

DIVISION FOR THE ADVANCEMENT OF WOMEN  
Now Part of UN WOMEN

**SUPPLEMENT TO  
THE HANDBOOK  
FOR LEGISLATION  
ON VIOLENCE  
AGAINST WOMEN**

**"HARMFUL PRACTICES"  
AGAINST WOMEN**



United Nations

**Department of Economic and Social Affairs**  
Division for the Advancement of Women  
now part of UN Women

## Supplement to the Handbook for Legislation on Violence against Women

# “Harmful practices” against women



United Nations  
New York, 2011

## DAW/DESA

The Division for the Advancement of Women, now part of UN Women, supports the work of the Commission on the Status of Women, the Economic and Social Council and the General Assembly of the United Nations on gender equality and the empowerment of women. For more information, see [www.un.org/womenwatch/daw/](http://www.un.org/womenwatch/daw/).

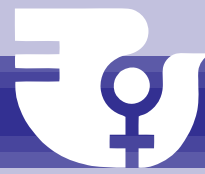
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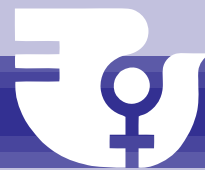
## Acknowledgements

This Supplement to the DAW/DESA Handbook for legislation on violence against women is based on the results of an expert group meeting on good practices in legislation on “harmful practices” against women, convened by the United Nations Division for the Advancement of Women, now part of UN Women, in cooperation with the United Nations Economic Commission for Africa, in May 2009. The meeting reviewed and analysed experiences, approaches and good practices in legislation on “harmful practices” against women from around the world, and developed recommendations for legislation on “harmful practices” against women.

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For further information regarding the expert group meeting, including expert papers, please visit the following website: <http://www.un.org/womenwatch/daw/vaw/v-egms-gplahpaw.htm>.





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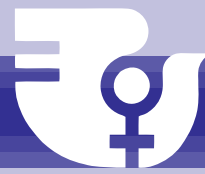
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# 1. Introduction

This publication in relation to legislation on “harmful practices” against women supplements the DAW/DESA Handbook for legislation on violence against women, and it should be read in conjunction with the Handbook.<sup>1</sup> The purpose of the Handbook and Supplement is to provide detailed guidance for all stakeholders to support the adoption and effective implementation of legislation which prevents violence against women, punishes perpetrators and ensures the rights of victims/survivors. The adoption and enforcement of national laws to address and punish all forms of violence against women and girls, in line with international human rights standards, is one of the five key outcomes which the Secretary-General’s campaign “UNITE to End Violence against Women” aims to achieve in all countries by 2015.<sup>2</sup>

The forms of violence which have been referred to as “harmful cultural or traditional practices” include, inter alia, female genital mutilation, female infanticide and prenatal sex selection, child marriage, forced marriage, dowry-related violence, acid attacks, so-called “honour” crimes, and maltreatment of widows. The Supplement uses the term “harmful practices” to refer to these forms of violence against women collectively in accordance with their treatment in international legal and policy documents.

The Supplement first discusses the nature of “harmful practices”, including the changes in “harmful practices” over time, as well as the linkages between “harmful practices” and other forms of violence and discrimination against women. It outlines the international and regional legal and policy framework which relate to States’ obligation to establish and implement a comprehensive and effective legal framework to address these forms of violence. It then presents recommendations for legislation on “harmful practices” against women, together with explanatory commentaries and good practice examples. The recommendations address either all forms of “harmful practices” or, where specifically stated, one particular “harmful practice”.

The recommendations are divided into 8 sections and cover: human-rights based and comprehensive approach (3.1); implementation (3.2); definitions of “harmful practices” and criminal law considerations (3.3); protection, support and assistance for victims/survivors and service providers (3.4); protection orders (3.5); legal proceedings and evidence (3.6); prevention (3.7); and asylum law (3.8).

The following terms were chosen by the 2009 expert group meeting for use throughout the text:

- *Female genital mutilation* was chosen in order to emphasize the gravity of the act;<sup>3</sup>
- *Child* was taken to mean any human being below the age of eighteen years;

1 United Nations (2010) *Handbook for Legislation on Violence Against Women*, available online at: <http://www.un.org/womenwatch/daw/vaw/v-handbook.htm>.

