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# The Limits of Cultural Traditions

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**Outline**



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**Introductory remarks.**

1. THE YEAR 2008 has been proclaimed "*European Year of Intercultural Dialogue"* by common Decision of the European Parliament and the Council[1], with the aim of "raising the awareness of all those living in the EU, in particular young people, of the importance of developing an active European citizenship which is open to the world, respects cultural diversity and is based on common values in the EU as laid down in Art. 6 of the EU Treaty and the Charter of Fundamental Rights of the EU"[2]. Thus, the common European values (*liberty*, *democracy*, *respect for human rights and fundamental freedoms* and *the rule of law*), which are the Union's cornerstone[3], will constitute the framework of the intercultural dialogue.

2. Another important event related to our subject is the entry in force this year, in record time, of the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (the UNESCO Convention)[4], the number of States parties to which, from all parts of the world, is rapidly increasing. This Convention was the culmination of UNESCO's quest for the roots of human rights, which had confirmed that these roots go back very deep into mankind history. Thus, the *universality* of human rights and the rejection of the «clash of civilizations» and of *cultural relativism* constitute the backdrop of this Convention (*infra* Nos 15, 17-19).

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1. Decision N° 1983/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the European Year of Intercultural Dialogue (2008), OJ L 412/44, 30.12.2006. Arts. 2 and 3, Preamble.

2. The EU Charter of Fundamental Rights, as drafted by a first Convention, was proclaimed by the European Parliament, the Council and the European Commission at Nice, on 7.12.2000 (OJ C 364/1, 18.12.2000). It was proclaimed again at Strasbourg, on 12.12.2007 (OJ C 303/1, 14.12.2007), by these three institutions, as amended by the Convention which elaborated the Constitutional Treaty and by the Intergovernmental Conference 2004. It is granted Treaty status, in that amended form, by the Lisbon Treaty. See S. KOUKOULIS-SPILIOTOPOULOS, *Les droits sociaux: droits proclamés ou droits invocables?*, in *La Charte des droits fondamentaux: des nouveaux droits pour le citoyen européen?*, Actes du colloque organisé par l'IDHAE et le Barreau de Luxembourg, mai 2007, Bruylant 2008 (forthcoming); and *The Lisbon Treaty and the Charter of Fundamental Rights: maintaining and developing the acquis in gender equality*, in European Network of Legal Experts in the Field of Gender Equality, *European Gender Equality Law Review*, 2008-1, http://ec.europa.eu/employment_social/gender_equality/legislation/index_en.html.

3. Art. 6(1) TEU: "*The Union is founded on the principles of liberty, democracy, respect for human rights, and fundamental freedoms, and the rule of law, principles which are common to the Member States"* (cf. Art. 2 TEU in the Lisbon Treaty version, OJ C 306, 17.12.2007, p. 1).

4. This Convention was adopted at the 33rd session of the UNESCO General Conference, on 20 October 2005; it entered into force seventeen months later, on 18 March 2007. Until July 2008, eighty nine States and the European Community had become parties to it. See http://portal.unesco.org/culture/en.

3. In his particularly pertinent and challenging introduction to our Conference, Mr. Pierre Lambert invoked cultural pluralism and diversity as central themes. He also recalled the fear expressed by President René Cassin, some fifty years ago, that there might one day be "*a temptation to open a breach in the universality of human rights"*, "*under the pretext of taking account of the particularities of the peoples of various continents and regions of the earth"*.

4. Has this day come? If not, is it approaching? Who might be tempted into accepting, or even provoking, such a breach? Those who are supposed to present "particularities" or to be "different"? Or those who are expected to respect the "particularities" or "differences"? "Particularities" in what regard? "Differences" from whom? Who determines the nature, content and scope of human rights? Indeed, who confirms and who denies their existence?

5. Further, Mr. Lambert wondered whether forced marriage, genital mutilations, honour and other crimes can be tolerated in the name of cultural diversity. To put it in other words: can we accept that the *worth* of a human being varies depending on the socio-cultural and/or political context within which this human being happens to have been born and/or to live?

6. After recalling the universally acknowledged foundation of human rights, we will briefly explore the relationship between cultural traditions and human rights, relying on characteristic examples of international instruments and the requirements deriving therefrom. At the same time, we will seek expressions of the quest for human rights as a human endeavour, beyond international or national instruments and policies.

## I. The dignity and worth of the human person: a universally acknowledged foundation of human rights.

7. In the aftermath of World War II, the UN Charter (1945), a multilateral treaty of universal scope, *"reaffirm[ed]"* the UN peoples' *"faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women"* (Preamble). Three years later, the Universal Declaration of Human Rights (Universal Declaration) (1948), which, like the UN Charter, embodies several rules of customary international law and is constantly serving as a basis for further developments in customary and treaty law[5], recalled this "faith", and stressed that:

5. The International Court of Justice (ICJ) considers that both instruments embody "international custom as evidence of a general practice accepted as law", which it applies in accordance with Art. 38(1)(b) of its Statute: *United States Diplomatic and Consular Staff in Tehran (United States v. Iran),* Judgment of 24 May 1980, ICJ Reports 1980, p. 3, para. 91; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States). Merits*. Judgment of 27 June1986, ICJ Reports 1986, p. 14, paras. 176, 181-195, 235, 290; according to the second judgment, the UN Charter also constitutes a multilateral treaty.

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", while "disregard and contempt for human rights have resulted in barbarous acts" (Preamble).

8. The Universal Declaration sets *"a common standard of achievement for all peoples and all nations"*. Its 1st Article proclaims: *"All human beings are born free and equal in dignity and rights"*. Thus, both instruments express the *universality, indivisibility, interdependence* and *complementarity*[6] of human rights, which derive from and enhance human dignity and worth.

9. These instruments were preceded, since 1919, by the International Labour Organisation (ILO) Conventions – the first international treaties that regulated not interstate relations, but matters of state jurisdiction, thus introducing a new dimension in human rights protection and initiating the penetration of international law in the sphere of domestic law, in parallel with a limitation of national sovereignty conceded by the States. The safeguard of the *dignity* of "*all human beings"* is crucial to the attainment of "*social justice"*, the aim of the ILO[7].

10. As we will see more particularly below, the above principles are constantly reaffirmed worldwide, in various socio-cultural, economic and political contexts, mostly with reference to the UN Charter and the Universal Declaration. This holds for the UN *Covenants on Civil and Political Rights* (CCPR) and *on Economic, Social and Cultural Rights* (CESCR), with which the Universal Declaration forms the so-called "*International Bill of Rights"*, and the other treaties sponsored by the UN and its specialized Agencies[8]. The same principles are reaffirmed by human rights instruments of regional scope, including the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR)[9] and the other Council of Europe (CoE)

6. Both instruments combine civil and political with economic, social and cultural rights, recognizing their equal rank (UN Charter, Arts. 55 and 61-72 establishing the ECOSOC; Universal Declaration, Arts. 22-28).

7. *Philadelphia Declaration concerning the aims and purposes of the ILO*, 1944, annexed to and forming an integral part of the ILO Constitution.

8. See e.g. among the most widely ratified treaties, the CCPR, 1966 (Preamble, Art. 10); the CESCR, 1966 (Preamble, Art. 13); the UN Convention on the Elimination of Racial Discrimination (CERD), 1966 (Preamble); the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 (Preamble); the UN Convention against Torture and Other Cruel or Degrading Treatment, 1984 (Preamble); the UN Convention on the Rights of the Child, 1989 (Preamble, Arts. 23(1), 28(2), 37(c), 39, 40); the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 (Preamble, Arts. 2, 5).

9. The ECHR refers to the UDHR in its Preamble; according to the ECtHR, human dignity is "the very essence of the ECHR"(*C.R. v UK*, 22.11.1995, Series A No 335-C, para. 42; *S.W v UK*, 22.11.1995, Series A No 335-B, para. 44; *Chr. Goodwin v UK*, 11.7.2002, Rep. 2002-VI, para. 90).

conventions; instruments adopted by the *Organization of American States* (OAS), which comprises all North, Central and South American States (except Cuba)[10]; by the *Organization of African Unity* (OAU) or *the African Union* (AU), its successor since 2002[11], a Pan-African organization (fifty three Member States) whose structure is loosely modelled on that of the EU[12] (see *infra* Nos 51-62).

11. Instruments adopted by the *Arab League*, an association of twenty two countries whose peoples are mainly Arabic speaking[13], or the *Organization of the Islamic Conference* (OIC), which comprises fifty seven States whose peoples are mainly of Islamic religion, several of which are also members of the Arab League and/or the African Union[14], mostly invoke as their basis the Islamic *Shari'a*, but also the princi-

10. See e.g. the American Declaration of the Rights and Duties of Man, 1948 (Preamble); the American Convention on Human Rights (AmerCHR), 1969, in force since 18.7.1978 (Preamble, Arts. 5(2), 6(2), 11(1); the Additional Protocol to the AmerCHR, in the Area of Economic, Social and Cultural Rights, 1988, in force since 16.11.1999 (Preamble); the Inter-American Convention to Prevent and Punish Torture, 1985, in force since 28.2.1987 (Preamble); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994, in force since 5.3.1995 (Preamble, Art. 4(e)); the Inter-American Convention on Forced Disappearance of Persons, 1994, in force since 28.3.1996 (Preamble).

11. See e. g. the OAU Convention on the Specific Aspects of Refugee Problems in Africa, 1969, in force since 20.6.1974 (Preamble), the African Charter on Human and Peoples' Rights (African Charter), 1981, in force since 21.10.1986 (Preamble, Art. 5); the African Charter on the Rights and Welfare of the Child, 1990, in force since 29.11.1991 (Preamble); the Protocol to the African Charter, on the Rights of Women in Africa, 2003, in force since 25.11.2005 (Preamble, Arts. 1(g), 3, 22-24). The first three instruments were adopted by the OAU Assembly and the third by the AU Assembly (on the OAU and AU, see http://news.bbc.co.uk/2/hi/africa/country_profiles ).

