vulnerable to abduction on their way to and from school and of those who are abducted, very few return to school afterwards. The fear of abduction may cause girls to drop out of school. Despite a revision of the Ethiopian Family Code to criminalize marriages that are not consensual, early

marriage and marriage through abduction still happens. The continuation of the practice shows the difficulties in enforcement of the law. 19

Domestic violence and marital rape are other forms of violence which may be more likely to result following early marriage. Research within Batwa communities in Rwanda and Uganda show that Batwa women have a high likelihood of experiencing violence. In both countries, the home and family were cited by the majority of respondents as the place violence occurred.²⁰

Again, there are health implications for married young girls. In areas where polygamy is a common practice, such as in the Afar region 6 men may receive conditional permission to marry up to four wives; however many men marry multiple women even without meeting those conditions.²¹ This increases girlsørisk of being exposed to sexually transmitted infections including HIV/AIDS.

Forced sexual servitude

In India and Nepal there are harmful cultural practices predominantly affecting marginalized Dalit communities. The *Devadasi* and *Jogini* systems in India are a form of religiously sanctioned sexual abuse. The vast majority of *Devadasi* and *Jogini* belong to Scheduled Castes (Dalits). One study found that 93% of *Devadasi* were from Scheduled Castes (Dalits) and 7% from Scheduled Tribes (indigenous). Although women sometimes choose to become *Devadasi*, frequently young girls are dedicated to the temple by their families before puberty, without consent or any understanding of what it means. There are variations in the cultural practices of temple dedication; however, in all *Devadasi* systems the girls are imarriedø to the temple deity, before or at puberty. They are raped soon after they reach puberty and then be expected to be sexually available to any man in the area. Girls who are given by their families to become *Joginis* undergo an initiation ceremony including a imarriageøto stand-in inhusbandø (who may be a relative or already married). This inhusbandø may take responsibility for looking after her economically or he may abandon her. If he abandons her, she is either given to another man (again without her consent) who undertakes to support her economically or she may become forced to accept the sexual advances of any man in the local area.

Girls who become *Devadasi* and *Jogini* are prohibited from marrying and are stigmatized by the community. There is a saying that *Devadasi* are the ±servant of god but wife of the whole towng²⁴ Because the sexual abuse starts when they are very young, they frequently have children at a young age with the consequent health risks (see below). They are also exposed to the risk of sexually transmitted diseases. The status is permanent and they are unable to give up or renounce it. The children of *Devadasi* and *Jogini* suffer from discrimination because they do not have a recognized father. Their daughters are particularly at risk of sexual exploitation because of their mothergs perceived ±availability@and in some cases the status is inherited. Although the practice of dedicating young girls to a temple as been prohibited by law, it still continues.

In Nepal the *Badi* (a sub-caste of Dalits) are known as the prostitute caste. Originally a caste of entertainers ó dancers and musicians ó the *Badi* saw their status decrease as society and the economy changed, eventually becoming prostitutes. *Badi* girls are frequently pressured by their families to start working as a prostitute at an early age to help with the household income. Lack of education and discrimination means that other job opportunities are rare both for *Badi* men and boys and for *Badi* women and one young *Badi* daughter working as a prostitute often supports her whole family. Their ÷customersøare frequently upper caste men ó local businessmen, politicians etc - who shun them in public. Until recently *Badi* women were unable to pass on citizenship to their children; however, that has changed. Efforts to reduce discrimination against Badi women and girls and provide them with alternative economic options have had mixed results.

Early pregnancy

As a result of practices of forced marriage, early marriage or forced sexual servitude girls frequently become pregnant very young. Young female bodies are not fully developed and are more likely to suffer a range of obstetric complications. The likelihood of these will increase if they underwent FGM. Complications include postpartum hemorrhage and death of the baby, immediate risks of severe blood loss, shock and infection, etc. Given that minority and indigenous communities frequently live in remote regions with fewer medical facilities than other areas or in poor areas with inadequate facilities, the risk of girls dying or suffering harm as a result of early pregnancy increases. They may also be additionally disadvantaged by discriminatory attitudes of health professionals or by not speaking the language used by healthcare providers. ²⁵

Son preference and its implications for the status of the girl child

The value placed on boys as opposed to girls from birth is enshrined in most patriarchal societies. Preferences for sons dictate the allocation of resources, such as food, money, care provision and access to education (amongst others) within the household. As mentioned earlier minority and indigenous communities more often than not live in precarious situations and experience greater poverty. This means that even if they have the same level of preferences for sons as dominant groups, they may be more likely to have to make resource allocation choices. This will have serious implications for the health of young minority and indigenous girls, as well as on their ability to access and remain in school.

For instance, in pastoralist communities of Ethiopia, the lower status of girls dictates the allocation of food in favor of boys, placing girls at higher risk of malnutrition. Pastoralist girls interviewed in the Gashamo District of Ethiopia commented on the gender-bias in favor of their male siblings: õ*In our home, my uncle and male cousins get the best food in the family.* (...) Even among the children, my mother and aunts give the small boys better and more food than the girlsö and "Most girl babies and children are thinner that the boys because their mothers don't treat them and feed them as well as the boys.ö²⁶ Malnutrition amongst pastoralist women is also heightened by environmental changes. Rationing food has been documented as a coping strategy disproportionately borne by women.²⁷ Discrimination within the household suggests that girls might be further be affected by these coping strategies.