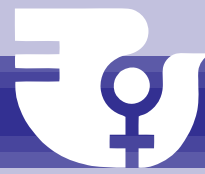
2 For further information regarding the Secretary-General’s campaign “UNITE to End Violence against Women”, please visit the website at: <http://endviolence.un.org/>.

3 Some United Nations agencies use the term “female genital mutilation/cutting” wherein the additional term “cutting” is intended to reflect the importance of using non-judgmental terminology with practicing communities. Both terms emphasize the fact that the practice is a violation of girls’ and women’s human rights. See, United Nations (2008) *Eliminating Female Genital Mutilation: An Inter-Agency Statement* available online at: [http://www.un.org/womenwatch/daw/csw/csw52/statements\\_missions/Interagency\\_Statement\\_on\\_Eliminating\\_FGM.pdf](http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf).

- *Child marriage*, as opposed to early marriage, was chosen in order to emphasize that at least one of those involved in the marriage is a child under international law;
- *Multiple legal system* was adopted to refer to any situation where more than one of the following systems of law are operating simultaneously: common law, civil law, customary law, religious law and/or other;<sup>4</sup>
- *So-called “honour” crimes* is used to emphasize that this violence, while excused in the name of “honour”, is not honourable and should be condemned as a human rights violation.

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<sup>4</sup> The term “multiple legal systems” is used in a number of resolutions of UN intergovernmental bodies, including General Assembly resolutions 61/143 and 63/155 on intensification of efforts to eliminate all forms of violence against women.



## 2. Background: nature of “harmful practices” against women, and international and regional legal and policy frameworks

### 2.1. The nature of “harmful practices” against women

“Harmful practices” are the result of gender inequality and discriminatory social, cultural, and religious norms, as well as traditions, which relate to women’s position in the family, community and society and to control over women’s freedom, including their sexuality. While some cultural norms and practices empower women and promote women’s human rights, many are also often used to justify violence against women. Women are engaged as perpetrators in the commission of “harmful practices”.

Women throughout the world may be exposed to a wide range of “harmful practices” across their life cycle, including prenatal sex selection and female infanticide, child marriage, dowry-related violence, female genital mutilation, so-called “honour” crimes, maltreatment of widows, inciting women to commit suicide, dedication of young girls to temples, restrictions on a second daughter’s right to marry, dietary restrictions for pregnant women, forced feeding and nutritional taboos, marriage to a deceased husband’s brother and witch hunts.<sup>5</sup> The ways in which culture shapes violence against women are as varied as culture itself. For example, the phenomena of “date rape” and eating disorders are tied to cultural norms but are not often labeled as cultural phenomena.<sup>6</sup> New “harmful practices” are constantly developing, and existing “harmful practices” have altered as a result of globalization and migration. There is therefore no exhaustive list of “harmful practices” against women.

#### 2.1.1. Changes in “harmful practices” over time

Migration, globalization and/or conflict have resulted in the transfer of certain “harmful practices” to different locations, as well as in changes and/or adaptations to the practices. Practices such as dowry and bride-price have escalated and altered as a result of rising levels of consumerism in the countries in which they are practiced. Increases in price and prevalence of dowry have resulted in an increase in dowry-related violence, while inflated bride-price

<sup>5</sup> See United Nations (2006), *Ending Violence Against Women: From Words to Action, Study of the Secretary-General* (A/61/122/Add.1 and Corr.1), pp. 45-47.