12. See the texts of these instruments in I. BROWNLIE/G. S. GOODWIN-GILL, *Basic Documents on Human Rights*, 5th ed. Oxford University Press 2006.

13. See the Arab Charter on Human Rights (Arab Charter) (revised), 2004, in force since 15.3.2008 (Preamble, Art. 3(3), 17, 33(3), 40). Seven League member States are in Africa (Algeria, Egypt, Libya, Mauritania, Morocco, Sudan and Tunisia), fourteen in Asia (Bahrain, Djibouti, Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Somalia, Syria, United Arab Emirates, Yemen and Palestine (which the League regards as an independent state) and one in South America (Comoros). See http://news.bbc.co.uk/2/hi/middle_east/country_profiles.

14. See the Covenant on the Rights of the Child in Islam, 2004. The OIC member States are Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Benin, Brunei-Darussalam, Burkina-Faso (then Upper Volta), Cameroon, Chad, Comoros, Djibouti, Egypt, Gabon, Gambia, Guinea, Guinea-Bissau, Guyana, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Kyrghyz, Lebanon, Libyan Arab Jamahiriya, Malaysia, Maldives, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, Oman, Pakistan, Palestine (which the OIC regards as an independent state), Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Suriname, Syria, Tajikistan, Togo, Tunisia, Turkey, Turkmenistan, Uganda, United Arab Emirates, Uzbekistan, Yemen, Côte d'Ivoire. See http://news.bbc.co.uk/2/hi/middle_east/country_profiles and http://www.oic-oci.org/oicnew/is11/english.

ples of the Universal Declaration and the UN Charter and/or other international instruments. (see *infra* Nos 65-73).

12. Therefore, "*the inherent dignity and worth"* of the human person – of each and every human person, *per se* – is a well-established universal norm, the basis of international human rights law. All human rights derive from this norm, as the aforementioned international instruments and numerous others proclaim. Moreover, as supra-national supervisory and enforcement mechanisms involving judicial or quasi-judicial protection of human rights, are developing, individuals gradually acquire an 'autonomous' status under international law: they become subjects of (substantive and procedural) rights, as well as obligations, which are not necessarily linked to their nationality[15]. Individual obligations arise by virtue of the "inherent in human rights" "positive obligations" of the States[16]; the horizontal direct effect of human rights norms, which is often explicitly provided by international treaties[17] or deduced therefrom by treaty bodies (examples *infra* Nos 25, 43-50); the interpretation of national law in conformity with supranational law; and/or the criminal liability of individuals under international law. Consequently, not only States, but also individuals and private legal entities are (directly or indirectly) responsible for the safeguard of the dignity and worth of the human person.

13. International human rights law permeates, *via* primary and secondary EC/EU law and ECJ case-law, the EC/EU legal order, where the limitation of national sovereignty is wider, the supervisory and enforcement mechanisms are stronger and direct effect constitutes an essential and constantly (directly or indirectly) reinforced feature[18]. Human rights, and *human dignity* as a fundamental right forming part of

15. See E. ROUCOUNAS, *Facteurs privés en droit international public,* Académie de Droit International, *Recueil des cours*, vol. 299 (2002), M. Nijhoff 2003, in particular p. 110 s.

16. See e.g. ECtHR *Marckx v Belgium*, 13.6.1979, Series A No 31, para. 31; *Airey v Ireland*, 9.10.1979, Series A, No 32, para. 25; *Siliadin v France*, 26.7.2005, Rep. 2005-VII, paras. 77-89; *Ilascu v Moldova & Russia*, 8.7.2004, Rep. 2004-VII, para. 313 (positive obligations are inherent in the obligations undertaken by the parties by virtue of ECHR Art. 1); HRC General Comments No 20 (Art. 7) and No 31 (Art. 2) CCPR.

17. E.g. the CCPR (Arts. 6(1), 17(2), 20); the CERD (Arts. 2, 4, 6, 7); the CEDAW (Art. 2); the Convention against Torture (Art. 4); the Convention on the Protection of All Migrant Workers and Members of their Families (Art. 16(2), 25(2)); several ILO Conventions; the African Charter (Art. 28).

18. ECJ Cases 26/62 *Van Gend & Loos* [1963] ECR 9; 106/77 *Simmenthal* [1978] ECR 629; C-397-403/01 *Pfeiffer* [2004] I-8835; V. SKOURIS, *Fundamental Rights and Fundamental Freedoms: The Challenge of Striking a Delicate Balance*, SAME AUTHOR, *Effet utile versus Legal Certainty: the Case-law of the Court of Justice on the Direct Effect of Directives*, European Business Law Review, vol. 17, issue 2, 2006, p. 225, p. 241, respectively; S. PRECHAL, *Does direct effect still matter?*, CML Rev. 2000, p. 1048-1069.

EC/EU law[19] – indeed "the most fundamental right of all"[20] along with the right to life – constitute the Union's cornerstone (supra No 2); they are binding and judicially enforceable upon the Union, its Member States and individuals.

14. Another well-known feature of human rights norms also obviously derives from the dignity and worth of the human being: human rights norms, whether international or national, provide a *minimum* guarantee, which can be surpassed by any other international or national norm; indeed, according to a principle of international human rights law, which is expressed in most human rights treaties[21], in Art. 53 of the EU Fundamental Rights Charter[22] and in ECJ case-law[23], the rules that are more favourable to human rights prevail, whatever their source, the principles of *lex posterior* and *lex specialis* not applying to them[24] (principle of the more favourable norm).

15. In the quest for the roots of human rights that led to the UNESCO Convention (*supra* No 3, *infra* Nos 17-19), a significant milestone was the realization of the book *"The Right to be a Man"*, a contribution to the twentieth anniversary of the Universal Declaration. On the initiative and under the coordination of Jeanne Hersch, then director of UNESCO's Section of Philosophy, all UNESCO Member States were

19. ECJ Case C-377/98 *The Netherlands v European Parliament,* [2001] ECR I-7079, para. 70.

20. ECJ Attorney General Fr. JACOBS in Case C-377/98 *The Netherlands v European Parliament,* para. 197.

21. E.g. the ECHR (Art. 53); the European Social Charter (ESC), 1961 (Art. 32); the ESC (revised) (Art. H) and all other CoE treaties; the CCPR (Art. 5); the CESCR (Art. 5); the Convention on the Rights of the Child (Art. 41); the CEDAW (Art. 23); the Convention on the Protection of All Migrant Workers the ILO Constitution (Art. 19(8)); the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Art. 20(2)); the AmerCHR (Art. 29); the Additional Protocol to the AmerCHR in the Area of Economic, the Social and Cultural Rights (Art. 4); the Inter-American Convention to Prevent and Punish Torture (Art. 16); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Arts. 13, 14); the Inter-American Convention on Forced Disappearance of Persons (Art. XV); the OAU Convention on the Specific Aspects of Refugee Problems in Africa, 1969 (Preamble, Art. VIII); the African Charter (Art. 60) and its Protocols on the African Court (Art. 7) and on the Rights of Women (Art. 31); the Arab Charter (Art. 43); the African Charter on the Rights and Welfare of the Child (Art. 1(2)).

22. Art. 53 of the Charter: "*Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all Member States are party, including the [ECHR], and by the Member States' constitutions*." On the Charter see *supra* note 2.

23. See *e.g.* ECJ Cases C-50/96 *Schröder* [2000] ECR I-774, para. 59; C-81/05, *Cordero Alonso* [2006] ECR I-7569, para. 35.

24. On this principle see E. ROUCOUNAS, *Engagements parallèles et contradictoires,* Académie de Droit International, *Recueil des cours*, M. Nijhoff, vol. 206 (1987-VI), p. 197-221. Cf. ECJ *Schröder,* op. cit.

asked to send texts written any time before 1948, the year of the Universal Declaration, in whatever form, which expressed, in their opinion, the meaning of human rights. In the words of the then UNESCO Director General René Maheu, "the harvest was admirable. The quantity and quality of the texts and the variety of the problems, ideas and forms of expression were surprising; but what was even more striking was the extraordinary impression of harmonious similarities". "*We saw the wide range of the themes that inspired the Universal Declaration open-up by itself*"[25].

## II. The relationship between cultural traditions and human rights.

*A. Requirements of international human rights treaties.*

16. Certain international treaties explicitly proclaim that human rights set limits on cultural traditions, they exclude the invocation of the latter as a justification for human rights violations and they require that the States parties take measures to modify or eradicate adverse traditions. This obligation is stressed by treaty bodies, which, moreover, consider that such a requirement is inherent in human rights norms, and that, therefore, it applies even where it is not explicitly stipulated. Examples include the following:

*a) Treaties sponsored by the United Nations and their specialized agencies.*

*i) The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (UNESCO Convention), 2005.

17. As Ms Stenou will more specifically deal with this Convention, we will only mention its features and guiding principles which are more closely related to our subject. This Convention implements UNESCO's dual mandate of promoting the "fruitful diversity of cultures" and the "free flow of ideas by word and image", as expressed in its Constitution (1946). Its merit lies in the place it assigns to creativity in the context of globalization. It aims to benefit individuals and societies as a whole by guaranteeing them the enjoyment of a diversity of cultural expressions in a spirit of openness, balance and freedom. Foremost among the beneficiaries are countries lacking the capacity for the production and dissemination of their cultural expressions, particularly *developing countries*. The Convention requires several measures in their favour, including the strengthening of their cultural industries and their institutional and management capacities, the transfer of technology and know-how, and different forms of financial assistance. Moreover, the Convention recognizes the importance of the cultural expressions and traditional forms of knowledge of *minorities and indige-*

25. UNESCO, *The Right to be a Man*, R. Laffont, Paris, 1968, Foreword by R. MAHEU (emphasis added).

*nous peoples* (Preamble); it affirms the *principle of equal dignity of and respect for all cultures* (Art. 2 (3)); and it requires "due attention to the *special circumstances and needs* of various social groups, including persons belonging to minorities and indigenous peoples" (Art. 7(1)(a)). As the cultural expressions of these persons are often weakened, the UNESCO General Conference considers that "they will likely become a priority under the Convention"[26].

