

HARMFUL PRACTICES, ESPECIALLY FORCED MARRIAGE AND FEMALE GENITAL MUTILATION



Harmful practices are a violation of human rights that put women's and adolescents' sexual and reproductive health and rights at great risk.

Human rights bodies have acknowledged that harmful practices are a violation of women's and girls' human rights¹ and called on States to protect adolescents from all harmful practices. A variety of harmful practices exist, including female genital mutilation (FGM), child and/or forced marriage, polygamy, crimes committed in the name of so-called honour and dowry-related violence. Child and/or forced marriage and FGM have an especially significant impact on the enjoyment of sexual and reproductive health.²



Child marriage affects primarily women and girls, although it can also affect boys. In the developing world one in three girls will most likely be married before they are 18 years old and one out of nine girls will be married before they are 15. The majority of these girls are poor, under-educated, and live in rural areas.³

Recent research shows that over 125 million women and girls alive today have been subjected to some form of FGM in 29 countries in Africa and the Middle East. FGM is also practiced

in a less widespread way in other parts of the world, although the exact number of girls and women affected is unknown.⁴

The obligation to eliminate harmful practices is explicitly mentioned in several international human rights treaties. The Convention on the Rights of the Child establishes the obligation of States to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."⁵ Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women provides that States must "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."⁶

International conferences and agreements have also contributed to the recognition of the need to take measures to end harmful practices. The Programme of Action of the International Conference on Population and Development recognizes FGM as "a violation of basic rights and a major lifelong risk to women's health."⁷ The Programme of Action urges states to "prohibit female genital mutilation wherever it exists and to give vigorous support to efforts among non-governmental and community organizations and religious institutions to eliminate such practices."⁸

The Programme of Action also recognizes that "early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term, adverse impact on their and their children's quality of life."⁹

States should strictly enforce laws to prevent forced and/or child marriage and provide educational and employment opportunities to generate social support for the enforcement of these laws.¹⁰

The Platform for Action of the Fourth World Conference on Women in Beijing calls on States to eliminate violence against women, resulting from harmful traditional practices.¹¹

WHILE CHILD MARRIAGES ARE DECLINING AMONG GIRLS UNDER AGE 15, 50 MILLION GIRLS COULD STILL BE AT RISK OF BEING MARRIED BEFORE THEIR 15TH BIRTHDAY IN THIS DECADE



COMPLICATIONS OF PREGNANCY AND CHILDBIRTH ARE THE MAIN CAUSES OF DEATH AMONG ADOLESCENT GIRLS AGES 15-19 YEARS OLD IN DEVELOPING COUNTRIES