<sup>6</sup> See United Nations (2006), *Ending Violence Against Women: From Words to Action, Study of the Secretary-General* (A/61/122/Add.1 and Corr.1), p. 32.

practices have placed further pressure on women to remain in abusive marriages. Conflict and post-conflict settings have contributed to a higher prevalence of “harmful practices”, such as child and forced marriages. The prevalence of forced marriage during conflict was recently highlighted when the Special Court for Sierra Leone adopted a landmark judgement recognizing forced marriage as a crime against humanity under international criminal law for the first time in history.<sup>7</sup> Conflict and other humanitarian disasters have also contributed to the spread of certain forms of violence, including female genital mutilation, to communities in which they were not originally present through the transfer of populations and their practices. Increased availability of medical technology has facilitated the perpetration of certain “harmful practices” such as the misuse of diagnostic techniques leading to sex-selective abortions. The practice of female genital mutilation in hospitals and other health-care facilities (i.e. the “medicalization” of female genital mutilation) has, in some instances, further institutionalized the procedure, while giving the false impression that the practice is medically sound.<sup>8</sup>

Interventions to address “harmful practices”, such as criminalization, may have unintended and negative consequences which result in changes and/or adaptations in “harmful practices”. For example, there is evidence that reforms eliminating exemptions with regard to so-called “honour” crimes have resulted in an increase in incitement of minors to commit the crime as their sentence would be less severe, as well as inciting women to commit suicide so as to avoid punishment. The enactment of legislation banning female genital mutilation has, in some instances, resulted in communities changing from practicing one type of female genital mutilation to another type so as to avoid punishment,<sup>9</sup> or in lowering the age of girls subjected to female genital mutilation so as to hide the practice from the authorities more easily or to minimize the resistance of the girls themselves.<sup>10</sup> These experiences have reinforced the importance of ensuring that legislation is drafted with all possible risks, backlashes and misuses taken into consideration, and of consistently monitoring the impact of legislation.

### 2.1.2. Linkages between “harmful practices” and other forms of violence and discrimination against women

“Harmful practices” reflect existing discrimination against women within society. They are interconnected with each other, as well as with other forms of violence and discrimination against women. Forced marriages result in sexual violence in many cases, particularly since many countries exempt marital rape from being a punishable offence. In a number of countries, victims/survivors of rape are forced to marry the perpetrator of the violence as this is seen to restore the family’s “honour” which was deemed to be tarnished by the woman being considered to have engaged in pre-marital or extra-marital “sexual relations”. The distinction between so-called “honour” crimes and domestic violence, in particular domestic homicide, is often not clear cut. While some domestic homicides are explained by the perpetrator in terms of “honour”, others are explained by more general terminology, such as jealousy and outrage, which are related to the concept of “honour”. In both instances, perpetrators may use the defence of provocation in order to be absolved of the crime or have their sentence drastically reduced. Maltreatment of widows is often closely linked to discrimination against women regarding property rights. Witch-burning is utilized as a method of controlling older

<sup>7</sup> *The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazzy Kamara and Santigie Borbor Kanu (The AFRC-case).*

<sup>8</sup> United Nations (2008), *Eliminating Female Genital Mutilation: An Inter-Agency Statement*, p. 12, available online at: [http://www.un.org/womenwatch/daw/csw/csw52/statements\\_missions/Interagency\\_Statement\\_on\\_Eliminating\\_FGM.pdf](http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf).

<sup>9</sup> The Inter-Agency Statement on eliminating female genital mutilation classified female genital mutilation into four types. See United Nations (2008), *Eliminating Female Genital Mutilation: An Inter-Agency Statement*, p. 4, available on line at: [http://www.un.org/womenwatch/daw/csw/csw52/statements\\_missions/Interagency\\_Statement\\_on\\_Eliminating\\_FGM.pdf](http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf).

<sup>10</sup> See, UNICEF (2005), *Changing a Harmful Social Convention: Female Genital Mutilation/Cutting*.

women and preventing them from inheriting property. Types of child marriage, such as the sale of daughters in return for large cash payments, are closely related to trafficking. Sale of daughters for a bride price, often a cash payment, reinforces the commodification of women's bodies and normalizing a monetary exchange for a virgin bride who, as a child, is incapable of legal consent. Female genital mutilation is sometimes a precursor to child marriage as it is associated with a woman's "coming of age". Female genital mutilation may also result in a variety of reproductive health issues, including maternal and infant mortality and obstetric fistula. Pre-natal sex selection and sex selective abortions are forms of discrimination against women and are symptomatic of the devalued status of women in society.

