

International Legal Framework for Harmful Practices

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Universal Declaration of Human Rights

The [Universal Declaration of Human Rights](#), 1948, provides a broad foundation for the protection of women against harmful practices. Article 1 provides that “[a]ll human beings are born free and equal in dignity and rights.” Article 3 states that “Everyone has the right to life, liberty and security of person.” Under Article 5, “No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. Article 7 states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 8 declares that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Article 12 protects an individual’s privacy while Article 16 provides for equality within and upon dissolution of marriage as well as for marriage to be entered into only upon consent of both parties. Article 25 addresses motherhood and childhood and more generally, Article 28 states: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

International Convention on Civil and Political Rights

Similarly, the [International Covenant on Civil and Political Rights](#) (ICCPR) (1966) prohibits discrimination on the basis of sex, and mandates States Parties to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Article 2. In addition, the ICCPR protects individuals from “torture or cruel, inhuman or degrading treatment” and arbitrary or unlawful interference with their privacy. Articles 7 and 17. The ICCPR states that everyone has the “right to liberty and security of person” and that “[e]very child shall have ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” Articles 9 and 24.

International Covenant on Economic, Social and Cultural Rights

The preamble to the [International Covenant on Economic, Social and Cultural Rights](#) (1976) acknowledges that human rights “derive from the inherent dignity of the human person.” Article 3 declares that the States Parties must “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” Article 12 protects the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” In its [General Comment No. 14](#), the Committee on Economic, Social, and Cultural Rights elaborates the obligation of States to “undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.”

Convention on the Elimination of All Forms of Discrimination Against Women

The [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW) (1979) defines discrimination against women as:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
[Article 1.](#)

In [General Recommendation No. 19](#), (11th Session, 1992), the Committee on the Elimination of Discrimination against Women affirms that violence against women is a form of discrimination against women as set forth in [Article 1](#) of the [Convention on the Elimination of All Forms of Discrimination Against Women](#).

In addition, the [Recommendation](#) acknowledges the following:

Paragraph 11: Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.

Paragraph 20: In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

The Committee recommends that:

(e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures;

(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);

States Parties to CEDAW must eliminate harmful practices by undertaking various measures, including:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

[Article 2](#) (emphasis added).

In addition, States Parties to CEDAW are required to “modify the social and cultural patterns of conduct ... 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.” [Article 5](#).

Finally, [Article 16](#) provides for the elimination of “discrimination against women in all matters relating to marriage and family relations,” and specifically states:

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.
[Article 16\(2\)](#)

Convention on the Rights of the Child

The [Convention on the Rights of the Child](#) (CRC), 1989, places on the government the ultimate responsibility for ensuring that the fundamental rights of children are recognized and protected. The CRC Article 3 establishes standard whereby “the best interests of the child” is to be the guiding principle for all actions concerning children.

With regard to harmful practices, States Parties to the Convention are required to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence ...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Article 19(1).

The Convention also requires States Parties to create “social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.” Article 19(2).

Article 24 requires states to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of the children.” Article 24(3).

In addition, Article 37 mandates that States Parties ensure the protection of children from “torture or other cruel, inhuman or degrading treatment or punishment.”

Each of the following General Comments by the [Committee on the Rights of the Child](#) specifically identify harmful practices as violations of the [Convention on the Rights of the Child](#):

- [General Comment No. 3 \(2003\): HIV/AIDS and the Rights of the Child](#)
- [General Comment No. 4 \(2003\): Adolescent health and development in the context of the Convention on the Rights of the Child](#)
- [General Comment No. 7 \(2005\): Implementing child rights in early childhood](#)

Declaration on the Elimination of Violence Against Women

Article 2 of the General Assembly’s landmark [Declaration on the Elimination of Violence Against Women](#), 1993, defines violence against women, in part, as:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation . . .

Article 4 of the Declaration provides that States should:

. . . [C]ondemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.

Plan of Action for the Elimination of Harmful Traditional Practices

In the same year, the United Nations Sub-Commission on the Promotion and Protection of Minorities adopted a [Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children](#), which recognizes that:

(43) Violence against women and girl children is a global phenomenon which cuts across geographical, cultural and political boundaries and varies only in its manifestations and severity. Gender violence has existed from time immemorial and continues up to the present day. It takes covert and overt forms including physical and mental abuse. Violence against women, including female genital mutilation, wife-burning, dowry-related violence, rape, incest, wife battering, female

feticide and female infanticide, trafficking and prostitution, is a human rights violation and not only a moral issue. It has serious negative implications on the economic and social development of women and society, and is an expression of the societal gender subordination of women.

The Plan calls on governments to "openly condemn all forms of violence against women and children, in particular girls, and commit themselves to confronting and eliminating such violence." The Plan sets forth specific elements of a National Action Plan to eliminate harmful traditional practices affecting the health of women and children. See: National Plan and Strategy in this section below.

At an international level, the Plan calls on the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to keep the issue of harmful practices "under constant review." Para. 64. The Plan also calls on the Commission on the Status of Women and other international organizations to do the following:

(65) The Commission should give more attention to the question of harmful traditional practices.

