**Response to the call for submission of written contributions for the elaboration of a study on the situation of the violations and abuses of human rights rooted in harmful practices related to accusations of witchcraft and ritual attacks, as well as stigmatization.**

***Section V. Challenges and opportunities***

***1. What have been the key challenges to prevent and address human rights violations and abuses rooted in harmful practices related to accusations of witchcraft and ritual attacks, as well as stigmatization?***

Human rights are rights inherent to all. Universal human rights are communicated within a variety of forms, such as treaties, general principles, customary international law, and other sources of international law. International human rights law promotes and protects the human rights of individuals and groups by laying down the obligations of governments to act or refrain from acting in a particular way. Consequently, human rights norms found within these sources can be employed to protect those affected by human rights violations and abuses rooted in harmful practices related to accusations of witchcraft and ritual attacks (HPAWRA). However, whilst there is an affirmation of equality laid out in the UN Charter, the Universal Declaration of Human Rights (UDHR),[[1]](#footnote-1) the International Covenant on Civil and Political Rights (ICCPR),[[2]](#footnote-2) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),[[3]](#footnote-3) they do not adequately address the specific needs of those affected by HPAWRA, such as women and other marginalised groups, and, despite the general protections, extensive discrimination continues to exist. This intervention will focus specifically on the rights of women in relation to HPAWRA.

Women’s rights have been continually relegated in international human rights law. One of the main obstacles to the effective protection of women’s rights in international human rights law has been the neglect of the gender difference between men and women. Within a jurisprudentially male international legal system, women are considered under traditional male standards. Thus, the universal, yet masculine principles of equality and discrimination within international human rights law have been inadequate to remedy the problem, due to their reliance on gender neutrality and lack of attention regarding violence against women. As a result, the widespread phenomenon of violence against women has remained in precarious positions within international law and policy.[[4]](#footnote-4)

Feminist analysis of international human rights law is necessary for a number for reasons. Primarily, the position of women within international human rights law would be incapable of being articulated without the presence of a feminist analysis. Furthermore, attempts to place women under the traditional scope of a jurisprudentially masculine international human rights system, a system built on the silence of women, is unfeasible. Human rights instruments have, thus, not been receptive to the experiences of women, preventing women’s assimilation within international human rights law. This is evident in the public/private dichotomy, where focus is directed towards the public sphere, allowing women to be marginalised and controlled within the unregulated private sphere.[[5]](#footnote-5) Significantly, it is the private sphere where women are being marginalised due to HPAWRA.

The creation of the human rights treaty bodies and the development of the treaty body system is, notably, one of the greatest triumphs in the efforts of the international community to promote and protect human rights.[[6]](#footnote-6) However, in a time where human rights violations are on the increase,[[7]](#footnote-7) international human rights are failing those very people the system was designed to protect. One of the most problematic issues within this system is, undoubtedly, the reporting process. A process that was devised to be ‘continuous and dynamic’[[8]](#footnote-8) is failing due to a lack of compliance by states in preparing reports, failure to follow up and act on recommendations issued to them and a failure to implement treaties into national law. There are significant problems with the enforceability of human rights standards; thus, enforceability remains a major weakness of the human rights system. Essentially, if a state refuses to comply with provisions, bodies such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Committee cannot impose sanctions.[[9]](#footnote-9) They can only comment on such failures in their Annual Report to the General Assembly, as outlined in Article 21 CEDAW. The high numbers of states that have failed to submit reports on time indicates that states do not regard this form of punishment to be of any major significance. Period reporting by states is not just a ‘key legal obligation,’ but also the timing of such reports is a fundamental requirement, to guarantee effective protection of individuals or groups of individual rights holders.[[10]](#footnote-10) Failure, by states, to adhere to reporting obligations produces a knock on effect, thus, treaty bodies are faced with an *ad hoc* working timetable, dealing with state reports as and when they come in, as opposed to within a predetermined agenda. This, in turn, generates disparity, as those states that faithfully conform to their reporting obligations are systematically reviewed more than those that fail to adhere.[[11]](#footnote-11)

