



Amnesty International's submission on "best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity" pursuant to Human Rights Council Resolution A/HRC/21/3 of October 2012.

15 March 2013

Summary: Amnesty International highlights that an understanding of the complexity of the concept of "tradition" is essential. Best practices in the application of traditional values must therefore recognise that "tradition" and 'traditional values' are constructed through historical processes and are contested and evolving rather than being largely self-contained, rooted in deep-seated convictions, and timeless. Best practices comply with the legal obligations states have to "take sustained and systemic action to modify or eliminate stereotypes and negative, harmful and discriminatory practices justified by traditional values".¹ Best practices also recognise that 'traditions' that are not in line with human rights standards may be found in any culture, community or country in the world.

The UN has elaborated two specific instruments which seek to protect the rights of specific groups to protect and promote their cultural identities within a human rights framework, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) adopted by consensus of the General Assembly in 1992 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the GA in 2007 after significant involvement of Indigenous Peoples in its drafting. The Human Rights Council has also appointed a Special Rapporteur in the field of cultural rights. These three very different instruments and mechanisms, all concerned with the protection of culture and identity, offer examples of best practice in protecting 'tradition' in accordance with human rights standards. They all demonstrate in different ways that tradition and culture can be protected within a framework that respects other human rights and does not use 'tradition', 'traditional values' or 'culture' as a justification for maintaining stereotypes or harmful and discriminatory practices.

Submission: Amnesty International welcomes the opportunity to submit information on "best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity" pursuant to Human Rights Council Resolution A/HRC/21/3 of October 2012. Amnesty International believes that if "a better understanding and appreciation of traditional values of humankind" is to contribute to the promotion and protection of human rights, an understanding of the complexity of the concept of "tradition" is essential. Best practices in the application of traditional values must therefore recognise that "tradition" and 'traditional values' are constructed through historical processes and are contested and evolving rather than being largely self-contained, rooted in deep-seated convictions, and timeless. Best practices comply with the legal obligations states have to "take sustained and systemic action to modify or eliminate stereotypes and negative, harmful and discriminatory practices justified by traditional values".² Best practices also recognise that 'traditions' which are not in line with human rights standards may be found in any culture, community or country in the world.

The UN human rights system has elaborated two specific instruments which seek to protect the rights of specific groups to protect and promote their cultural identities within a human rights framework. The Human Rights Council also has appointed a Special Rapporteur in the field of cultural rights, with the mandate to "identify best practices in the promotion and protection of cultural rights at the local, national, regional and international levels". These three very different instruments and mechanisms

¹ Study of the Human Rights Council Advisory Committee on Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind, A/HRC/22/71, para 76

² Study of the Human Rights Council Advisory Committee on Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind, A/HRC/22/71, para 76

are all concerned with the protection of culture and identity and offer examples of best practice in protecting 'tradition' in accordance with human rights standards.

The work of the Special Rapporteur is particularly closely related to the subject of 'traditional values' under study here. Best practices identified by the Special Rapporteur are therefore highly relevant. The Special Rapporteur has highlighted that "cultural rights are pivotal to the recognition and respect of human dignity, as they protect the development and expression of various world visions — individual and collective — and encompass important freedoms relating to matters of identity".³ However, she has also noted that the right to enjoy equal cultural rights must include the freedom to "embrace or reject particular cultural practices and identities as well as to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance."⁴

The Special Rapporteur has also noted that "not all cultural practices can be considered as protected in international human rights law, and cultural rights may be subject to limitations in certain circumstances".⁵ The Special Rapporteur has said "All human communities, including nations, are characterized by a dominant culture that reflects the viewpoint and the interests of those with the power to ensure adherence to prescribed norms." Those who hold or claim authority may use their power to define the community's 'traditional values' in a way that that supports their hold on or claim to power, the abuse of that power or denial of accountability for human rights abuses.

