

HARMFUL PRACTICES



Harmful practices are a violation of human rights that put women’s and adolescents’ sexual and reproductive health and rights at great risk.¹ A variety of harmful practices exist, including female genital mutilation (FGM), child and forced marriage, virginity testing and related practices, extreme dietary restrictions, including during pregnancy (force-feeding, food taboos), binding, scarring, branding/infliction of tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, accusations of witchcraft, infanticide, incest and body modifications that are performed for the purpose of beauty or marriageability of girls and women.²

Harmful practices constitute discrimination against women and girls.³ They place women and girls’ sexual and reproductive health at serious risk. Human rights bodies have repeatedly called on States to protect women, adolescents and children from all harmful practices.

Child and forced marriage and FGM have an especially significant impact on the enjoyment of sexual and reproductive health.⁴ Child marriage affects primarily women and girls, although it can also affect boys. Conflict and humanitarian emergencies increase the prevalence of child early, and forced marriage, with reports of high rates of child marriage in situations of crisis and displacement.⁵

The obligation to eliminate harmful practices is recognized 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.” 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.”⁷

International and regional conferences and agreements have also recognized the need to end harmful practices. Under the Programme of Action of the International Conference on Population and Development, FGM is considered as “a violation of basic rights and a major lifelong risk to women’s health.”⁸ The Programme of Action urges States to prohibit FGM wherever it exists.⁹ It 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 them and their children’s quality of life.”¹⁰

The Platform for Action of the Fourth World Conference on Women in Beijing also calls on States to eliminate violence against women resulting from harmful traditional practices.¹¹ Furthermore, in adopting the 2030 Agenda for Sustainable Development, States reaffirmed their commitment to “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation” by 2030.



WORLDWIDE, MORE THAN 650 MILLION WOMEN ALIVE TODAY WERE MARRIED AS CHILDREN



ONE IN EVERY FIVE GIRLS IS MARRIED, OR IN UNION, BEFORE REACHING AGE 18. IN THE LEAST DEVELOPED COUNTRIES, THAT NUMBER DOUBLES – 40 % ARE MARRIED BEFORE AGE 18, AND 12 % OF GIRLS ARE MARRIED BEFORE AGE 15