18. The UNESCO Convention repeatedly refers to the Universal Declaration, the UN Charter, international human rights law and universally recognized human rights instruments, as the framework within which its provisions have to be read and implemented[27]. Moreover, Art. 2 proclaims "*Guiding principles*", the first of which is the "*Principle of respect for human rights and fundamental freedoms*":

> "No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof."

19. Therefore, respect for human rights and fundamental freedoms – indeed their universality – constitutes the backdrop of the UNESCO Convention. As the UNESCO General Conference pointed out, the Convention recognizes, in line with the UNESCO *Universal Declaration on Cultural Diversity*, 2001, "the connecting link between cultural diversity and the full realization of human rights and fundamental freedoms; one could not exist without the other". "Thus, *the risk of cultural relativism*, which in the name of diversity would recognize cultural practices that infringe the fundamental principles of human rights, has been eliminated"[28].

*ii) The Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), 1979.

20. Art. 5(a) of the CEDAW requires that the States parties:

> "take all appropriate measures", "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women"[29].

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26. UNESCO General Conference, 33rd session, 2005, *Ten keys to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, p. 11-12.

27. See Preamble, Arts. 2(1) and (2), 5(1), 8(1).

28. UNESCO General Conference, *Ten keys to the Convention*, op. cit., p. 8 (emphasis added).

29. See R. HOLTMAAT, *"Towards Different Law and Public Policy: the significance of Art. 5a CEDAW for the elimination of structural gender discrimination"*, SZW, 2004*, Research on behalf*

21. The Committee monitoring CEDAW implementation (the Committee) invokes Art. 5(a) in conjunction with other CEDAW provisions, as a horizontal requirement, as well as an autonomous norm[30]. It combines it e.g. with requirements relating to education (Art. 10) or marriage and the family (Art. 16), as well as matters not explicitly addressed by the CEDAW, which it nonetheless considers to be forms of gender-based discrimination, such as violence against women, including domestic violence, which it regards as an expression of sexual stereotypes[31] and which in some States is even allowed by law[32]. We will rely on Committee Comments of the years 2007-2008.

22. In a standard comment, the Committee expresses its concern about "the prevalence of a *patriarchal ideology* with firmly entrenched *stereotypes* and the persistence of deep-rooted *adverse cultural norms, customs and traditions* […] that discriminate against women and constitute obstacles to women's enjoyment of their human rights" and about "conservative views contesting women's human rights on the basis of *cultural values and the preservation of national identity*". It urges the States:

> *"to view culture as a dynamic dimension in the country's life and social fabric, subject to many influences over time and therefore to change"*; "to put into place without delay a comprehensive strategy, including clear goals and timetables, *to modify or eliminate negative cultural practices and stereotypes* that are harmful to and discriminate [directly or indirectly] against women and to promote the full enjoyment of their human rights"[33].

23. Recent examples of adverse traditional practices, which in certain countries are allowed by law and in others are stronger than law[34], include the following: stoning to death and flogging of women for committing fornication (extra-marital sexual

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*of the Dutch Ministry of Social Affairs and Employment*, PO Box 90801, 2509 LV The Hague, The Netherlands, 2004.

30. See e.g. General Recommendation No 3 (6th Session, 1987) on the requirements of Article 5.

31. General Recommendation No 19; UN Secretary General, Study on all forms of violence against women, A/61/122 and Add./Corr.1, which the Committee recommends to States parties.

32. E.g. in Nigeria, the Penal Code, allows a man to chastise his wife (Nigeria NGO Coalition, Shadow Report to the 41st Session, 2008).

33. E.g. Concluding Comments: Mauritania, Niger, 38th Session, 2007; Mozambique, 38th Session, 2007; Guinea, Jordan, Kenya, Henduras, 39th Session, 2007; Lebanon, 40th Session, 2008; Concluding Observations: Tanzania, 41st Session, 2008 (emphasis added). See also Concluding Observations: Yemen, 41st Session, 2008.

34. See General Recommendations No 19 (11th Session, 1992, violence against women); No 14 (9th Session, 1990, female circumcision); No 21 (13th Session, 1994, equality in marriage and family relations) and Concluding Comments or Observations, such as those quoted in notes below.

relations) and adultery[35]; honour crimes and forced virginity tests whose results are used against women[36]; female circumcision or genital mutilation[37]; murder of women who cannot pay a dowry, acid attacks; polygamy, forced and early marriage (including child betrothal or marriage) or remarriage[38], marriage without the woman's presence[39], bride price[40]; forced pregnancies, abortions or sterilization; murder or mutilation by the husband of women giving birth to girls[41]; limited or no schooling for girls and training only in fields suiting their "nature"[42]; expressions of women's subordinate status in the family, such as male guardianship over them[43], dealing with daugh-

35. In Nigeria, this is allowed by the *Shari'a* Penal Code which applies in several Nigerian states (Nigeria NGO Coalition, Shadow Report to the 41st Session, 2008).

36. E.g. Concluding Comments: Jordan, 39th Session, 2007; Yemen (where, according to the Penal Code, honour crimes by husbands or other male relatives are not prosecuted), 41st Session, 2008.

37. The Committee urges the criminalization of genital mutilation and the introduction of remedies and support for victims (e.g. Concluding Observations: Yemen, Nigeria, 41st Session, 2008); it also deplores the non-implementation of laws prohibiting it and the impunity of perpetrators (Concluding Comments: Guinea, Kenya, 39th Session, 2007; Tanzania (where it is practiced on new born baby girls and is also forced on adult women), 41st Session, 2008), and it rejects cultural and religious justification (Guinea, op. cit.). See also Saudi Women for Reform, Shadow Report, 40th Session, 2008.

38. Polygamy, along with early and forced marriage, is legal e.g. in Yemen (where a man is allowed up to four wives) (Concluding Observations: Yemen; and Sisters Arab Forum for Human Rights, Shadow Report, 41st Session, 2008), Morocco, Jordan, Mauritania, and Kenya (in the latter by the Mohammedan Marriage and Divorce Law); the Kenyan delegation acknowledged the need to address the problem; the Jordanian delegation expressed willingness to respond to the Committee's recommendations, which included this issue (Concluding Comments: Jordan, Kenya, and UN General Assembly WOM/1649 and WOM/1644, respectively, 39th Session (press releases); Mauritania, 38th Session, 2007; Morocco, 40th Session, 2008, and Moroccan Women NGOs, Shadow Report).

39. Sisters Arab Forum for Human Rights, Shadow Report for Yemen to 41st Session, 2008.

40. Concluding Observations: Tanzania, 41st Session, 2008.

41. CAFOB (Collective of Burundi Women Associations and NGOs), Shadow Report to the 1st periodical report on the implementation of the CEDAW, Burundi, 40th Session, 2008

42. E.g. Concluding Comments: Saudi Arabia, and Saudi Women for Reform, Shadow Report, 40th Session, 2008; Belize, Guinea, Indonesia, 39th Session, 2007.

43. The guardianship is for life; it excludes the woman's "legal capacity in matters of personal status, including marriage, divorce, child custody, inheritance, property ownership and decision-making in the family, and the choice of residency, education and employment", access to health facilities and justice (Concluding Comments: Saudi Arabia, and Saudi Women for Reform, Shadow Report, 40th Session 2008). The male guardian (*mehrem*) is a relative who is not allowed to marry the woman, such as a father, brother, son, uncle, nephew, grandfather or father-in-law, regardless of his and her age and education. He can conclude marriage for the woman without her consent or even her presence (Concluding Observations: Yemen; Sisters Arab Forum for Human Rights, Shadow Report, 41st Session, 2008).

ters as property, divorce by *repudium* of the wife[44], rules on child custody, personal, property and inheritance[45]; dowry and bride burning, mass crimes against women (including sexual violence and massacres), witch-hunting and widowhood rites leading to murders[46]; child labour, including domestic work under slavery-like conditions, to which girls are particularly vulnerable[47].

24. The Committee urges States parties to modify discriminatory laws and adopt effective punitive and remedial measures, including criminal and civil sanctions and remedies. *Inter alia*, they must ensure that honour crimes perpetrators are not exonerated and that marriage to the victim does not exempt a sexual offender from punishment, according to the law or in practice[48].

25. However, "discrimination under the Convention [including violence against women] is not restricted to actions or omissions by or on behalf of Governments". The Committee recalls the general provisions of Art. 2(e) and (f), which require that States parties "*take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise*" and "*to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women*", as well as the requirements of Art. 5(a) (*supra* No 20). It further recalls that "under general international law and specific human rights covenants, States may also be responsible for *private acts* if they fail to act *with due diligence* to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation"[49] and holds States accountable for lack of due diligence by State actors[50]. Non-State actors' practices for which the State is held accountable include those in-

44. Repudiumis legal e.g.: in Morocco and Mauritainia, see Moroccan Women NGOs, Shadow Report to the 40th Session, 2008; Concluding Comments: Mauritania, 38th Session, 2007.

45. E.g. Concluding Comments and UN General Assembly WOM/1594 (press release): India, 37th Session, 2007; Mauritania, 38th Session, 2007; Indonesia, Jordan, 39th Session, 2007; Burundi, Morocco, Saudi Arabia, 40th Session, 2008; Concluding Observations: Nigeria, Tanzania, Yemen, 41st Session, 2008.

46. E.g. Concluding Comments and UN General Assembly WOM/1594 (press release): India, 37th Session, 2007; Saudi Women for Reform, Shadow Report, 40th Session, 2008; NGO Shadow Report on Older Women Rights in Tanzania, 41st Session, 2008.