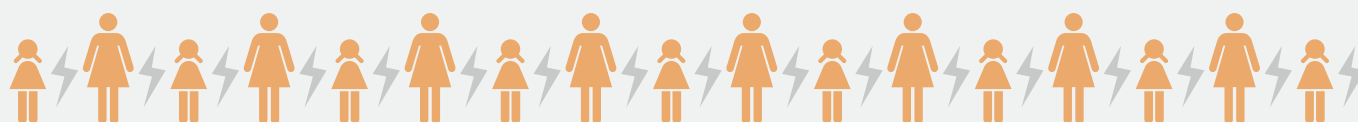


30 MILLION GIRLS ARE AT RISK OF UNDERGOING FGM IN THE NEXT DECADE

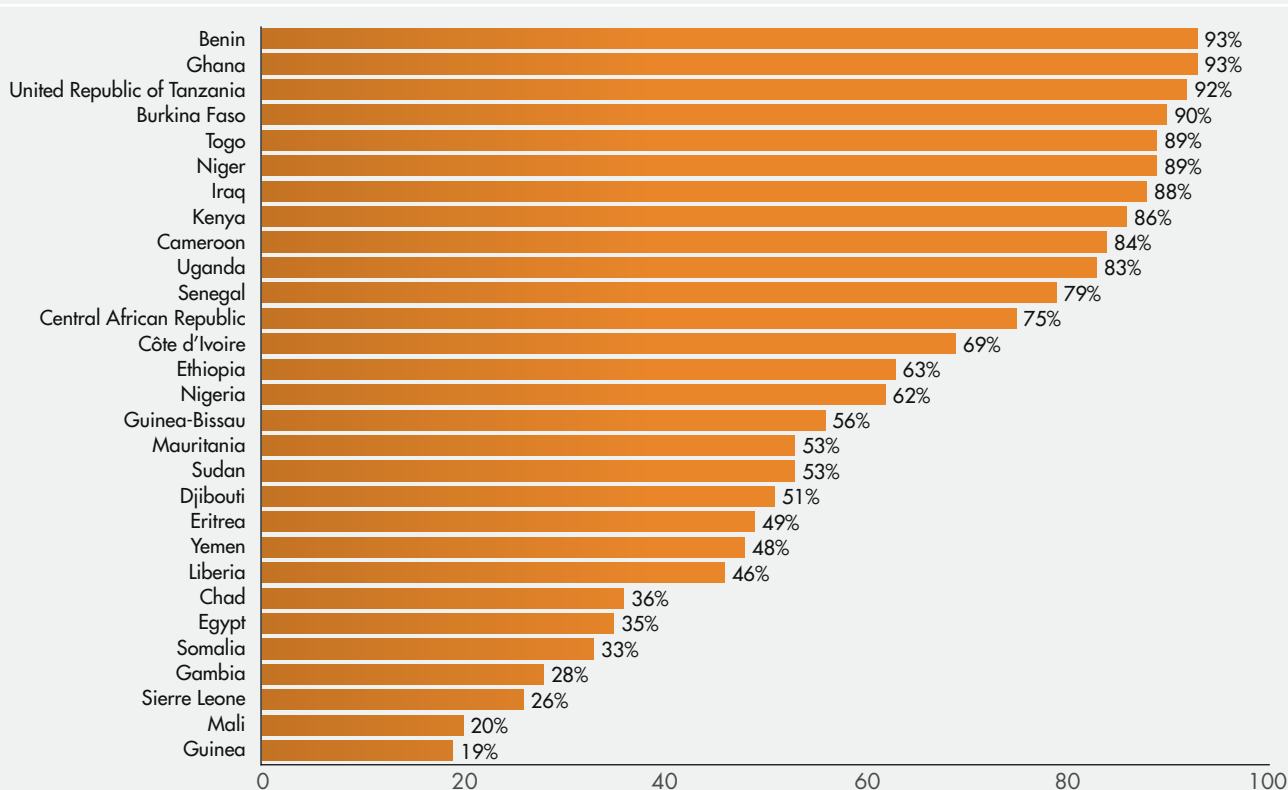


IN HALF OF THE COUNTRIES WHERE FGM IS PRACTICED THE MAJORITY OF GIRLS WERE CUT BEFORE AGE 5. IN THE REST OF THE COUNTRIES, MOST CUTTING OCCURS BETWEEN 5 AND 14 YEARS OF AGE

Sources:
United Nations Population Fund, *Marrying Too Young, End Child Marriage*, 2012
United Nations Children's Fund, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change*, 2013



% OF WOMEN AND GIRLS WHO THINK THAT FGM/C SHOULD END



Source: UNICEF, 2013

KEY ISSUES

1 HARMFUL PRACTICES ARE VIOLATIONS OF WOMEN AND CHILDREN'S RIGHTS

*Harmful practices constitute a form of violence against women and children and are deeply grounded in discrimination on the basis of sex, gender, age and other grounds.*¹²

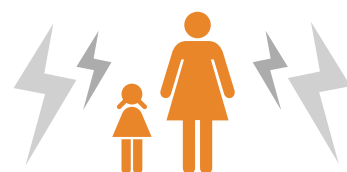
The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have consistently underlined that harmful practices are deeply rooted in societal attitudes that regard women and girls as inferior to men and boys. Both Committees have also expressed concerns about the use of these practices "to justify gender-based violence as a form of "protection" or control of women and children [...]."¹³ The Committees have underscored "that,

sex- and gender-based discrimination intersect with other factors that affect women and girls, in particular those who belong to, or are perceived as belonging to disadvantaged groups, and who are therefore at a higher risk of becoming victims of harmful practices."¹⁴

Harmful practices constitute a violation of women and children's right to health.