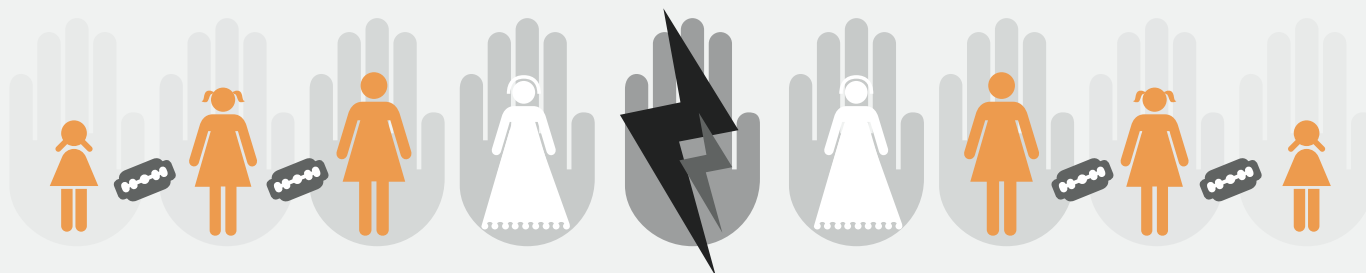


MORE THAN 200 MILLION GIRLS AND WOMEN ALIVE TODAY HAVE BEEN SUBJECT TO FGM IN 30 COUNTRIES

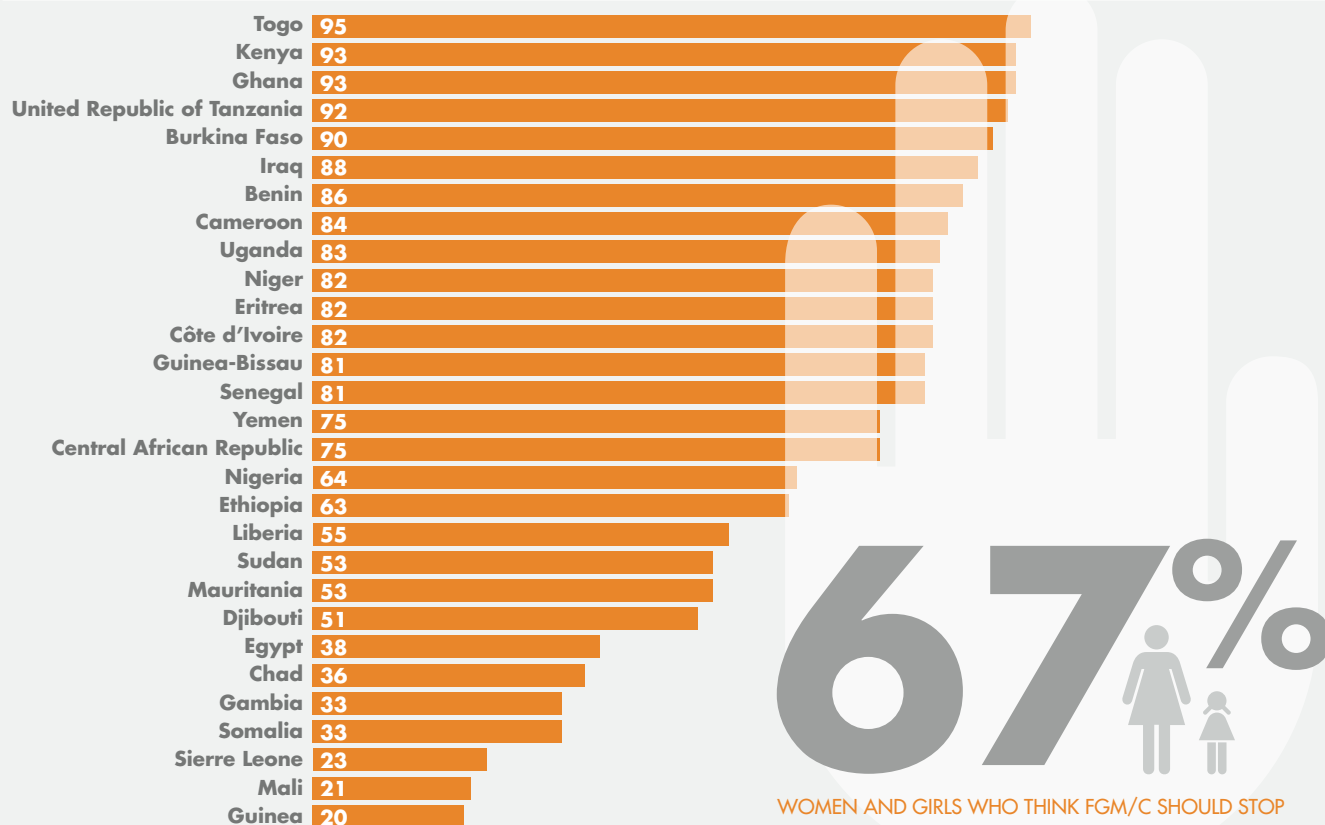


OF THESE 200 MILLION, 44 MILLION ARE GIRLS BELOW THE AGE OF 15

Sources: United Nations Population Fund - United Nations Children’s Fund, Global Programme to Accelerate Action to End Child Marriage, Annual Report Accelerating and Amplifying Change (2017); United Nations Children’s Fund, Female Genital Mutilation/Cutting: A Global Concern (2016).



% OF WOMEN AND GIRLS WHO THINK THAT FGM/C SHOULD END, 2004-2015



Source: United Nations Children's Fund, *Female Genital Mutilation/Cutting: A Global Concern* (2016).