47. E.g. Concluding Comments: India, 37th Session, 2007; Mauritania, 38th Session; Bolivia, Saudi Arabia (and Saudi Women for Reform, Shadow Report) 40th Session, 2008.

48. E.g. Concluding Comments: Pakistan, Syrian Arab Republic, 38th Session; Jordan, 39th Session 2007; Bolivia, Burundi, Lebanon (this is also deplored in the 3rd Lebanese NGOs' Shadow Report), 40th Session, 2008.

49. General Recommendation No 19, op. cit., para. 9 (emphasis added).

50. See Committee's Views on Communications under the Optional Protocol to the CEDAW: No 2/2003, *A.T. v. Hungary* (26.1.2005); No 5/2005, *Goecke v. Austria* (6.8.2007); No 6/2005, *Yildirim v. Austria* (6.8.2007).

cited by fundamentalists, who "through the misinterpretation of Islam and the use of intimidation and violence, are undermining the enjoyment by women and girls of their human rights"[51].

26. States parties must also take effective *preventive measures to change traditional cultural attitudes and patterns* (including hidden patterns[52]) that perpetuate the idea of women's subordination and are at the root of discrimination, including violence, so as to establish a human rights culture. Such measures include public awareness-raising campaigns; educational campaigns addressing religious and community leaders, parents, teachers and young people; training of the judiciary, law enforcement officials, legal professionals and social workers[53].

27. States parties must eliminate "adverse" or "negative" attitudes and practices detrimental to women belonging to minority, indigenous or immigrant groups. They must also eliminate such practices, where they are based on customary, cultural and/or religious norms and occur *within* such groups, (e.g. forced and early marriage, domestic violence or genital mutilation)[54]. Regarding the latter obligation, the Committee, while welcoming the recognition of cultural diversity and specificities, e.g. of indigenous people, expresses its concern that "the emphasis placed on such specificities might detract from compliance with the Convention provisions" and "might operate to perpetuate stereotypes and prejudices that violate the human rights enshrined in the Convention". Consequently, it urges the State party concerned to ensure that indigenous concepts and practices are in conformity with the CEDAW and *"create the conditions for a wide intercultural dialogue that would respect diversity while guaranteeing full compliance with the principles, values and international norms for the protection of human rights, including women's rights"* (cf. the UNESCO Convention guiding principles, *supra* Nos 17-19)[55].

28. The Committee constantly stresses in its General Recommendations, Concluding Comments on national periodic reports and Views on "Communications" (recourses submitted to the Committee by or on behalf of individuals or groups of indi-

51. Concluding Comments: Pakistan, 38th Session, 2007.

52. Concluding Comments: Morocco, 40th Session, 2008.

53. General Recommendations 21 (Art. 16), and 19 (violence), in conjunction with General Recommendations 3 and 25; Concluding Comments: India, Tajikistan, Kazakhstan, Peru, Viet Nam, 37th Session 2008.

54. E.g. Concluding Comments: Austria, 37th Session 2007; Serbia, 38th Session 2007; Hungary (and summary record of 801st meeting, 31.7.2007), New Zealand, Norway, 39th Session; Sweden, France (and oral intervention by the National Human Rights Consultative Commission, CNCDH), 40th Session, 2008; Finland, Slovakia (and Centre for Civil and Human Rights, Comments to the 4th Report of the Slovak Republic), United Kingdom, 41st Session, 2008. See also Concluding Comments: Singapore, 39th Session, 2007, *supra* No 21.

55. Concluding Comments: Bolivia, 40th Session, 2008.

viduals) under the Optional Protocol to the CEDAW[56] that the CEDAW is violated where, in spite of *de jure* gender equality, traditional or customary rules or practices prevent the achievement of *de facto* gender equality in all fields. It empasizes the obligation of States parties to attain not only formal, but moreover substantive gender equality by taking *"temporary special measures"* (positive measures) as required by Art. 4(1) – which specifies that these *do not constitute discrimination* – and by eradicating not only direct, but also indirect discrimination. Moreover, although the rights to effective access to an independent court, fair trial and effective implementation of judicial decisions are not explicitly enshrined in the Convention, the Committee considers them to be inherent in the human rights that the Convention guarantees.

29. States parties acknowledge, in principle, the necessity to change discriminatory cultural stereotypes – e.g. those resulting from "local application of *Shari'a* law"[57]. Several of them invoke measures that they take to this effect. Thus, Jordan states that it promotes "a moderate, humane and equality-based Islam" by "spearheading educational reform" and changing laws in line with the principle of *"enlightened Islamic jurisprudence"*, or by "developing a guide for preachers and imams emphasizing women's rights in Islam"[58]. Even where national constitutional guarantees of religious freedom and protection of indigenous population rights are invoked, the Committee urges law reform and interpretation of religious norms in a way that is consistent with the CEDAW[59], or the application of uniform personal status law in line with the CEDAW to all women in the country, irrespective of their religion[60].

30. NGOs' "Shadow Reports" to the Committee, while acknowledging cultural resistance to progress, deplore their government's reference to such resistance to "downplay its liability"; thus, Muslim women's NGOs demand changes in law along with a global State policy to counter cultural excuses, such as so-called "Islamic values"[61]. Moreover, Muslim women's rights groups stress that the concept of "Islamic

56. See all these documents on www.un.org/womenwatch/daw/cedaw.

57. Indonesian delegation to the Committee, 39th Session, 2007, UN General Assembly WOM/1594 (press release).

58. Jordan delegation to the Committee, underscoring that the government had issued the "Amman Message" of moderation, UN General Assembly WOM/16459 (press release) and Concluding Comments: Jordan (whose Islam is the official religion), 39th Session, 2007.

59. E.g. in Singapore, a multi-cultural country, personal status is governed by a dual system of civil law and Sharia law, the latter being applied, as required by the Constitution, to family and inheritance matters of the indigenous Malays. The Committee urges law reform and consistent Islamic law interpretation (see Concluding Comments: Singapore, and Statement by the leader of the Singapore delegation, 39th Session, 2007.

60. E.g. Concluding Comments: Lebanon (this is also deplored in the 3rd Lebanese NGOs' Shadow Report), 40th Session, 2008.

61. Moroccan Women NGOs, Shadow Report to the 40th Session, 2008.

law" is "very obscure and inaccurate", as "Islam incorporates many schools of thought that adopt different stands according to their interpretation of the sacred text", and they deplore that their government neglects positive sides of customs and traditions, endorsing stands which restrict human rights, and women's rights in particular. This holds, *inter alia*, for male guardianship (*supra* No 23) and face cover, according to these groups, which also point out that some adverse customs and traditions date back to pre-Islamic Arabia and are preserved "with the blessing of the Islamic judiciary system". They further denounce violations of women's fundamental rights by State institutions on the pretext of protecting "Islam ethics", including the tolerance of horrible crimes and the severe sentencing of raped women rather than rapists[62] (see also references to Shadow Reports *supra* under Nos 23 and 24).

31. Regarding Greece, in particular, the Committee, *inter alia*, "expresses its concern about the non-application of the general law of Greece to the Muslim minority on matters of marriage and inheritance, as Muslim communities can choose to be governed by *Shari'a* law". This situation leads to discrimination against Muslim women, in contravention of the Greek Constitution and Article 16 of the Convention. The Committee notes with concern the continuing phenomenon of early marriage and polygamy in the Muslim community despite both being in conflict with the Greek constitutional order and the Convention". Consequently, it urges Greece "to increase efforts to raise the awareness of Muslim women of their rights and of remedies against violations, and to ensure that they benefit from Greek law on marriage and inheritance"; to enforce its laws prohibiting early marriages and polygamy and to take comprehensive measures to eliminate these practices, in line with the Greek constitutional order, Convention article 16 and the Committee's General Recommendation 21 on equality in marriage and family relations[63].

32. The competence of the Mufti and the application of the *Shari'a* in family matters of the Greek Muslim minority is provided by the treaties of Athens (1913) and Lausanne (1923). It seems that marriages of girls from the age of twelve and of boys from the age of fourteen are common among Greek Muslims. A Muslim Greek Parliament member told the AFP that the Mufti concerned usually avoids celebrating marriages of children under fifteen, but this was an exceptional case, as the man had raped the girl and the (Rom) families of both were eager to save family honour. The *Shari'a* also applies to divorce granted by the Mufti, in particular regarding child custody, the child's best interest not being the decisive criterion, as required by Greek family law. Greek courts may overturn a Mufti's decision if they consider it contrary

62. Saudi Women for Reform, Shadow Report to the 40th Session, 2008 (a characteristic example: a woman abducted and gang raped by seven men fourteen times was sentenced to six months in prison and 200 lashes).

63. Concluding Comments: Greece, 39th Session, 2007.

to public order, which includes respect for women's and children's rights, but in practice they seldom do overturn these decisions. Moreover, a quite recent judgment of the Supreme Civil Court (*Areios Pagos*) (No 1097/2007), in contravention of the CEDAW and the CCPR, accepted the application of *Shari'a* inheritance rules to Greek Muslims, thus upholding the entitlement of daughters to half the share of sons (see *supra* No 27, *infra* No 50).

33. The problem of Muslim child marriages was addressed by the Greek National Commission for Human Rights (GNCHR)[64], in response to a report by Agence France Presse (AFP) published under the headline "In Greece girl-children are still lawfully married". The report dealt with the marriage of an 11-year-girl to a 22-year-old man, celebrated by a Mufti of North-Eastern Greece. The marriage had been discovered in Germany to which the couple had migrated. A Düsseldorf court had ordered the "spouses'" separation and placed the "bride" in a child protection institution while charges were brought against the "groom" for child seduction.