Likewise, Pastoralist boys tend to be given priority for healthcare. In the Gashamo district of the Somali region (Ethiopia), sick boys are more often taken to the health center, whereas daughters are given herbs, a girl mentioned õMy mother is always taking my younger brother to the Health Centre and buying him drugs even when he only has a slight cough. But she never takes my small sister although she is a sickly child and my brother isn't.o.²⁸

Educational opportunities may also be limited by the differential value placed on girls and boys. In Batwa communities of the Great Lake Regions, the education of Batwa boys is prioritized over girls. A respondent in the DRC said, õ*Pygmies themselves discriminate in a way between their children because they do not accept that they should educate their girls ... because they say that girls disappear and go and start other families elsewhere²⁹ö. Concurrently, the precarious economic situation in which Batwa communities lives also means that a household is more likely to have to choose which child will attend school.*

2. Challenging harmful traditional practices - ways forward for minority and indigenous girls³⁰

The question protection of girls from harmful traditional practices and the rights of minorities and indigenous peoples to protect their identities may in the first instance seem contradictory; however principles of human rights law provide a framework of guidance that ensures compatibility.

Legislation

The Convention on the Rights of the Child (CRC) protects children from abuse, violence and torture, it provides that in all actions concerning children, their best interests shall be the primary consideration and it protects the right of children belonging to minorities or indigenous peoples to their identity and to practice their culture. The Convention on the Elimination of all forms of Discrimination Against Women protects women and girls from discrimination in all areas of life (education, employment, etc), including protection from discriminatory practices which affect health, discrimination within the family and the choice to marry or not marry.

Minority and indigenous girls have the right to be protected from any harmful practice which violates their rights in the same way as all girls have that right to protection. Minority and indigenous communities also have the right to practice their cultures and protect their identity. However this is not an unlimited right.

The UN Declaration on Minorities (UNDM) provides guidance on the issue which may be useful to the Committees (the UNDM is not legally binding; however, it was adopted by consensus which means that no state objected to its provisions). Minorities have the right to protect and develop their culture except under two circumstances: where specific practices are in ÷violation of national lawø and where they are ÷contrary to international standardsø ÷Contrary to international standardsø means that states are free to (and should) prohibit practices that violate other international human rights standards such as those in CEDAW and the CRC. Thus all the practices described in the first part of this submission cannot be justified on the basis of ÷cultureø and ÷protection of identityø because they are contrary to the protection provided to individuals under CEDAW and the CRC. The UNDMøs reference to ÷national lawø is problematic, but it is clear that it would be meaningless if states were permitted to adopt whatever laws they wished against the cultural practices of minorities.

Prohibitions on cultural practices must be based on reasonable and objective grounds. States may not use provisions permitting them to outlaw harmful traditional practices in order to prohibit whole cultures on the grounds that a practice violates human rights norms; the restrictions must be on the specific practices. Neither may they act in a discriminatory manner, prohibiting harmful practices in minority communities while ignoring those of the majority ó and it is important to remember that harmful traditional practices are also found in majority communities. Legislation is needed to prohibit specific harmful traditional practices which violate human rights norms ó but legislation alone will not be sufficient to end these practices.

Some states might also be reluctant to address harmful traditional practices in a minority or indigenous community for fear of accusations of racism or that they will antagonize and cause conflict with an already marginalized group. However, finding a way to protect young girls from harmful practices is critical and is their obligation under both CEDAW and the CRC.

Designing and implementing inclusive responses to harmful traditional practices

A prerequisite for designing an effective strategy to respond to harmful traditional practices is a thorough understanding of whole situation and culture of minorities and indigenous peoples. Data, disaggregated by gender AND minority/indigenous status is needed to understand the prevalence of a particular practice in the country and the extent to which it is valued as part of a communityøs culture. It is also required to monitor the impact and success (along with unintended consequences) of any programme designed to eradicate the harmful practice.

The meaningful participation of minorities in the design and implementation of a State® efforts to eliminate harmful traditional practices is critical. All the harmful practices described in section one of this submission have been prohibited by various laws; however, this has not been enough to

ensure their eradication. The most effective methods for reducing harmful traditional practices involve the cooperation of the community concerned and this is perhaps even more important when the community is a minority or indigenous group. This participation of the minority or indigenous group (especially minority or indigenous women and girls) will help ensure that the response is tailored to the needs and interests of those affected women and girls within these communities, and also will ensure that underlying factors which are context specific and contribute to the perpetuation of theses practices, such as poverty, are addressed. Most importantly, an inclusive approach will ensure that responses do not pose a threat (or are perceived to pose a threat) to the cultural identity of these minority groups.