Another issue, hindering the effectiveness of international human rights law, in relation to HPAWRA, is the allowance of state reservations, which renders specific articles limited or non-applicable to those states that have entered them. CEDAW is the most heavily reserved treaty in the UN system,[[12]](#footnote-12) thus, undermining the effectiveness of the Convention. The disposition of CEDAW, in that it deals with the position of women within structures of patriarchy, culture and religion, has meant that the Convention has posed specific challenges to traditional and customary practices, together with religious practices and interpretations of the law, specifically within the context of the family.[[13]](#footnote-13) Thus, many states have entered reservations to CEDAW based on religious, traditional or cultural grounds; yet, paradoxically the reservation process allowed the ratification of CEDAW, by the majority of states, possible. It is submitted that this conditional acceptance and selectiveness of the Convention simply reflects the marginalisation of women’s rights within international human rights law. Essentially, women are positioned in a dispute between gender equality and those rules dictating discriminatory religious, cultural, or traditional practices, in which, currently, the latter remains successful. This is not to say that the Convention, or international human rights law *per se*, is opposed to tradition, culture, or customary laws, or indeed views these as static and regressive. On the contrary, it is suggested that the standpoint of culture as a tenacious entity, resistant to change is actually a characteristic of those states that oppose and reserve against the implementation of international human rights conventions. The ‘protection’ of states citing exemptions from human rights on cultural, religious, or customary grounds is clearly an issue that needs addressing. As emphasised by the Committee on Economic, Social and Cultural Rights, with regards to violations of Article 15(1) ICESCR, traditional and customary negative practices must not infringe upon nor limit the scope of international human rights. However, despite such declarations, the position of traditional discriminatory values remains strong. Impunity is the key problem here. The fundamental issue of a lack of enforcement within international human rights allows states to continue to ignore and violate human rights. Unfortunately, human rights guarantees are of little practical worth unless they are effectively implemented by states.Despite the prevalence and persistence of HPAWRA, the issue remains very much under the radar within the international human rights discourse.

**2. Have you identified some promising practices in this regard?**

On a positive note, incidents of witchcraft related violence have been documented within reports by the CEDAW Committee, the Committee on Torture, the HR Council, the HRC Advisory Committee, UPR, the Committee on Economic, Social and Cultural Rights, the CSW and UN Women. In all these reports, witchcraft related violence is classified as a traditional harmful practice and has been recognised as a specific form of discriminatory gender-based violence. The HRC Advisory Committee has recognised the link between poverty, misfortune, and witchcraft, focusing specifically on attacks on persons with albinism, whilst CSW and UN Women have recognised witchcraft related violence as a gender issue, with UN Women categorising witchcraft violence as femicide. This classification of witchcraft related violence as a harmful practice, the recognition of the motivation behind witchcraft related violence, together with the acknowledgement of witchcraft related violence as a gender specific crime is encouraging.

More recently, work done by the Pan-African Parliament,[[14]](#footnote-14) to discuss and validate *Guidelines for Parliamentarians on Accusations of Witchcraft and Ritual Attacks: Towards Eliminating Harmful Practices and Other Human Rights Violations*,[[15]](#footnote-15) the first document of its kind to address the phenomenon of HPAWR comprehensively has had a significant and encouraging effect regionally. The successful adoption, in July 2021, of UN Human Rights Council Resolution 47/8[[16]](#footnote-16) on the situation of the violations and abuses of human rights rooted in harmful practices related to accusations of witchcraft and ritual attacks, is another positive step in the right direction, fuelled by the tireless work of academics and activists,[[17]](#footnote-17) NGOs and both the former[[18]](#footnote-18) and current[[19]](#footnote-19) UN Expert on the Enjoyment of Rights by Persons with Albinism over the years. Here, as is demonstrated by this specific call for written contributions on HPAWRA, the issue is finally making its way onto the international agenda.

**3. What kind of further action could be undertaken by existing mechanisms at the United Nations for the elimination of harmful practices amounting to human rights violations related to accusations of witchcraft and ritual attacks, as well as stigmatization?**

The issue of HPAWRA needs to be addressed at three different levels. Internationally, nationally, and at grass roots level.

Whilst political will is a major barrier to the realisation of women’s rights, so too is the inherently masculine nature of international human rights law, as demonstrated through the allowance of reservations to CEDAW,[[20]](#footnote-20) which simply perpetuate the entrenched nature of women’s inequality.[[21]](#footnote-21) Systems need to be put in place in order to tackle the recurrent issues of late/non-reporting of states, with strict penalties for non-compliance of state obligations under international human rights treaties. Moreover, there is the need for greater coherency and conformity of reports by both states and Committees. There also needs to be greater co-ordination between the differing treaty bodies on their work to ensure consistency throughout their reports. It is suggested that a UN Independent Expert on Harmful Practices could be appointed to specifically deal with the issue.