34. In its opinion on the above child marriage, the GNCHR underlined the following: The provisions of the Athens and Lausanne treaties relating to family matters of the Muslim minority have been amended or replaced by specific provisions of more recent human rights treaties ratified by Greece, such as the Covenant on Civil and Political Rights and the CEDAW, which require the full and free personal consent of future spouses and the establishment of a minimum marriageable age that ensures the expression of such consent (18 years). Moreover, the Vienna declaration adopted unanimously at the World Conference on Human Rights in 1993, while drawing attention to the importance of historical, cultural and religious traditions, recalled the duty of UN member states to promote and protect all human rights and to eradicate any conflict between women's rights and traditional or customary practices, cultural prejudices and religious extremism[65]. Therefore, Greece must comply with these obligations toward all its citizens and residents[66]. Two years earlier, the GNCHR, on the basis of a similar reasoning, had considered that marriages of young Muslim girls by proxy, which were celebrated by Muftis, were non-valid under Greek law[67].

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64. GNCHR 2005 Report, www.nchr.gr. The GNCHR is an independent agency established in accordance with the Paris Principles (85th Plenary Assembly of the UN General Assembly, 20 December 1993, A/RES/48/134). On the legal problems connected with the Greek Muftis' judicial functions, see in particular J. KTISTAKIS, *Islam Holy Law and Greek Muslim citizens* (in Greek), Sakkoulas publications, Athens/Thessaloniki 2006; S. MATHIAS, *The Mufti as a judge* (in Greek), The Constitution (Το Σύνταγμα), 2007, p. 427 s.

65. See also CoE Parliamentary Assembly, Resolution 1468(2005), 29th Sitting, Forced marriages and child marriages.

66. See also CEDAW General Recommendation No 21 (equality in marriage and family relations).

67. GNCHR 2003 Report, www.nchr.gr. On the above Muslim marriage cases see our note in

35. Under the Greek Civil Code, the marriageable age is eighteen for women and men (the age of majority). Marriages involving minors are null and void. They may however be exceptionally permitted, on serious grounds, by judicial decision. Pregnancy has traditionally been deemed to be a "serious ground" for permitting this exception, but such marriages have become rare among the non-Muslim population. Although Muslim child marriages are entered into not on the basis of this exception, but in application of the *Shari'a*, this was an opportunity for the GNCHR to deal with the relevant Civil Code provision as well; it recommended that it be replaced by a transitory rule fixing the minimum age at which marriage may be exceptionally permitted to sixteen years, subject to the conditions required by the current provision. The transitory provision should remain in effect for a five year period, at the expiry of which no exception for marriages of minors should be permitted, whatever their religion.

*iii) The Convention on the Elimination of All Forms of Racial Discrimination* (CERD), 1966.

36. The elimination of prejudices and traditional negative attitudes and practices is crucial to the effective implementation of the CERD. This is why it is required by the CERD and stressed by the Committee monitoring its implementation (the Committee)[68]. The CERD, proclaiming that "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, *in theory or in practice*, anywhere", stresses the need "to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to *prevent and combat racist doctrines and practices*" (Preamble)[69].

37. Therefore, States parties must "*prevent, prohibit and eradicate all practices*" of racial segregation and apartheid (Art. 3). Condemning "all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form", the CERD requires that States parties "*adopt immediate and positive measures designed to eradicate any incitement to, or acts of such discrimination*" (Art. 4, listing examples of such measures). States parties also have to "adopt immediate and effective measures, particularly in the fields of teach-

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Deutscher Juristinnenbund, Aktuelle Informationen, 3-2007, p. 38; regarding immigrants in Germany, see B. WURSTER, *Phänomen Zwangsehe – eine fehlgeschlagene Integration?*, Aktuelle Informationen, op.cit., p. 27, www.djb.de, and the website "wir sind eure Töchter, nicht eure Ehre" (we are your daughters, not your honour): http://www.serap-cileli.de.

68. www2.ohchr.org/english/bodies/cerd.

69. Emphasis added.

ing, education, culture and information, with a view to *combating prejudices* which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial and ethnic groups […]" (Art. 7)[70].

38. The Committee recalls that, according to the Vienna Declaration (*infra* N[os] 74-76), it is the duty of States, "*regardless of political, economic and cultural system*", to promote and protect all human rights and fundamental freedoms. It thus addresses quasi-taboo issues of discrimination rooted in century long customs, such as discrimination based on 'descent' in a wide sense which includes "discrimination against members of communities based on forms of *social stratification* such as *caste* and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights". Drawing on reports of State parties, contributions by NGOs and shattering testimonies by individual victims of such discrimination, which revealed its extent and persistence, it "*strongly condemns*" it and recommends measures for its effective elimination[71].

39. States parties should "address *xenophobic attitudes and behaviour*" and "take resolute action to counter any tendency to *target, stigmatize, stereotype or profile*, on the basis of race, colour, descent, and national or ethnic origin, members of 'non-citizen' population groups, especially by politicians, officials, educators, the media, on the Internet and other electronic communications networks and in society at large". In the same vein, it condemns discrimination against Roma.[72].

40. The Committee stresses that "when the [CERD] was being adopted, Article 4 [*supra* No 37] was regarded as *central to the struggle against racial discrimination*. At that time, there was a widespread fear of the revival of authoritarian ideologies" "Since that time, the Committee has received evidence of *organized violence* based on ethnic origin and the political exploitation of ethnic difference. As a result, *implementation of article 4 is now of increased importance*". The Committee underlines that "the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression" "The citizen's exercise of this right carries special duties and responsibilities, specified in article 29(2) of the [Universal Declaration], among which the obligation not to disseminate racist ideas is of particular importance"[73].

41. The Committee draws particular attention to *multiple discrimination against*

70. Emphasis added.

71. General Recommendation No 29, 1.11.2002 (emphasis added). On the original procedure of elaboration of this Recommendation and its importance, see L.-A. SICILIANOS, *Les potentialités de la Convention pour l'élimination de la discrimination*, in "Liberté justice, tolérance. Mélanges en hommage au Doyen G. Cohen - Jonathan", Bruylant 2004, p. 1385-1397.

72. General Recommendation No 30, 1.10.2004 (emphasis added) and No 27, 16.8.2000.

73. General Recommendation No 15, 23.3.1993 (emphasis added).

*women*: "Certain forms of racial discrimination may be directed towards women specifically because of their gender, such as *sexual violence* committed against women members of particular racial or ethnic groups in detention or during armed conflict; the *coerced sterilization* of indigenous women; *abuse of women workers* in the informal sector or *domestic workers"*. Moreover, "racial discrimination may have consequences that affect primarily or only women, such as *pregnancy resulting from racial bias-motivated rape*; in some societies women victims of such rape *may also be ostracized*. Women may also be further hindered by lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as *gender bias in the legal system and discrimination against women in private spheres of life*"[74].

42. We consider the CERD relevant to our topic, because: i) it condemns racism, in the widest sense, even where it stems from cultural traditions, and ii) the idea of cultural relativism and non-universality of human rights seems to us to amount in fact to racial bias and discrimination. Whether intentionally or unintentionally, this idea is linked to stereotypes of racial superiority and inferiority – to the perception of human rights as a privilege of an elite – and leads to a relativist perception of the dignity and worth of the human person.

*iv) The Covenant on Civil and Political Rights* (CCPR), 1966.

43. Art. 2(2) requires that States parties take steps to give effect to the Covenant rights. "Failure to comply with this obligation cannot be justified by reference to political, social, *cultural* or economic considerations within the State"[75]. The CCPR guarantees the right of persons belonging to national, religious or linguistic minorities "to enjoy in common with other members of their group, their civilisation, to have and exercise their religion or to use their language" (Art. 27). However, monitoring the implementation of Art. 3 CCPR (equal rights of men and women), the Human Rights Committee (HRC) stresses the obligation of States parties to ensure that cultural or religious traditions and practices are not used as a justification for women's rights violations and requests information on the measures they take in order to neutralize such practices. In this respect, the HRC seems to draw inspiration from the CEDAW and the CEDAW Committee.

44. The HRC recalls that "Articles 2 and 3 mandate States parties to take all steps necessary […] to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights" and it stresses that:

74. General Recommendation No 25, 20.3.2000 (emphasis added). See also General Recommendation No 29, op. cit.

75. HRC, General Comment No 31 (emphasis added).

> "Inequality in the enjoyment of rights by women throughout the world is *deeply embedded* in *tradition, history and culture, including religious attitudes*. The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female foetuses. States parties should ensure that *traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights*. States parties should furnish appropriate *information on those aspects of tradition, history, cultural practices and religious attitudes* which jeopardize, or may jeopardize, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors".

45. The HRC requires the *eradication of attitudes and practices* violating women's dignity and their rights under the CCPR, including practices undermining *women's right to marry* only with their free and full consent, which are connected to "*social attitudes which tend to marginalize women victims of rape and put pressure on them to agree to marriage*"; or the abolition of "*laws or practices"* preventing the marriage of a woman of a particular religion to a man of no religion or of a different religion, or allowing *polygamy* or *repudium*.

46. States parties should also "*eradicate,* through legislation and other appropriate measures, *all cultural or religious practices* which jeopardize the freedom and well-being of female children", including adverse treatment of girls in education, feeding and health care. The HRC emphasizes that "so-called '*honour crimes*' which remain unpunished constitute a serious violation of the Covenant and in particular of articles 6, 14 and 26"[76]. It requires "appropriate measures to ensure that domestic laws and *customary law*, as well as certain aspects of the *Shari'a*, are interpreted and applied in ways compatible with the provisions of the CCPR"[77].

47. The HRC further stresses that "the rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights […]. States should report on any legislation or administrative practices related to membership in a minority community that might constitute an infringement of the equal rights of women under the Covenant (Communication No. 24/1977, *Lovelace v. Canada*, Views adopted July 1981) and on

76. See all these requirements in HRC, General Comment No 28 on Article 3, 68th Session, 29.3.2000, and HRC Report 2000, vol. I, Consideration of Reports by Cameroon, Morocco, Korea, Kuwait; HRC Report 2000, vol. I, Consideration of Report by Gabon; HRC Report 2003-2004, vol. I, Consideration of Report by Uganda and Namibia; HRC Report 2005-2006, vol. I, Consideration of Report by Congo and the Central African Republic; HRC Report 2006-2007, vol. I, Consideration of Reports by Madagascar and Zambia.