Minority or indigenous communities which are marginalized or have experienced systematic discrimination from the State may perceive legitimate concern over a harmful traditional practice as another attack on the community. This may result in non-cooperation or even a hostile negative reaction from the community (or from community leaders who are frequently men). However, it is essential to remember that no community δ (majority, minority or indigenous) is homogeneous or unchanging. Even where there a community outwardly appears to resist moves to respond to harmful traditional practices, there are very likely to be people within the community who do not agree with the practice and are themselves working on changing it.

Without the inclusion of minorities, initiatives to reduce traditional practices could act in further discriminating young girls and/or eroding gains in some areas. For instance, encouraging the elimination of a practice harming girls from a specific community through the educational system might result in parents withdrawing their daughters from school because they fear that it will impact on their culture. It is especially important in countries where minority communities have experienced discrimination or marginalization that care is taken to ensure there are no unintended outcomes of any programme designed to eradicate a harmful traditional practice. ³¹

Dynamics within minority communities

Traditional practices performed within certain minority or indigenous groups are frequently not endorsed by the whole community. There are very likely to be women and men within these communities resisting the practice, whether it is by not conforming to the practice themselves or working toward its eradication. These minority and indigenous women (and men) who reject harmful traditional practices in their communities and/or work to eradicate them frequently face criticism, hostility or even violence from other in their community. Sometimes they are accused of aiding the destruction of the community culture because they are willing to see the practice change. Or they are accused of giving the government and majority community another reason to discriminate against them or attack the community by airing what are seen as internal@community issues in public. They may face arguments from the community that the community with rights of women and girls within the group are less important than the rights of the group as a whole. However, the opposite argument also holds: that a community failure to address the rights of women and girls within it, undermines its efforts to hold governments to account to protect the rights of the community.

Since no culture is homogenous, this diversity within minority and indigenous communities needs to be taken into account when devising and implementing strategies on harmful traditional practices. State efforts to eliminate a harmful practice are more likely to be successful if they work with and support those within the community who are already actively engaged in its eradication to design a culturally relevant approach, including addressing reasons why others in the community are opposed to the eradication of the practice. Eradication efforts may be more effective if members of the community take the lead rather than state officials. However, care must be taken that those community activists are protected from backlash and are not put in a position where they may face further hostility for working with the government.

Conclusion

A joint General Recommendation/Comment from CEDAW and the CRC is very welcome. MRG urges the Committees to take into account the situation of minority and indigenous girls in relation to harmful traditional practices and the specific challenges this poses in attempts to eradicate those harmful practices. In particular we recommend that the following be included:

- An acknowledgement that harmful practices may occur in all communities and cultures and that State efforts to eradicate harmful practices must not be exercised in a discriminatory manner ie they must not be focused only on minority or indigenous communities if the practice also occurs in majority groups
- That no culture is homogenous or unchanging and that it is important to get the views of everyone in a community, not only community leadersø
- That data disaggregated by gender and minority/indigenous status or ethnicity is critical to ensuring that the situation of minority and indigenous girls is fully understood and for designing and monitoring the impact of efforts to eradicate harmful practices
- That the full and effective participation of the minority or indigenous community concerned will lead to more effective results
- That sensitivity to cultural considerations is required by States but that they should not refrain from tackling harmful practices in minority communities out of fear of accusations of racism or cultural insensitivity. Minority and indigenous girls are entitled to the same protection form harmful practices as girls from other groups.

 $\underline{\text{http://www.minorityrights.org/7587/reports/a-double-bind-the-exclusion-of-pastoralist-women-in-the-east-and-horn-of-africa.html}$

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² Interviews by Andrew Ridgewell with Hon. Linah Jebii Kilimo, Chair of the Kenya Women Parliamentary Association (KEWOPA), Kenya, 13 June 2008, in Kipuri, N. & A. Ridgewell, A Double Bind: The Exclusion of Pastoralist Women in the East and Horn of Africa, London, MRG, 2008, available at:

³ Kipuri, N. & A. Ridgewell, *Ibid.*, p. 13

⁴ UNICEF, Female Genital Mutilation/Cutting, 2007, available at: http://www.unicef.org/ethiopia/ET_fgm.pdf

⁵ Kipuri, N. & A. Ridgewell, op. cit., p. 13

⁶ Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No.414/2004

⁷ IRIN, Pastoralists battling FGM/C, 26 January 2011, available at:

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⁸ Asmelash W. M., The role of men in ending the impunity of violence at the community level, the case of Afar in Ethiopia, Rohi Weddu Pastoral Women Development Organization, 2007, available at:http://www.uneca.org/acgs/new/Presentation-RohiWeddu-March-8.doc

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¹³ Kipuri, N. & A. Ridgewell, op. cit., p. 8

¹⁴ Ramsay, K. 2010, op. cit. p. 7

¹⁵ Ramsay, K. 2010, op. cit. p. 8

¹⁶ Moore, T. and Mohammed, A., :Gender-based violence in Afarø, unpublished report for SOS Sahel Ethiopiaøs Gender and Pastoralism Research Project. In Kipuri, N. & A. Ridgewell, op. cit., p. 8 17 UNICEF, op. cit.

¹⁸ Ramsay, Kathryn, õThe gender dimension of minority and indigenous educationö in State of the Worldow Minorities

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