## 2.2. International legal and policy frameworks and jurisprudence

Violence against women, and the importance of enacting legislation to address such violence, is the subject of a comprehensive legal and policy framework at the international level.<sup>11</sup> In addition, over the past 60 years, numerous provisions in international legal and policy frameworks have called for legal measures to address "harmful practices".

### 2.2.1. International human rights law

The obligation of States to enact legislation to address "harmful practices" has been established in international human rights treaties and taken up by the treaty bodies which monitor their implementation. The International Covenant on Economic, Social and Cultural Rights, adopted in 1966, states in article 10(2) that marriage must be entered into with the free consent of the intending spouses. In its general comment No. 14,<sup>12</sup> the Committee on Economic, Social and Cultural Rights (ICESCR) notes that States are under a specific legal obligation to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children. It also notes that States parties are obliged to prevent third parties from coercing women to undergo traditional practices, such as female genital mutilation.

The Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979, calls upon States Parties "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (article 2(f))". In addition, the Convention contains specific provisions in relation to forced marriage (article 16(1)(b)) and early marriage (article 16 (2)). It calls upon States parties to take all necessary action, including legislation, to specify a minimum age of marriage (article 16(2)).

General recommendation No. 14<sup>13</sup> of the Committee on the Elimination of Discrimination Against Women recommends that States parties take appropriate and effective measures with a view to eradicating the practice of female circumcision. General recommendation No. 19<sup>14</sup> of the Committee highlights that traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, including forced marriage, dowry deaths, acid attacks and female

<sup>11</sup> For further information, please refer to *Handbook for Legislation on Violence Against Women*.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 35.

<sup>13</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), general recommendation No. 14 (1990) on female circumcision.

<sup>14</sup> CEDAW, general recommendation No. 19 (1992) on violence against women.

circumcision. The Committee recommends that States parties take effective legal measures, including penal sanctions, civil remedies and compensatory provisions, to protect women against all kinds of violence. It specifically recommends that legislation remove the defence of honour in regard to the assault or murder of a female family member. In its general recommendation No. 24,<sup>15</sup> the Committee specifically recommends that States parties enact and effectively enforce laws that prohibit female genital mutilation and marriage of girl children.

The Convention on the Rights of the Child, adopted in 1989, requires States parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (article 24(3)). The Committee on the Rights of the Child, general comment No. 4, strongly urges States parties to “develop and implement legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices”, and to “protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation”.<sup>16</sup> It also recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Other human rights treaty bodies have called on States parties to take legal measures to address “harmful practices” in their concluding observations on States parties’ reports. For example, the Committee on the Elimination of Racial Discrimination (CERD) has expressed concern regarding continuing practices of child marriage and dowry, and *devadasi*.<sup>17</sup> The Committee against Torture (CAT) has called upon States parties to enact legislation banning FGM and to take the necessary steps to end the practice, including through awareness-raising campaigns, prevention and detection measures, and punishment of perpetrators.<sup>18</sup> The Human Rights Committee (HRC) has recommended that States parties enact legislation to address FGM, and ensure that perpetrators are punished,<sup>19</sup> discourage the persistence of customary practices that are highly detrimental to women’s rights,<sup>20</sup> remove discriminatory provisions from the penal code, including those that provide lesser penalties for crimes committed by men in the name of honour,<sup>21</sup> and raise the minimum age of marriage and ensure that it is respected in practice.<sup>22</sup>

### 2.2.2. International criminal law

In 2008, the Special Court for Sierra Leone recognized forced marriage as a crime against humanity under international criminal law for the first time in history. In the case of *The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu (The AFRC-case)*<sup>23</sup> the Appeals Chamber found that forced marriage is an independent crime not to be conflated with sexual slavery,<sup>24</sup> and defined forced marriage in the context of the Sierra Leone conflict as follows:

“Forced marriage describes a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force,

<sup>15</sup> CEDAW, general recommendation No. 24 (1999) on women and health.

<sup>16</sup> Committee on the Rights of the Child, general comment No. 4 (2003), on adolescent health and development in the context of the Convention on the Rights of the Child, paras. 24 and 39(g).

<sup>17</sup> See for example, CERD/C/IND/CO/19, para. 18.

<sup>18</sup> See for example, CAT/C/KEN/CO/1, para. 27.