KEY ISSUES

1 HARMFUL PRACTICES ARE VIOLATIONS OF WOMEN AND GIRLS' HUMAN RIGHTS

Harmful practices constitute a form of gender-based violence against women and girls and may amount to torture or cruel, inhumane or degrading treatment.¹² Such practices are deeply rooted in discrimination on the basis of sex, gender, age and disability, amongst others.¹³

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 expressed concerns about the use of these practices "to justify gender-based violence as a form of 'protection' or control of women and children."¹⁴

Harmful practices violate the human right to the "enjoyment of the highest attainable standard of health"¹⁵ and can carry a high risk of death and disability.¹⁶

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 Child marriages are "often accompanied by early and frequent pregnancies and childbirth, resulting in higher than average maternal morbidity and mortality rates."

The Human Rights Council has expressed concern about the "impact of deep-rooted gender inequalities, norms and stereotypes and of harmful practices, perceptions and customs that are among the primary causes of child, early and forced marriage, and ... also that poverty and lack of education are also among the drivers of this harmful practice, and that it remains common in rural areas and among the poorest communities."

Source: Human Rights Council resolution on child, early and forced marriage, UN Doc A/HRC/RES/35/16 (2017); See also UN Doc. A/HRC/RES/29/8 (2015).

Women from marginalized groups are specifically disadvantaged by harmful practices.

The Committee on the Elimination of Discrimination against Women has observed that rural women and girls particularly face the risk of “child and/or forced marriage, polygamy and female genital mutilation, which endanger their health and well-being and may push them to migrate in order to escape such practices, potentially exposing them to other risks.”¹⁹

In addition, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have also noted that “there is often continued adherence to harmful practices by members of practising communities who have moved to destination countries through migration or to seek asylum”.²⁰ According to the Committees, social norms and cultural beliefs supporting such harmful practices persist and are at times emphasized by a community in an attempt to preserve its cultural identity in a new environment.²¹

Women and girls with disabilities are at particular risk of harmful practices, which are typically justified on the grounds of sociocultural and religious customs. For

example, girls with disabilities are more likely to die as a result of ‘mercy killing’ than boys with disabilities because their families are unwilling or lack the support to raise a girl with an impairment.²²

Harmful practices affect the enjoyment of the right to education.

Child, early and forced marriage contributes to higher rates of school dropouts and forced exclusion from schools.²³ The Committee on the Elimination of Discrimination against Women has underscored how harmful practices directly threaten girls’ human right to education: “By failing to curb child marriage, Governments fail in their obligation to ensure access to education for girls on an equal basis with boys.”²⁴

To this end, States have been urged to provide “economic incentives for pregnant girls and adolescent mothers to complete secondary school and establish non-discriminatory return policies.”²⁵

The right to education includes the right 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.”²⁶



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 African Committee of Experts on the Rights and Welfare of the Child laid out a variety of recommendations to end child marriage in its Addis Ababa Declaration, including urging States to:

- Providing a conducive legal and policy environment for ending child marriage
- Adopt a holistic approach, and address the structural causes of child marriage including through promotion of gender equality, poverty reduction and challenging gender stereotypes
- Strengthen the evidence base for effective policy towards the reduction of child marriage
- Pay particular attention to marginalized groups of girls who are at heightened risk of child marriage

The Council of Europe Convention on preventing and combating violence against women and domestic violence requires States to take the necessary legislative or other measures to ensure that conduct leading to FGM is criminalized (article 38).

