

## Harmful Practices: Regional Law & Standards

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Regional legal and policy frameworks also mandate legislative action to address harmful practices.

### Africa

**Article 18(3)** of the **African Charter on Human and Peoples' Rights** stipulates that *"the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."*

**The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (The Maputo Protocol)** provides much more detailed guidance to States on their obligations in this regard, mandating States Parties to "...adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women." Article 4. This Protocol also specifically directs States Parties to prohibit and eliminate harmful practices, explicitly including the practice of FGM:

### **Article 5 - Elimination of Harmful Practices**

*States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:*

- *creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;*
- *prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;*
- *provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting;*
- *protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance."*

In addition, the Protocol requires States Parties to enact legislation to guarantee free and full consent to marriage and to establish 18 years as the minimum age of marriage for women. Article 6. Articles 20 and 21 address the rights of widows, stating:

**Article 20 – Widows’ Rights**

*States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:*

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;*
- b) a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;*
- c) a widow shall have the right to remarry, and in that event, to marry the person of her choice.*

**Article 21 - Right to Inheritance**

- 1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.*
- 2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.*

The **African Charter on the Rights and Welfare of the Child** (1990) prohibits discrimination and protects children’s rights to survival, protection, privacy, and physical, mental, and spiritual health. **Articles 3, 5(2), 10, 14(1). Article 16** prohibits all forms of torture, inhuman or degrading treatment, including physical, sexual or mental abuse from neglect or maltreatment. Article 21 requires Member States of the Organization of African Unity to:

*[T]ake 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 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.*

Article 21(1).

**Europe**

In recent years, the European regional system of human rights protection has paid increasing attention to state obligations to end harmful practices.

Both the **European Parliament Resolution on Female Genital Mutilation (2001/2035(INI))**, and the **European Parliament Resolution of 24 March 2009 on**

**combating female genital mutilation in the EU (2008/2071(INI))** specifically condemn the practice of FGM and call for action by members to prohibit that harmful practice. In addition, the more recent resolution states that “such violations can under no circumstances be justified by respect for cultural traditions of various kinds or initiation ceremonies.”

**The European Parliament Resolution of 16 January 2008: Towards an EU strategy on the rights of the child (2007/2093(INI))** addresses harmful practices against children generally. The Parliament:

*42. Affirms that no forms of violence against children in any setting, including the home, can be justified and that all violence must be condemned; therefore calls for Community legislation that prohibits all forms of violence, sexual abuse, degrading punishment and harmful traditional practices; condemns all forms of violence against children including physical, psychological and sexual violence, such as torture, child abuse and exploitation, child abduction, trafficking in or sale of children and their organs, domestic violence, child pornography, child prostitution, pedophilia, and harmful traditional practices such as female genital mutilation, forced marriages and honour crimes; [and]*

*46. Urges the Member States to raise medical practitioners' awareness of harmful traditional practices and to ensure that crimes are punished consistently under the legislation in force, with particular attention being paid to vulnerable groups including immigrant girls and women, those from ethnic minorities and disabled girls;. . .*

In 2002, the Committee of Ministers to Member States of the Council of Europe adopted **Recommendation Rec(2002)5 on the protection of women against violence**. The ground-breaking document defined “violence against women” broadly and set forth general measures for Member States to take to protect women against violence.

*For the purposes of this recommendation, the term “violence against women” is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following:*

- a. violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;*
- b. violence occurring within the general community, including, inter alia, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;*
- c. violence perpetrated or condoned by the state or its officials;*
- d. violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.*

[Appendix to Recommendation Rec \(2002\)5](#) (emphasis added).

In April 2009, the Parliamentary Assembly Council of Europe adopted a resolution that called on Member States to adapt their national legislation in order to prohibit and penalize forced marriages, female genital mutilation and any other gender-based violations of human rights. See: Council of Europe Press Release (2009). Previously, the Parliamentary Assembly Council of Europe had adopted **Resolution 1327 (2003)** on So-called “honour crimes” expressing its concern with “the increase in so-called “honour crimes”, committed against women in the name of honour, which constitute a flagrant violation of human rights based on archaic, unjust cultures and traditions.”

### **Asia**

**The Declaration on the Elimination of Violence Against Women in the ASEAN Region, (2004)**, sets forth eight measures to enhance regional collaboration to eliminate violence against women. Although the Declaration does not specifically address harmful practices as a form of violence against women or result of discrimination, it does call on the parties to agree to the following measure:

*To enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimisation of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody...*  
Section 4.

### **Americas**

The **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para) (1994)** affirms the right of women to be free from violence and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence. **Article 6(a)** affirms that a woman’s right to be free from violence includes her right “to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.” In addition, the Convention places a broad scope of duties on States Parties, including, among others, the following items:

#### **Article 7**

*The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:*

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;*
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;*
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;*

*d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;*

*e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;*

*f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;*

*g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and*

*h. adopt such legislative or other measures as may be necessary to give effect to this Convention.*

*(Emphasis added).*