<sup>19</sup> See for example, CCPR/C/SDN/CO/3, para. 15, and CCPR/C/CAF/CO/3 para. 11.

<sup>20</sup> See for example, CCPR/C/BWA/CO/1, para. 11.

<sup>21</sup> See for example, CCPR/CO/84/SYR, para. 16.

<sup>22</sup> See for example, CCPR/CO/84/YEM, para. 21.

<sup>23</sup> The case of *The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu (The AFRC-case)* concluded with the Appeal Judgment on 22 February 2008.

<sup>24</sup> *The AFRC-case* (2008), supra note 22, para. 195.

threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim”.<sup>25</sup>

In doing so, the Chamber found that forced marriage constitutes an “Other Inhumane Act” capable of incurring individual criminal responsibility in international law.

Subsequently, in the case of *The Prosecutor vs. Foday Saybana Sankoh, Sam Bockarie, Issa Hassan Sesay, Morris Kallon and Augustine Gbao (The RUF-case)*<sup>26</sup> the Trial Chamber of the Court applied the Appeals Chamber’s findings with regard to forced marriage. Accordingly, it issued an historical judgment convicting three senior leaders of the Revolutionary United Front (RUF) of participating in a joint criminal enterprise to force young girls and women to marry rebel soldiers or command responsibility for forced marriages.

### 2.2.3. International policy framework

Since the 1950s, a significant number of policy recommendations have been developed which call for the adoption of legislation in relation to “harmful practices”. In 1979 the World Health Organization seminar in Khartoum on traditional practices affecting the health of women and children recommended, when and where appropriate, the enactment of legislation prohibiting female circumcision, and legislation to stop childhood marriage.<sup>27</sup>

In 1986, the report of the Working Group on Traditional Practices Affecting the Health of Women and Children of the Subcommission on Prevention of Discrimination and Protection of Minorities suggested that an appeal be made to Governments “which had not yet had the possibility of adopting clear-cut policies and appropriate legislation to abolish female circumcision, to take such action” and it was noted that “to ensure the implementation of such legislation there is a need to set up an effective mechanism”.<sup>28</sup> This recommendation was reinforced in 1994 when the Subcommission adopted a Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children,<sup>29</sup> which called for the drafting of “legislation prohibiting practices harmful to the health of women and children, particularly female genital mutilation”.

In 1993, the Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly,<sup>30</sup> explicitly acknowledged “harmful practices” as forms of violence against women, and required Member States to develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to the victims of harmful practices and provide access to judicial mechanisms. The Declaration also emphasized that Member States must condemn violence against women and not invoke any custom, tradition or religious consideration to avoid their obligation with respect to its elimination. The Programme of Action of the International Conference on Population Development, adopted in 1994, urged Governments to prohibit female genital mutilation wherever it exists,<sup>31</sup> and create a socio-economic environment conducive to the elimination of all child marriages. The Beijing Declaration and the Platform for Action, adopted by the Fourth World Conference on Women in 1995, called upon Governments to enact and

<sup>25</sup> *The AFRC-case* (2008), supra note 22 para. 196.

<sup>26</sup> The case of *The Prosecutor vs. Foday Saybana Sankoh, Sam Bockarie, Issa Hassan Sesay, Morris Kallon and Augustine Gbao (The RUF-case)* concluded with the Trial Judgment on 25 February 2009.

<sup>27</sup> World Health Organization Regional Office for the Eastern Mediterranean (1979), *Report of the Seminar on Traditional Practices Affecting the Health of Women and Children*, WHO/EMRO Technical Publication No. 2, available online at: [http://whqlibdoc.who.int/emro/tp/EMRO\\_TP\\_2.pdf](http://whqlibdoc.who.int/emro/tp/EMRO_TP_2.pdf), last accessed 28 April 2009.

<sup>28</sup> United Nations Economic and Social Council (1985), *Report of the Working Group on Traditional Practices Affecting the Health of Women and Children*, E/CN.4/1986/42 (4 February 1986), paras. 121 and 123.