The Committee on the Elimination of Discrimination Against Women and Committee on the Rights of the Child have clarified that these practices are harmful to the health of women and children¹⁵ and carry a high risk of death and disability.¹⁶ For instance, FGM can "lead to various immediate and long-term health

consequences, including severe pain, shock, infections and complications during childbirth (affecting both the mother and child), long-term gynaecological problems such as fistula, psychological effects and death."¹⁷ Concerning child marriages, they are "often accompanied by early and frequent pregnancies and childbirth, resulting in higher than average maternal morbidity and mortality rates."¹⁸ Harmful practices violate the right to the "enjoyment of the highest attainable standard of health" broadly recognized under international law.¹⁹



The prevalence of harmful practices affects the enjoyment of the right to education.

Forced and/or child marriage contributes to higher rates of school dropouts and forced exclusion from schools.²⁰ The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have recommended States to provide universal, free and compulsory primary education and to consider making secondary education mandatory. The Committees have also recommended States to provide "economic incentives for pregnant girls and adolescent mothers to complete secondary school and establish non-discriminatory return policies."²¹ Linked to the right to education is the right

A NUMBER OF REGIONAL INSTRUMENTS STIPULATE THE OBLIGATION OF STATES TO ELIMINATE HARMFUL PRACTICES.

The Protocol to the **African Charter on Human and Peoples' Rights on the Rights of Women** in Africa prohibits all forms of harmful practices, including female genital mutilation (*article 5*).

The Protocol also requires States to adopt legislative measures to ensure that marriage only takes place with the full and free consent of both parties (*article 6*).

Additionally, the **African Charter on the Rights and Welfare of the Child** also prohibits child marriage (*article 21.2*), as well as "customs and practices prejudicial to the health or life of the child" (*article 21.1.a*).

The **American Convention on Human Rights** (*article 17.3*) and the **Association of Southeast Asian Nations (ASEAN) Human Rights Declaration** (*article 19*) both required free and full consent to enter a marriage.



of women and adolescents "to accurate information about sexual and reproductive health and rights and on the impacts of harmful practices as well as access to adequate and confidential services."²²

The Committees have emphasized the critical role that teachers can play in providing this information and assisting victims or potential victims of harmful practices.²³



2 PREVENTING AND ELIMINATING HARMFUL PRACTICES ENTAIL "THE ESTABLISHMENT OF A WELL-DEFINED, RIGHTS-BASED AND LOCALLY-RELEVANT HOLISTIC STRATEGY"²⁴

States must enact and enforce legislation proscribing female genital mutilation and the marriage of children.²⁵

The Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have called on States "to explicitly prohibit by law and adequately sanction or criminalize harmful practices."²⁶ The Committees have also recognized that States must "provide for the means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices."²⁷ Both Committees have further stressed "that legislation aimed at eliminating harmful practices must include appropriate budgeting, implementing, monitoring and effective enforcement measures."²⁸

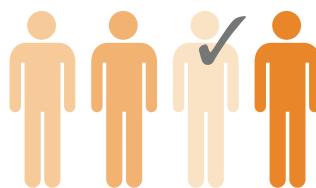
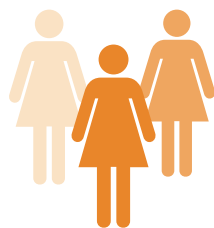
The elimination of harmful practices requires the transformation of societal norms and cultural factors.

Laws prohibiting harmful practices may not be enforced because in many contexts customs, traditions and religious laws encourage these practices.³² In addition to implementing legislation and policies, States are required to take 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 for men and women."³³ Both the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child have recommended that States "develop and adopt comprehensive awareness-raising programmes to challenge and change cultural and social attitudes, traditions and customs that underlie behaviours that perpetuate harmful practices."³⁴ Human rights bodies have also highlighted the importance of involving all relevant actors, particularly women and girls and community leaders.³⁵

INTERNATIONAL HUMAN RIGHTS STANDARDS

ESTABLISH THAT THE RIGHTS TO CHOOSE A SPOUSE AND TO FREELY MARRY ARE ESSENTIAL TO A WOMAN'S LIFE AND TO HER DIGNITY AND EQUALITY AS A HUMAN BEING.²⁹ INTERNATIONAL STANDARDS PROVIDE THAT "no marriage shall be entered into without the free and full consent of the intending spouses."³⁰