77. HRC Report 2003-2004, vol. I, Consideration of Report by Gambia.

measures taken or envisaged to ensure [the enjoyment of these rights]. Likewise, States should report on measures taken to discharge their responsibilities in relation to *cultural or religious practices within* minority communities that affect the rights of women"[78] (cf. CEDAW Committee, *supra* No 27, and UNESCO Convention guiding principles, *supra* Nos 17-19).

48. Particularly pertinent to the relationship between cultural traditions and human rights is Art. 7 CCPR (prohibition of torture and cruel treatment or punishment) which aims to protect "both the dignity and the physical and mental integrity of the individual". States parties must afford everyone protection through legislative and other measures against the acts prohibited by Art. 7, "whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity". Art. 7 allows no derogations; no justification or extenuating circumstances can be invoked to excuse a violation of this Article[79]. The HRC refers to Art. 7 and to Art. 24 (protection of children) in relation to *laws and practice* regarding domestic and other types of violence against women, including rape, forced abortion, forced sterilization and genital mutilation and it requires measures of protection, including legal remedies[80].

49. The HRC also requests States to take "appropriate vigorous, binding measures" to eradicate *customary practices* against the life and corporal and moral integrity of children, such as those committed in a region of Madagascar, where the birth of twins is regarded as a bad omen; in such cases, only one of the newborns is kept by the family, while the other is automatically abandoned (violation of Arts. 6 (right to life) and 24 (protection of children)). Effective measures are also required to put an end to the employment of children as domestic servants "in conditions that are often tantamount to slavery and lend themselves to all kinds of abuse" (Art. 8 (prohibition of slavery) and Art. 24 (protection of children)) (cf. *supra* No 23). The HRC further requires measures to ensure that customary courts administer a fair justice[81].

50. Regarding Greece, the HRC, expresses its concern about the impediments that Muslim women might face as a result of the non-application of the general law of Greece to the Muslim minority on matters such as marriage and inheritance (Arts. 3 and 23); it urges the State to increase the awareness of Muslim women of their rights and the availability of remedies, and to ensure that they benefit from the provisions of Greek civil law (cf. *supra* Nos 32-34)[82]. The Committee monitoring the implementa-

78. HRC, General Comment No 2, op.cit.

79. HRC, General Comment No 20 on Article 7, 10.03.1992.

80. General Comment No 28 on Article 3. See also HRC Report 2000, vol. I, Consideration of Report by Cameroon.

81. HRC Report 2006-2007, vol. I, Consideration of Report by Madagascar.

82. HRC Concluding Observations: Greece, 25.04.2005 (CCPR/CO/83/GRC).

tion of the *Convention on the Rights of the Child* expresses analogous concerns about the practice of Muftis, in case of separation of the parents, to grant the custody of children under a certain age to the mother and of children over a certain age to the father, without taking into account the interest of the child and without seeking the child's opinion[83].

*b) Treaties applying in the African, American and Asian continents.*

*i) The African Charter on Human and Peoples' Rights* (African Charter), 1981.

51. The African Charter of the Organisation of African Unity (OAU)[84] (*supra* No 10) is in force since 1986. Its objectives are "*freedom, equality, justice and dignity*" and it recognizes "that fundamental rights stem from the *attributes of the human being* which justifies their national and international protection". It also proclaims the *universality and indivisibility* of human rights; and reaffirms the adherence of African States to "the principles of human and peoples' rights and freedoms" contained *inter alia* in declarations, conventions and other *UN instruments* (Preamble)[85].

52. While it proclaims every individual's right to "take part in the cultural life of his community" and makes "the promotion and protection of morals and traditional values recognized by the community" a duty of the State (Art. 17(2) and (3), the African Charter imposes on individuals the duty "to preserve and strengthen *positive African cultural values*" (Art. 29(7)). It also requires the elimination of any discrimination against women and the protection of women's and children's rights "*as stipulated in international declarations and conventions*" (Art. 18(3))[86] and enshrines the principle of the more favourable norm (Art. 60) (*supra* No 14).

53. The African Charter establishes an African Commission on Human and Peoples' Rights (African Commission) which it mandates to promote and protect human rights in Africa. The African Commission "*shall draw inspiration* from *international law* on human and peoples' rights", particularly, *inter alia,* from *UN instruments* (the UN Charter, the Universal Declaration and other relevant instruments sponsored by the UN and its Specialized Agencies whose the States parties are members) (Article 60). In order to determine the principles of law, it also takes into consideration other general or special international conventions to which OAU member states are parties and "*African practices consistent with international norms on human and people's*

83. CRC/C/114 (2002), 777th meeting, 1.2.2002 (CRC/C/SR.777), paras. 144-145.

84. Websites of the AU http://www.africa-union.org and the African Court Coalition www.africancourtcoalition.org

85. Emphasis added.

86. Emphasis added.

*rights*" (Art. 61)[87]. Thus, the African Charter recognizes the limits on cultural traditions set by human rights (cf. *supra* Nos 18-19).

54. In the same vein, the African Commission, in a Resolution on the Situation of Women and Children in Africa[88], expresses its concern about "the situation of women and children in Africa", as they are "victims of multiple human rights violations", and about "*the persistence of traditional practices that are harmful* to women and children in some African countries ("almoudou" children and genital mutilation)"[89]. Consequently, it urges Member States of the African Union (AU) (*supra* No 10), to ratify the Protocol to the African Charter on the Rights of Women in Africa and the CEDAW, and those who have ratified the CEDAW to withdraw their reservations.

55. The African Commission undertakes "Missions of Promotion" to African States, where it holds consultations with the authorities and representatives of civil society. The latter come out even in countries with authoritarian regimes where political activities are banned[90]. They complain, *inter alia*, about prevailing traditional practices which violate human rights, in particular those of women and children; widespread violence of all kinds; leniency of the courts towards perpetrators, difficulty for NGOs' to have access to public media, lack of awareness of the public about human rights[91]; abuses by the army and the police[92]; arbitrary imprisonment, civilian abuse by the authorities and political and military interference with the judiciary[93]. In several reports on such Missions, the Commission recommends to governments to *harmonize culture/customary law with positive law*[94].

56. By a Protocol to the African Charter[95], an African Court was established, with jurisdiction for "all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and *any other relevant Human Rights instrument* ratified by the States concerned" (Art. 3). The applicable law includes "the

87. Emphasis added.

88. Done in Banjul, 4 June 2004, 71.ACHPR/Res.66(XXXV)04.

89. Emphasis added.

90. E.g. in Swaziland which is under an absolute monarchy, the King having abolished the Constitution.

91. See e.g. Reports of Promotional Missions to Burundi, February 2004; to the Seychelles, July 2004; to Guinea Bissau, April 2005; to Lesotho, April 2006; to Mauritius, August 2006; to Swaziland, August 2006.

92. Report of the Mission to the Seychelles, op. cit.

93. Report of the Mission to Guinea Bissau, op. cit.

94. See e.g. Reports of Promotional Missions to the Kingdom of Swaziland, 21-25.8.2006; to the Mauritius, August 2006; to the Republic of Guinea Bissau, April 2005.

95. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998.

provisions of the Charter *and any other relevant human rights instrument* ratified by the States concerned" (Art. 7). This Court was recently merged with the Court of Justice of the AU. Thus, a single Court, the African Court of Justice and Human Rights, came into being, which shall be the main AU judicial organ. Several of the provisions governing the operation of the latter Court are analogous to those regarding the African Commission (*supra* No 53): the applicable law shall include "*international treaties,* whether general or particular, ratified by the contesting States"; "*international custom*, as evidence of a general practice accepted as law"; and "the *general principles of law recognized universally* or by African States" (Art. 31(1)(a), (b) and (d)[96]. Thus, the universality of human rights is constantly reaffirmed.

*ii) The Inter-American and African treaties on women's rights,* 1994 and 2003.

57. The *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (the Inter-American Convention), 1994, in force since 1995, and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (the African Protocol), 2003, in force since 2005 (*supra* No 10), include provisions which are very similar to those of the CEDAW. The second of these treaties refers to the CEDAW, along with the Universal Declaration, the two UN Covenants, "and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights", while it expresses the concern of the AU that "women in Africa still continue to be victims of discrimination and harmful practices" (Preamble). The first of these treaties refers to the Universal Declaration and "other international and regional instruments". Both treaties enshrine a *Right to Dignity*, which is *"inherent in a human being"* (Art. 4(e) and 3, respectively), and they prohibit every form of violence, including domestic violence (Arts. 3-6 and 4, respectively). Both treaties express the principle of the more favourable norm (Arts 13, 14 and 31, respectively) (*supra* No 14), and they require the eradication of negative stereotypes and practices.

58. The Inter-American Convention, in particular, enshrines the "right of women to be valued and educated *free of stereotyped patterns of behaviour* and *social and cultural practices* based on concepts of inferiority or subordination" (Art. 6(b)), and requires that States parties "amend or repeal existing laws and regulations or modify legal or *customary practices* which sustain the persistence and tolerance of violence against women" (Art. 7(e)). Furthermore, Art. 8(b) is analogous to Art. 5(a) CEDAW; it requires that States parties:

"modify social and cultural patterns of conduct of men and women, including

96. Protocol on the Statute of the African Court of Justice and Human Rights, 2008 (emphasis added).

> the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women."

59. In the same vein, Art. 4 of the African Protocol requires that State parties:

> "eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women".

It further requires the *"elimination of harmful practices"* (Art. 5), including *"all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices"*.