<sup>29</sup> The Plan of Action was prepared by the second United Nations Regional Seminar on Traditional Practices Affecting the Health of Women and Children, held at Colombo, Sri Lanka, from 4 to 8 July 1994 (E/CN.4/Sub.2/1994/10/Add.1 and Corr.1). It was adopted by resolution 1994/30 of the Subcommission on Prevention of Discrimination and Protection of Minorities.

<sup>30</sup> United Nations General Assembly resolution 48/104.

<sup>31</sup> Programme of Action of the International Conference on Population Development (1994), para. 4.22.



enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence.

In 1998, the United Nations General Assembly, in its resolution on the issue of traditional or customary practices affecting the health of women and girls, emphasized “the need for national legislation and/or measures prohibiting harmful traditional or customary practices as well as for their implementation, inter alia, through appropriate measures against those responsible.”<sup>32</sup> This wording was strengthened in 1999 and reaffirmed in two subsequent resolutions, when the General Assembly called upon Member States “to develop and implement national legislation and policies prohibiting traditional or customary practices affecting the health of women and girls, including female genital mutilation, inter alia, through appropriate measures against those responsible, and to establish, if they have not done so, a concrete national mechanism for the implementation and monitoring of legislation, law enforcement and national policies.”<sup>33</sup> In 2002, Member States reiterated their call for an end to harmful traditional or customary practices, such as early and forced marriage and female genital mutilation, which violate the rights of children and women.<sup>34</sup> In 2006, the General Assembly again committed to strengthening, inter alia, legal measures for the promotion and protection of women’s full enjoyment of all human rights and the elimination of all forms of violence against women and girls, including harmful traditional and customary practices.<sup>35</sup>

In 2000, 2002 and 2004, the United Nations General Assembly adopted resolutions on so-called honour crimes, calling on Governments to intensify efforts to prevent and eliminate crimes against women committed in the name of honour by using, inter alia, legislative measures.<sup>36</sup>

In 2007, the Commission on the Status of Women adopted a resolution on ending female genital mutilation which emphasized the importance of adopting legislation to address female genital mutilation. It urged Member States to take all necessary measures to protect girls and women from female genital mutilation, including by enacting and enforcing legislation to prohibit this form of violence and to end impunity. It also urged Member States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs, in particular female genital mutilation, that discriminate against women or have a discriminatory impact on women and girls, and to ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles. The resolution called on Member States to develop policies, protocols and rules to ensure the effective implementation of national legislative frameworks and to put in place adequate accountability mechanisms at national and local levels to monitor adherence to, and implementation of, these legislative frameworks.<sup>37</sup> Also in 2007, the Commission on the Status of Women adopted a resolution on forced marriage of the girl child. The resolution urged States to enact and strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses and, in addition, to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and to raise the minimum age for marriage where necessary.<sup>38</sup>

<sup>32</sup> United Nations General Assembly resolution 52/99, para. 2(b).

<sup>33</sup> United Nations General Assembly resolution 53/117, para. 3(c), see also United Nations General Assembly resolution 54/133 and United Nations General Assembly resolution 56/128.

<sup>34</sup> United Nations General Assembly resolution S-27/2, A world fit for children, para. 44, sub-para. 9.

<sup>35</sup> United Nations General Assembly resolution 60/262, Political declaration on HIV/AIDS, para. 31.

<sup>36</sup> United Nations General Assembly resolution 55/66, para. 4(b); see also United Nations General Assembly resolution 57/179, para. 3(b).

<sup>37</sup> United Nations Commission on the Status of Women (CSW) resolution 51/2 of 2007, paras. 9, 10 and 12.

<sup>38</sup> CSW resolution 51/3 of 2007, para. 1(a).

### 2.3. Regional legal and policy frameworks

The international legal and policy framework outlined above has been supplemented over time by the adoption of legal and policy frameworks at the regional level.