On a national level, it is suggested that states should make a more concerted effort to adhere to their obligations under international human rights law. State co-operation is a key element to the functioning of the system. States need to effectively tackle the prevalence of patriarchal norms that permeate through society, taking steps to review and reform those discriminatory systems of traditional customary laws and personal laws that are incompatible with treaty provisions. Protection of such laws by states is a major cause of subordination and discrimination of women and other marginalised groups. There is also the need for an extensive review into law enforcement procedures at all levels, with an emphasis on better resources and education, to improve investigations and the much-needed protection of witnesses and victims, together with stronger punishments and higher rates of prosecutions for offenders.

At grass roots level, in collaboration with effective legislation, there is the need for extensive education and awareness campaigns within these societies, incorporating the recognition of human rights, gender equality and harmful traditional practices, to tackle the dominance of patriarchal attitudes, whilst, at the same time, allowing women to realise their rights. Human rights and gender equality should be included within national education curriculums, which should be made available to people, regardless of social class or poverty. As should education against superstitious belief, whereby people are educated to realise that their misfortune is not ‘unexplainable’ through witchcraft, but explicable in terms of illness, disease, and other misfortunes.[[22]](#footnote-22) If you explain the unexplainable, the mysterious and secretive nature of the witchcraft discourse becomes exposed.

To generate these changes, there is the need for cross-cultural dialogue and the engagement of all levels of society. Culture did not create society, society created culture. It is dynamic and adaptable to change. Together, we have the power to change the status quo and the way in which people live their lives, for the better.

1. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR) [↑](#footnote-ref-1)
2. International Covenant on Civil and Political Rights (adopted 16 December

   1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) [↑](#footnote-ref-2)
3. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) [↑](#footnote-ref-3)
4. Shazia Qureshi, ‘The Recognition of Violence against Women as a Violation of Human Rights in the United Nations System’ (2013) 28(1) Research Journal of South Asian Studies 187 [↑](#footnote-ref-4)
5. ibid [↑](#footnote-ref-5)
6. UN General Assembly, ‘United Nations reform: measures and proposals’ 26 June 2012 A/66/860, 8 [↑](#footnote-ref-6)
7. ibid 9 [↑](#footnote-ref-7)
8. ibid 8 [↑](#footnote-ref-8)
9. Ronagh McQuigg, ‘How Effective is the United Nations Committee Against Torture’ (2011) 22(3) European Journal of International Law 828 [↑](#footnote-ref-9)
10. UN General Assembly, ‘United Nations reform: measures and proposals’ 26 June 2012 A/66/860, 8 [↑](#footnote-ref-10)
11. ibid 22 [↑](#footnote-ref-11)
12. UN Convention on the Elimination of All Forms of Discrimination against Women, ‘Declarations, reservations, objections, and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women, (10th April 2006) CEDAW/SP/2006/2 [↑](#footnote-ref-12)
13. Anne Hellum and Henriette Sinding Aasen (eds) *Women’s Human Rights: CEDAW in International, Regional and National Law,* (CUP 2013) 56 [↑](#footnote-ref-13)
14. 19th and 20th April 2021 [↑](#footnote-ref-14)
15. Pan-African Parliament, ‘Guidelines for Parliamentarians on Accusations of Witchcraft and Ritual Attacks: Towards Eliminating Harmful Practices and Other Human Rights Violations’, Draft Report March 2021 [↑](#footnote-ref-15)
16. UN Human Rights Council Resolution 47/8, ‘Elimination of harmful practices related to accusations of witchcraft and ritual attacks’ adopted 12 July 2021 A/HRC/RES/47/8 [↑](#footnote-ref-16)
17. Including Dr Samantha Spence, Professor Charlotte Baker, Professor Miranda Forsyth, Philip Gibbs, Leethen Bartholomew, Kirsty Brimelow KC, Louise Meincke and Gary Foxcroft. [↑](#footnote-ref-17)
18. Ikponwosa Ero [↑](#footnote-ref-18)
19. Muluka Anne Miti-Drummond [↑](#footnote-ref-19)
20. UN Convention on the Elimination of All Forms of Discrimination against Women, ‘Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women, (10th April 2006) CEDAW/SP/2006/2 [↑](#footnote-ref-20)
21. Amnesty International, ‘Reservations to the Convention on the Elimination of All Forms of Violence Against Women’ (Stop Violence Against Women 2021) <https://www.amnesty.org/en/wp-content/uploads/2021/09/ior510092004en.pdf> <last visited 14th July 2022> [↑](#footnote-ref-21)
22. It is important here to acknowledge the work of Dr Dinesh Mishra in India on this issue. [↑](#footnote-ref-22)