Those who benefit most from the *status quo* are more likely to appeal to tradition to maintain their power and privilege. Yet tradition is rarely, if ever, uncontested. Where power-holders claim particular practices as integral to a community's 'traditional values', a more detailed examination finds a diverse range of views about the importance or otherwise of that practice amongst different parts of the community and its impact on different community members. The series of questions suggested by the Special Rapporteur in her report on "the enjoyment of cultural rights by women on an equal basis with men" could be used as best practice guidance to examine the legitimacy of social arrangements that are defended in the name of culture or tradition.

1. "Do the purported cultural norms reflect an actual social practice? 2. Are they representative of the community, or are they simply a generalization of the narrow interests of a few? In other words, is there a uniform interpretation of the source and nature of the practice/norm? 3. Whose power is preserved through the use of the purported cultural norms? 4. Who is challenging the practice/norm (outsider/insider, oppressed and/or marginalized person(s) within the community) and what are the claimed harmful outcomes of the practice/norm? 5. Is the label of culture being deployed to stifle a desirable and necessary political debate?"⁶

The first UN human rights instrument specifically addressing protection of identity of particular groups was the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) adopted by the General Assembly in 1992. It protects the individual rights of members of minorities and contains provisions on protection of identity and traditions which may be exercised collectively.

The UNDM requires states to protect the existence and the identity of minorities on their territories and to "encourage conditions for the promotion of that identity" (Article 1). Article 4.2 provides "States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards". The reference to international standards means that any traditional practices which are contrary to international human rights standards must be prohibited. However, "Cultural or religious practices which violate human rights law should be outlawed for everyone, not only for minorities."⁷ The reference to 'national law' means that states are permitted to restrict the traditions and cultural practices of minorities. However "[I]t is clear that the State is not free to adopt whatever prohibitions against minorities' cultural practices that it wants. If that were the case, the Declaration, and article

³ Report by the Special Rapporteur on Cultural Rights to the Human Rights Council A/HRC/14/36, para 3

⁴ See report A/67/287, para 28

⁵ Report by the Special Rapporteur on Cultural Rights to the Human Rights Council A/HRC/14/36, June 2010, paras 30-35

⁶ Report of the Special Rapporteur on Cultural Rights to the Human Rights Council, UN Doc A/67/287, August 2012

⁷ Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN. Doc E/CN.4/Sub.2/AC.5/2005/2 para 57

4.2 in particular, would be nearly empty of content.”⁸ Instead, any prohibitions made by states must be based on reasonable and objective grounds. The UNDM was adopted by consensus by the General Assembly so it is clear that no UN member state disagreed with its approach of making expression and promotion of cultural identities contingent on those cultural and traditional practices being consistent with international human rights standards.

The Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the GA in 2007 represents a distinct example of how the right to culture and tradition can be elaborated in a manner that is compatible with other human rights. Significantly, it recognises collective rights and the majority of the provisions are directed at promoting Indigenous Peoples distinctive cultural identities. A further significant factor is that Indigenous Peoples themselves were heavily involved in the elaboration of the Declaration and its provisions reflect how Indigenous Peoples see the coexistence between protection of cultural and tradition within the framework of human rights.

The preamble of the UNDRIP recognizes the “urgent need to respect and promote” Indigenous Peoples “cultures, spiritual traditions, histories and philosophies... especially their rights to their lands.” The Declaration recognizes the right of Indigenous Peoples to self-determination and is clear that the rights in the Declaration are human rights to be exercised consistently with all other human rights. For example: Article 34 provides for the right of Indigenous peoples to “promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs” also states this must be “in accordance with human rights standards”⁹ and article 46(3) states that all provisions in the UNDRIP: “shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.” This framework for promoting culture and tradition consistently with other human rights shows that there may be some occasions when restrictions on culture and tradition would be justifiable.

These three very different examples clearly show that tradition and culture can be protected within a framework which respects other human rights and does not use ‘tradition’, ‘traditional values’ or ‘culture’ as a justification for maintaining stereotypes or negative, harmful and discriminatory practices.

⁸ Ibid, para 58

⁹ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, October 2007, Article 34 reads: “Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with human rights standards”