Moreover, Art. 2(2)) is analogous to Art. 5(a) of the CEDAW (*supra* No 20); it stipulates:

> "States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men."

60. The process for adopting the African Protocol was lengthy. During its elaboration certain countries expressed reservations on the text, some (such as South Africa) regarded the standards too low; others (such as Libya and Egypt) argued that it violated *Shari'a* law or were concerned about the legality of customary marriage (Kenya). The final text was, however, adopted without reservations[97]. Art. 26(1) entrusts the African Commission, which also draws from international human rights law (*supra* No 53), with the monitoring of the Protocol, *via* periodic reports submitted by States parties in accordance with Art. 62 of the African Charter.

61. Articles 10-12 of the Inter-American Convention provide that its implementation is monitored by the Inter-American Commission of Women, which examines national reports, and by the Inter-American Commission on Human Rights (IACHR), established by the American Convention on Human Rights (AmerCHR), which receives petitions from persons or group of persons or NGOs for violations of both Conventions. As the Preambles of both Conventions refer to the Universal Declara-

97. BROWNLIE/GOODWIN-GILL, *Basic Documents on Human Rights*, op.cit., p. 1029.

tion and "other international or regional instruments", the latter Commission interprets them in the light of such instruments[98].

*iii) The African Charter on the Rights and Welfare of the Child* (African Children's Charter), 1990.

62. The African Children's Charter expresses concern that "the situation of most African children, remains critical due (inter alia) to the unique factors of their *socio-economic, cultural, traditional and developmental circumstances*" (Preamble). It requires that "*any custom, tradition, cultural or religious practice* that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged" (Art. 1(3)); that "*the education* of the child be directed to (inter alia): fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions; the preservation and strengthening of *positive African morals, traditional values and cultures"* (Art. 11(2)).

63. It further requires that States parties "take all appropriate measures *to eliminate harmful social and cultural practices* affecting the welfare, dignity, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices discriminatory to the child on the grounds of sex or other status, and "child marriage and the betrothal of girls and boys" (Art. 21(1) and (2)).

64. The African Children's Charter establishes a Committee on the Rights and Welfare of the Child, which shall promote and protect the rights enshrined in the Charter (Art. 42) and shall draw inspiration from *international human rights law*, particularly, *inter alia*, the Universal Declaration, the Convention on the Rights of the Child, and other UN instruments (Art. 46). Is also enshrines the principle of the more favourable norm (Art. 1(2)) (*supra* No 14).

*iv) The Covenant on the Rights of the Child in Islam* (Islamic Child's Covenant), 2004.

65. The Islamic Child's Covenant, adopted by the Organization of the Islamic Conference (OIC) (*supra* No 11)[99], starts by invoking "Islamic efforts on issues of childhood, which contributed to the development of the UN Convention on the Rights

98. See e.g. IACHR, *Stalinski* v. *Honduras,* 15.10.2005; *Gayle* v. *Jamaica,* 24.10.2005; *Medina v US,* 24.10.2005; *Sahli Vera et. ail. v. Chile* 10.3.2005 (interpretation of the AmerCHR in the light of the CCPR, the CERD, the CEDAW, the ECHR and ECtHR, HRC and International Court of Justice case-law) http://www.cidh.oas.org.

99. See the OIC website, www.oic-oci.org

of the Child" (Preamble). It further refers to OIC instruments along with "international conventions signed by [OIC] member states" and "the rights of the child in the provisions of the Islamic *Shari'a*" (to which its Articles repeatedly refer) and to "the historic role and civilisation of the *Ummah*[100]", and it specifies that it affirms the human rights of the Muslim and non-Muslim child (Preamble).

66. The "principles" proclaimed by the Islamic Child's Covenant include respect for the Islamic *Shari'a* provisions and observation of "the cultural and civilizational constants of the Islamic *Ummah*" (Art. 2). The "obligations of the States" include respect for parents' and legal guardians' responsibilities and duties, "as required by *the child's interest"*, and States' obligation to "*end action based on customs, traditions and practices* that are in conflict with the rights and duties stipulated in this Covenant" (Art. 4). The Covenant also requires that parents, those legally responsible and States "protect the child from *practices and traditions* which are socially or culturally detrimental or harmful to the health, and from practices which have negative effects on his/her welfare, *dignity* or growth, as well as those leading to *discrimination* between children on the basis of sex or other grounds in accordance with the regulations and without prejudice to Islamic *Shari'a*" (Art. 20(2)) (emphasis added). These provisions obviously aim to meet the concerns of UN treaty bodies which we have mentioned (e.g. *supra* Nos 46, 48-50).

*v) The Arab Charter on Human Rights (revised)* (revised Arab Charter), 2004.

67. The first version of the Arab Charter, adopted by the Council of the League of Arab States (*supra* No 11) in 1994[101], obtained no ratification. A revised version, adopted at the Summit of Heads of Member States of the League, in Tunis, in May 2004, entered in force on 15 March 2008. The First Civil Forum Parallel to the Arab Summit and other NGOs expressed many reservations regarding this text, considering that several of its provisions (such as those allowing the death penalty to be passed and carried out on minors if allowed under national law, and derogations to the right to life) were inconsistent with international human rights law.

68. The UN High Commissioner for Human Rights, whose office had provided assistance in the drafting of the text, welcomed its coming into force and called upon the Arab States to ensure that the Arab Committee for Human Rights, which will monitor its implementation, is independent and effective. However, she also recalled her concerns about the "incompatibility of some of its provisions with international

100. An *Ummah* is a community or a people. It is used in reference to the community of Believers or Muslims (Islamic Glossary, University of Southern California, www.usc.edu/dept/MSA/reference/glossary.html).

101. See its text in http://www1.umn.edu/humanrts/instree/arabcharter.html.

norms and standards. These concerns included the approach to the death penalty for children and the rights of women and non-citizens". She also reiterated that "to the extent that it equates Zionism with racism […] the Arab Charter is not in conformity with General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination". She declared that her Office "does not endorse these inconsistencies" and will "continue to work with all stakeholders in the region to ensure the implementation of universal human rights norms"[102].

69. The revised Arab Charter "is based on the faith of the Arab nation in the *dignity* of the human person" and the "eternal principles of fraternity, equality and tolerance among human beings consecrated by the *noble Islamic religion and the other divinely-related religions*". It reaffirms the UN Charter and Universal Declaration principles and the provisions of the two UN Covenants, i.e. the International Bill of Rights (*supra* No 10) (Preamble, emphasis added).

70. The first version of the Arab Charter (Art. 2) included the standard, indicative non-discrimination clause that appears in the ECHR, the UN treaties, the American Convention and the African Charter. The revised Arab Charter adds certain grounds, but its list is exhaustive (Art. 3(2))[103]; it moreover contains a specific clause on equality of men and women, "within the framework of positive discrimination established in favour of women by the Islamic *Shari'a*, other divine laws and applicable laws and legal instruments" and requires that States parties "take all requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all rights set out in this Charter" (Art. 3(3)).

71. Other clauses of the revised Arab Charter obviously aim to meet the concerns of UN treaty bodies, in particular the HRC and the CEDAW Committee, about *adverse customary practices*, to which we have referred. Examples include the prohibition of marriage "without the full and free consent of both parties" (Art. 33(1)); the prohibition of domestic violence, "particularly against women and children" (Art. 33(2); the requirements that "the child's best interests [be] the basic criterion for all measures taken in his regard" (Art. 33(3)) and provisions aimed at combating child labour by guaranteeing the child's right "to be protected from exploitation and from being forced to perform any work that is likely to be hazardous", with reference also to "the relevant provisions of other international instruments" (Art. 34(3)).

72. Notable novelties of the revised Arab Charter include provisions on social

102. See BROWNLIE/GOODWIN, *Basic Documents on Human Rights*, op.cit., p. 1070, and the website of the Office of the UN High Commissioner for Human Rights http://www.ohchr.org (statements of 24.1.2008 and 30.1.2008).

103. It prohibits "distinction on grounds on race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability" (Art. 3(1) of the revised Arab Charter).

rights obviously inspired by the Covenant on Economic, Social and Cultural Rights and ILO Conventions. These include a more elaborate right to work (Art. 34); a right to access to health care without discrimination of any kind and a requirement to suppress "*traditional practices* which are harmful to the health of the individual" (Art. 39); a right to education without discrimination "directed to the full development of the human person and to strengthening respect for human rights and fundamental freedoms" (Art. 41). These provisions are also obviously aimed at meeting treaty bodies' concerns about *harmful customary practices*.

73. Moreover, the revised Arab Charter enshrines the principle of the more favourable norm (*supra* No 14)[104]. Hence in fact, at least in some areas, it sets limits to adverse customary/ cultural norms, thus also facilitating the UN High Commissioner's task of ensuring the implementation of universal human rights norms in the region (*supra* No 66), the more so as Arab States are also parties to UN treaties.

*B. The Vienna Declaration.*

74. The foundations, the universality and indivisibility of human rights and their function as limits to cultural traditions were solemnly reaffirmed by the 1993 *World Conference on Human Rights of Vienna*[105]. By a *Declaration* adopted unanimously, the 171 States participating in this conference recalled that "*all human rights derive from the dignity and worth inherent in the human person*" and that the Universal Declaration "*constitutes a common standard of achievement for all peoples and all nations*"; they *"reaffirm[ed] [their] solemn commitment to fulfil their obligations to promote universal respect for, and observance and protection of all fundamental rights and freedoms for all, in accordance with [international] instruments and international law"*; and they emphasized that "*the universal nature of these rights and freedoms is beyond question"*.

75. The Vienna Declaration, while drawing attention to *"the significance of national and regional particularities and various historical, cultural and religious backgrounds"*, and proclaiming that *"persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion and to use their own language, in private and in public, freely and without interference or any form of discrimination"*, proclaimed that *"it is the duty of States, regardless of their political,*

104. "Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States arties or those set forth in the international and regional human rights instruments which the States parties have adopted or ratified, including rights of women, the rights of the child and the rights set forth herein." (Art. 43).