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

THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, conducted a confidential inquiry into the practice of “**bride kidnapping**” in one country. Under this practice, young women are abducted against their will, forced into marriage and raped the night following the “wedding” ceremony. The Committee found that the practice constituted a “**grave violation of the rights of victims to life, security and physical and mental integrity and to freely choose their spouse.**”²⁸



2 PREVENTING AND ELIMINATING HARMFUL PRACTICES ENTAIL “THE ESTABLISHMENT OF A WELL-DEFINED, RIGHTS-BASED AND LOCALLY-RELEVANT HOLISTIC STRATEGY”²⁹

States must enact and enforce the legal prohibition of harmful practices.³⁰

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.”³¹ The Committees have also recognized that States must “provide for the means of prevention, protection, recovery, reintegration and redress for victims and combat impunity”.

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

Customs, traditions and religious laws may hinder the enforcement of laws prohibiting harmful practices. Thus, States must take additional 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 behaviour that perpetuate harmful practices.”³⁴

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



RESPECT States must enact 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 States must prevent violations committed by private individuals and organizations. To this end, States must provide protection to girls running away from their families to avoid forced marriage or being subjected to FGM. Appropriate measures could include the establishment of temporary shelters and relocation of victims outside their immediate community,³⁵ but must not result in the arbitrary detention of girls.

FULFIL States must take appropriate legislative, administrative, budgetary, judicial and other actions and 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.”³⁶ This requires deliberate measures to address root causes of harmful practices, which include harmful gender stereotypes, poverty and lack of education.

NOTES

- 1 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. 68.
- 2 *Ibid.*, para. 9. See also, World Health Organization, *Eliminating Virginity Testing: An Interagency Statement* (2018).
- 3 Joint General Recommendation 31/General Comment 18, para. 16.
- 4 *Ibid.*, para. 68; Committee on Economic, Social and Cultural Rights, General Comment 22 (2016) on the right to sexual and reproductive health, para. 29.
- 5 United Nations General Assembly Resolution, A/71/253 (2016) on Child, Early and Forced Marriage, para. 61; Committee on the Elimination of Discrimination against Women, General Recommendation 37 (2018) on Gender-related dimensions of disaster risk reduction in the context of climate change, para. 5; United Nations High Commissioner for Human Rights, *Child, early and forced marriage in humanitarian settings*, A/HRC/41/19 (2019), paras. 2, 10.
- 6 Article 24.3.
- 7 Article 2(f).
- 8 International Conference on Population and Development, *Programme of Action* (1994), para. 7.35.
- 9 *Ibid.*, para. 4.22.
- 10 *Ibid.*, para. 7.41.
- 11 Fourth World Conference on Women, *Platform for Action* (1995), para. 232(g).
- 12 Committee on the Elimination of Discrimination against Women, General Recommendation 35 (2017), on gender-based violence against women, updating general recommendation No. 19, para. 16.
- 13 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.
- 14 *Ibid.*, para. 6.
- 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 (2013) on the right of the child to the highest attainable standard of health, para. 9; 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; General Comment 22, para. 29.
- 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 Office of the United Nations High Commissioner for Human Rights, *Preventing and eliminating child, early and forced marriage*, A/HRC/26/22 (2014), para. 23.
- 19 General Recommendation 34 (2016) on rights of rural women, para. 22.
- 20 Joint General Recommendation 31/General Comment 18, para. 18.
- 21 *Ibid.*
- 22 Committee on the Rights of Persons with Disabilities, General Comment 3 (2016) on women and girls with disabilities, para. 36.
- 23 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.
- 24 General Recommendation 36 (2017) on the right of girls and women to education, para. 52.
- 25 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. 69(a).
- 26 *Ibid.*, para. 68.
- 27 African Committee of Experts on the Rights and Welfare of the Child, *Addis Ababa Declaration on Ending Child Marriage in Africa* (2014).
- 28 Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/OR.8/KGZ/1 (2018), para. 5.
- 29 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. 33.
- 30 Committee on the Elimination of Discrimination against Women, General Recommendation 24, para. 15(d).
- 31 Joint General Recommendation 31/General Comment 18, para. 13.
- 32 *Ibid.*, para. 13.
- 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 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. 83.
- 36 *Ibid.*, para. 33.