(66) All the organs of the United Nations working for the protection and the promotion of human rights, and in particular the mechanisms established by the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Covenants on Human Rights and the Convention against Torture, should include in their agenda the question of all harmful traditional practices which jeopardize the health of women and girls and discriminate against them.

(67) Intergovernmental organizations and specialized agencies and bodies of the United Nations system, such as the United Nations Children's Fund, the United Nations Development Programme, the United Nations Population Fund, the United Nations Development Fund for Women, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, should integrate in their activities the issue of confronting harmful traditional practices and elaborate programmes to cope with this problem.

The Plan also provides action recommendations for specific types of harmful practices including son preference, early marriage, child delivery practices, and violence against women and girl children. These recommendations are included throughout this asset under relevant sections.

Vienna Declaration and Programme of Action

The [Vienna Declaration and Programme of Action of the World Conference on Human Rights](#) (1993) calls for the "eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism." Section II(B)(3)(Para 38). In addition, the [Vienna Declaration and Programme of Action of the World Conference on Human Rights](#) "urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child." Para. 49.

Programme of Action of the International Conference on Population and Development

The [Programme of Action of the International Conference on Population and Development](#) speaks out against son preferences, female genital mutilation, infanticide, prenatal sex selection and trafficking, among other harmful practices:

The objectives are to eliminate all forms of discrimination against the girl child, to eliminate the root causes of son preference, to increase public awareness of the value of the girl child and to strengthen her self-esteem. To these ends, leaders at all levels of society should speak out and act forcefully against gender discrimination within the family based on preference for sons. There should be special education and public information efforts to promote equal treatment of girls and boys with respect to nutrition, health care, education and social, economic and political activity, as well as equitable inheritance. Governments should develop an integrated approach to the special health, education and social needs of girls and young women, and should strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses. Governments are urged to prohibit female genital mutilation and to prevent infanticide, prenatal

sex selection, trafficking of girl children and use of girls in prostitution and pornography. Chapter IV, B.

Beijing Declaration and Platform for Action

The [Beijing Declaration and the Platform for Action: Fourth World Conference on Human Rights, 1995](#), recognized that girls are:

[o]ften subjected to various forms of ... violence and harmful practices such as female infanticide and prenatal sex selection, incest, female genital mutilation and early marriage, including child marriage.

Para. 39.

The Platform required that “[a]ny harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated.” Para. 224.

General Assembly Resolutions

Subsequently, the [United Nations General Assembly](#) has continued to call for more attention to harmful practices and more efforts by States for the protection of women and girls from harmful practices. See: United Nations, [Resolution Adopted by General Assembly on Traditional or Customary Practices Affecting the Health of Women and Girls \(1 February 1999\) A/Res/53/117](#); United Nations, [General Assembly Resolution on Traditional or Customary Practices Affecting the Health of Women and Girls \(7 February 2000\) A/54/133](#); and United Nations, [General Assembly Resolution Traditional or Customary Practices Affecting the Health of Women and Girls \(30 January 2002\) A/56/128](#).

The three most recent General Assembly Resolutions on Intensification of Efforts to Eliminate All Forms of Violence Against Women call on Member States to “review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles.” See: General Assembly Resolutions ([30 January 2007\) A/RES/61/143](#), ([30 January 2009\) A/RES/63/155](#), and ([11 February 2010\) A/RES/64/137](#).

UN Commission on the Status of Women

The [United Nations Commission on the Status of Women](#) has continued to address harmful practices. For example, at its [42nd session](#), the Commission reviewed the implementation of several critical areas of concern of the [Beijing Declaration and Platform for Action](#) and expressed concern regarding the persistence of harmful practices, calling on governments to:

Develop and implement national legislation and policies prohibiting harmful customary or traditional practices that are violations of women’s and girls’ human rights and obstacles to the full enjoyment by women and girls of their human rights and fundamental freedoms; . . . [p]rosecute the perpetrators of practices that are harmful to the health of women and girls; [and] [e]radicate customary or traditional practices, particularly female genital mutilation, that are harmful to, or discriminatory against, women and that are violations of women’s human rights and fundamental freedoms, through the design and implementation of awareness-raising programmes, education and training . . .

At its [51st session](#) of the Commission on the Status of Women also focused on the elimination of all forms of discrimination and violence against girls. The [Commission’s report on that session](#) reaffirms the responsibility of States to:

Develop and implement national legislation and policies prohibiting harmful customary or traditional practices, particularly female genital mutilation, that are violations of and obstacles to the full enjoyment by women of their human rights and fundamental freedoms, and prosecute the perpetrators of such practices that are harmful to the health of women and girls . . .

The Commission has also adopted resolutions calling on States to take action to end specific harmful practices, including female genital mutilation ([Resolutions 51/2 and 52/2](#)) and forced marriage ([Resolution 51/3](#)) (See Resolutions in [Commission’s report on 51st session](#)).