105. UN, World Conference on Human Rights, Vienna 14-25 June 1993, Vienna Declaration and Programme of Action.

*economic and cultural systems, to promote and protect all human rights and fundamental freedoms"*.

76. Furthermore, the Vienna Declaration stressed that *"the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights"*; and *"priority objectives of the international community"*; it condemned *"gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking'*, which *"are incompatible with the dignity and worth of the human person and must be eliminated"*.

*C. The quest for human rights: a fundamental human endeavour.*

77. The importance of the Vienna Declaration as the reaffirmation of a common body or "trunk"[106] of human rights of global scope is widely acknowledged. Moreover, the fact that 171 States, having various and heterogeneous political, socio-economic and cultural backgrounds and systems, have proclaimed the universality and indivisibility of those human rights which some consider "European" rights or rights pertaining to a "western" or "Christian" culture comes as no surprise. It reflects the growing tendency for States around the world to adopt and become parties to international human rights instruments which proclaim as a common basis the principles of the UN Charter and the Universal Declaration and recognize their primacy over cultural traditions – a tendency which continues beyond the Vienna Declaration, as we have already seen.

78. This tendency is also strongly expressed in the framework of the "Euro-Mediterranean Partnership" (Euromed), established by the Euro-Mediterranean Conference of 27-28 November, in Barcelona, which brought together the Ministers of Foreign Affairs of the then 15 EU Member States and 12 Mediterranean non-member countries[107]. The "Barcelona Declaration" adopted by this Conference provided for a multilateral framework focusing on three aspects: a political and security aspect, an economic and financial aspect, and a "social, cultural and human aspect" which "aims to develop and promote understanding between cultures and exchanges between civil societies". The parties undertook to act in accordance with the UN Charter and the

106. E. DECAUX, *Droit international public,* 5e éd. Dalloz, 2006, n° 200.

107. Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey, Palestinian Authority. After the 2004 UE enlargement all the new EU Member States joined the Partnership. See http://ec.europa.eu/external_relations/euromed/index_en.htm; Y. BEN ACHOUR, *Le relazioni tra la civiltà islamica e la civiltà occidentale*, IRIDE, anno XX, N° 51, maggio-agosto, 2007(Ed.Il Mulino); R. RHATTAT, *Du processus de Barcelone à la politique européenne de voisinage*, Revue du Marché commun et de l'UE, 2007, p. 100-107.

Universal Declaration as well as with other obligations under international law. Respect for human rights and fundamental freedoms is reaffirmed. A Euromed Non-Governmental Platform, which was established in 2003 and convenes NGOs from around the Mediterranean in regular Civil Forums, in parallel with the Conferences of Foreign Ministers, has significantly developed the human rights aspect of Euromed, on the basis of international human rights instruments, in particular by putting pressure on governments to ratify and implement such instruments[108].

79. There are often discrepancies between international commitments that a State has made and domestic law and/or practice. In such cases, human rights NGOs and groups, as well as individual activists contribute substantively to the international monitoring system by submitting shadow reports and complaints against States to competent international organs. The risk of persecution by authoritarian regimes does not deter them. Striking examples of such activity are shadow reports by NGOs or groups which denounce horrible crimes committed in their country by State officials or non-State actors with the acquiescence or even the "blessing" of State authorities, including the courts, on the pretext of respecting cultural/religious traditions[109]. The activity of the Euromed Non-Governmental Platform is also important.

80. In certain countries, the content of official periodic reports to treaty bodies is not made public and shadow reports are prepared "secretly mainly for security reasons". In such countries, groups and individual activists work independently (and are thus exposed to greater risks), as the establishment of NGOs is not allowed or genuine NGOs are silenced. The risks run by women, whether they are activists or not, are made clear, *inter alia*, by denunciations that State officials dealing with domestic violence victimize or maltreat complaining women[110]; that official institutions such as the "Religious Police or *Mutawwas*", using as a pretext the protection of public moralities and the combat against religious and moral decadence, follow women and persecute them for not adhering to religious norms such as hair, face and body covering[111]. It is also denounced that "quasi-official newspapers are defaming" human rights activists and journalists through "slander articles", which "provoke traditional sectors of the community" against them and lead to violence. Accusations of "infide-

108 See the website of the Platform www.euromedi.org and reports on these Forums by S. DIMITROULIAS, in "La Gazette de l'AFEM" www.afem-europa.org.

109. Shadow reports and recourses can be found on the websites of the treaty bodies to which they are addressed (see also *supra* Nos 23-24, 30, 38).

110. See e.g. Congregation of the Sisters of the Good Shepherd, Alternative Report on Bolivia for the 40th CEDAW Session (2008).

111. Saudi Women for Reform, Shadow Report, op. cit.

lity and apostasy" are "a form of cultural violence that incites the community against activists and journalists and calls for their execution"[112].

81. Examples of human rights activism are also provided by Reports of the African Commission on Human and Peoples' Rights on their Missions of Promotion, on the occasion of which they meet both local authorities and NGO representatives (*supra* Nos 53-55). The complaints of the NGOs are less detailed than shadow reports to UN treaty bodies and the findings of these bodies, but are in principle in accord with them as to the issues raised.

82. Individual activists, both men and women, are also fighting around the world for human dignity and human rights within very different socio-cultural contexts, and under even the most oppressive regimes; they prove through their struggle and their suffering or death the universality of classical human rights. Some of those that come to the attention of the international community are offered awards and support[113]. Yet, the great majority are unknown; they fight, suffer and die in isolation.

**Concluding remarks.**

83. We have tried to explore some widely ratified human rights treaties sponsored by the United Nations and its specialized agencies, as well as treaties applying in the African, American and Asian continents. We have thus seen that, by becoming parties to such treaties, States acknowledged that the dignity and worth of the human person is the foundation of human rights and they subscribed to their universality. Moreover, they agreed to modify or eliminate, as required by such treaties, attitudes and practices stemming from deep-rooted cultural and religious norms which are detrimental to human rights. They also accepted the control of international or regional treaty bodies in this respect and the obligation to contribute to the task of these bodies. In so doing, they continuously acknowledge (directly or indirectly) the universal character of human rights[114].

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112. Saudi Women for Reform, Shadow Report, op. cit. (prepared with the support of the UN Development Program and quoting names of persecuted activists).

113. E.g. "lawyers suffering for their human rights advocacy all around the world" receive the Ludovic Trarieux human rights prize from the European Bar Human Rights Institute (IDHAE), an "Observatory without borders monitoring attacks against lawyers all around the world": www.idhae.org and www.ludovictrarieux.org.

114. A characteristic example of the efforts of States to create a good image is provided by the Organization of the Islamic Conference (OIC, *supra* No 11): The Final Communiqué of the 31st Session of the Islamic Conference of Foreign Ministers (14-16.6.2004, Istanbul) "urged that the universality of human rights must not be used as a pretext to interfere in the internal affairs of States and flout their national sovereignty" and "condemned the decision of the European Union to denounce stoning as a penalty and what it calls inhumane punishments meted out by some Member States in compliance with Islamic *Shari'a*" (see Resolution of the Human Rights and Gender Equality Groupings of the INGOs holding participatory status with the Council of Europe, Strasbourg, 26-

84. The very recent UNESCO Convention (*supra* N[os] 15, 17-19), the number of parties to which from all around the world is constantly growing, reaffirms the universality of human rights and the limits that they set on cultural traditions. This also holds in certain respects for treaties applying in the African, American and Asian continents. The UNESCO Convention was the culmination of a quest for the roots of human rights, which led to the finding that these roots go back very deep into the history of mankind. Moreover, there are strong tendencies to interpret religious rules in various ways, so as to adapt them to international human rights law (*supra* Nos 29-30). Such tendencies are also reflected to some extent in Islamic human rights instruments, as we have seen[115].

85. We have also tried to listen, as far as possible, to those who, directly concerned, care not about theories but about real life and essential human needs and aspirations, and who defy the most oppressive rulers. The NGOs and groups engaged in this struggle denounce States for using cultural and religious traditions as an excuse for violating human rights or tolerating their violation, struggle to convince States to comply with their international obligations, and pay tribute to individual activists who prize human rights over their own life. They thus prove the universality of human rights.

86. We can thus conclude that the violation of human rights in the name of cultural or religious traditions is typical of extremist groups and authoritarian regimes which use such traditions as a way of keeping people under control. The idea of cultural relativism and non-universality of human rights is legally unfounded and seems to amount, in fact, to social or racial bias. Whether intentionally or unintentionally, this idea is linked to stereotypes of superiority or inferiority – to the perception of human rights as the privilege of an elite – and leads to a relativist perception of the dignity and worth of the human person, which may well call to mind just those situations to which the Universal Declaration sought to put an end.

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27.1.2005, strongly protesting against this Communiqué http://www.coe.int/T/E/NGO/public/Groupings). On the contrary, in its Resolutions on Cultural and Social Affairs, the 35th Session of the same Conference (18-20.6.2008, Kampala), "recalling OIC's obligations towards international conventions and instruments", expressed "deep concern over all forms of coercion and violence practiced against women" and reaffirmed that "neglecting women status constitutes a violation of human dignity and therefore requires the adoption of urgent measures at OIC for special attention and consideration". Moreover the Final Communiqué of the Islamic Summit Conference (13-14.3.2008, Dakar ) affirmed that human rights "*by nature are universal*"; it welcomed several conferences on human rights and called for the drafting of the "Islamic Covenant on Human Rights" and the "Covenant on Women's Right in Islam". See www.oic-oci.org.

115. On this matter see Y. BEN ACHOUR, *Le relazioni tra la civiltà islamica e la civiltà occidentale*, IRIDE, anno XX, N° 51, maggio-agosto, 2007(Ed.Il Mulino).