MOST RECENTLY, IN NOVEMBER 2014, THE GENERAL ASSEMBLY ADOPTED A RESOLUTION URGING STATES "to enact, enforce and uphold laws and policies aimed at preventing and ending child, early and forced marriage and protecting those at risk, and to ensure that marriage is entered into only with the informed, free and full consent of the intending spouses."³¹



STATES HAVE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE RIGHTS OF WOMEN AND GIRLS IN ELIMINATING HARMFUL PRACTICES



RESPECT States must ensure that all marriages are entered into with the free and informed consent of both parties. They also must enact appropriate legislative measures to prohibit the practice of FGM. For example, States should not support the medicalization of FGM by encouraging the use of medical personnel to perform this practice.

PROTECT The obligation to protect requires States to prevent violations committed by private individuals and organizations. Thus, for instance, States must provide protection to girls running away from their families to avoid forced marriage or being subjected to FGM. Appropriate security measures could include the establishment of temporary shelters and relocation of victims outside their immediate community,³⁶ but must not result in the arbitrary detention of girls.

FULFIL The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other actions. To prevent and eliminate harmful practices, States need to establish “a well-defined, rights-based and locally-relevant holistic strategy which includes supportive legal and policy measures, including social measures that are combined with a commensurate political commitment and accountability at all levels.”³⁷

NOTES

- 1 Committee on the Rights of the Child, General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 9.
- 2 Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, Joint General Recommendation 31 / General Comment 18 (2014) on harmful practices, para. 7.
- 3 United Nations Population Fund, *Marrying Too Young, End Child Marriage* (2012), p. 34-36. See also A/HRC/26/22, paras. 17-18.
- 4 United Nations Children’s Fund, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change* (2013), p. 22.
- 5 Article 24.3.
- 6 Article 2(f).
- 7 International Conference on Population and Development, Programme of Action (1994), para. 7.35.
- 8 *Ibid.*, para. 4.22.
- 9 *Ibid.*, para. 7.41.
- 10 *Ibid.*, para. 4.21.
- 11 Fourth World Conference on Women, Platform for Action (1995), para. 232(g).
- 12 Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child, Joint General Recommendation 31 / General Comment 18, para. 7.
- 13 *Ibid.*, para. 6.
- 14 *Ibid.*
- 15 Committee on the Elimination of Discrimination Against Women, General Recommendation 19 (1992) on violence against women, para. 20; General Recommendation 14 (1990) on female circumcision; Committee on the Rights of the Child, General Comment 15, para. 9.
- 16 Committee on the Elimination of Discrimination Against Women, General Recommendation 24 (1999) on women and health, para. 12(b).
- 17 Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child, Joint General Recommendation 31 / General Comment 18, para. 19.
- 18 *Ibid.*, para. 22. See also A/HRC/26/22, para. 23.
- 19 Committee on Economic, Social and Cultural Rights, General Comment 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para. 29.
- 20 Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child, Joint General Recommendation 31 / General Comment 18, para. 22. See also A/HRC/26/22, para. 24.
- 21 Joint General Recommendation 31 / General Comment 18, para. 69(a).
- 22 *Ibid.*, para. 68.
- 23 *Ibid.*
- 24 *Ibid.*, para. 33.
- 25 Committee on the Elimination of Discrimination Against Women, General Recommendation 24, para. 15(d).
- 26 Joint General Recommendation 31 / General Comment 18, para. 13.
- 27 *Ibid.*
- 28 *Ibid.*, para. 12.
- 29 Committee on the Elimination of Discrimination Against Women, General Recommendation 21 (1994) on equality in marriage and family relations, para. 16.
- 30 International Covenant on Civil and Political Rights, Article 23(3).
- 31 United Nations General Assembly resolution 69/156 (2014) on child, early and forced marriage, para. 1.
- 32 Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child, Joint General Recommendation 31 / General Comment 18, para. 43.
- 33 Convention on the Elimination of All Forms of Discrimination Against Women, Article 5(a).
- 34 Joint General Recommendation 31 / General Comment 18, para. 81(a). See also Committee on the Rights of the Child, General Comment 4 (2003) on adolescent health and development, para. 20.
- 35 Joint General Recommendation 31 / General Comment 18, paras. 59-60.
- 36 *Ibid.*, para. 83.
- 37 *Ibid.*, para. 33.