The legal and policy framework addressing “harmful practices” in the African region began to be formulated in the 1990s. The *African Charter on the Rights and Welfare of the Child*, which was adopted in 1990 and entered into force in 1999, obligates States parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child, as well as to prohibit child marriage through legislation and take action to specify the minimum age of marriage to be 18 years. This was followed in 1998 by the adoption by the Organization for African Unity (the predecessor of the African Union) of the Addis Ababa Declaration on Violence against Women, which calls for national laws against FGM, and calls on African Governments to ensure that by the year 2005 the practice of FGM will have been completely eradicated or its incidences drastically reduced. In 1999, the Ouagadougou Declaration was adopted by the member countries of the West African Economic and Monetary Union (UEMOA), which recommends the effective implementation of the Addis Ababa Declaration through the adoption of national legislation condemning the practice of FGM.

The *Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa* was adopted by the African Union in 2003. It requires that States parties take all legislative and other measures to eliminate all forms of harmful practices which negatively affect the human rights of women including complete prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation and all other practices in order to eradicate them. The Protocol also requires States parties to enact appropriate national legislative measures to guarantee that no marriage takes place without the free and full consent of both parties and that the minimum age of marriage for women is 18 years. The *African Youth Charter*, adopted in 2006, also requires States parties to take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth.

In the Americas, the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (Convention of Belem do Para), adopted in 1994, requires that States parties condemn all forms of violence against women and undertake to 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.

“Harmful practices”, and in particular FGM and so-called “honour” crimes, have been the subject of significant attention in Europe. In 2001, the European Parliament adopted a detailed resolution on female genital mutilation,<sup>39</sup> which contains strong recommendations for legislative action by its Member States. It calls on Member States to: regard any form of female genital mutilation as a specific crime, irrespective of whether or not the woman concerned has given any form of consent, and to punish anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or girl; pursue, prosecute and punish any resident who has committed the crime of female genital mutilation, even if the offence was committed outside its frontiers (extraterritoriality); approve legislative measures to allow judges or public prosecutors to adopt precautionary and preventive measures if they are aware of cases of women or girls at risk of being mutilated; and adopt administrative provisions concerning health centres and the medical profession, educational centres and social workers, as well as codes of conduct, decrees and ethical codes, to ensure that health professionals, social workers, teachers and educators report cases of which they are aware or instances of people at risk who need protection and, furthermore, carry out simultaneously the task of education and awareness-raising among families. In the same

<sup>39</sup> European Parliament resolution 2001/2035(INI).

year, the Council of Europe adopted resolution 1247 on female genital mutilation, calling on Member States to introduce specific legislation prohibiting genital mutilation and declaring genital mutilation to be a violation of human rights and bodily integrity.

In 2002, the Committee of Ministers to Member States of the Council of Europe adopted recommendation No. 5 on the protection of women against violence. The recommendation defines violence against women as any act of gender-based violence including, but not limited to, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages. It urges Member States to review their legislation and policies with a view to guaranteeing women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms and to exercise due diligence to prevent, investigate and punish such acts of violence. In 2003, the Parliamentary Assembly of the Council of Europe adopted resolution 1327 (2003) on so-called “honour crimes”, calling on Member States to adopt the following legal measures regarding the prevention and prosecution of so-called “honour crimes”: (a) amend national asylum and immigration law in order to ensure that immigration policy acknowledges that a woman has the right to a residence permit, or even to asylum, in order to escape from “honour crimes”, and does not risk deportation or removal if there is, or has been, any actual threat of a so-called “honour crime”; (b) enforce the legislation more effectively to penalize all crimes committed in the name of honour and ensure that allegations of violence and abuse are treated as serious criminal complaints; (c) ensure that such crimes are effectively (and sensitively) investigated and prosecuted. The courts should not accept honour in mitigation, or as a justifiable motive, of the crime; (d) take the necessary measures to implement the laws related to these crimes and to give policymakers, the police and the judiciary a better understanding of the causes and consequences of such crimes; and (e) ensure a stronger female presence within the judicial bodies and the police.

In March 2009, the European Parliament adopted resolution 2008/2071 (INI) on combating female genital mutilation in the EU. The resolution calls on Member States either to adopt specific legislation on FGM or under their existing legislation to prosecute each person who conducts female genital mutilation. It also calls on Member States to enforce their existing laws on FGM, or legislate penalties for the grievous bodily harm resulting from it, and to do their utmost to achieve the greatest possible degree of harmonization of the laws in force across all 27 Member States. In April 2009, the Parliamentary Assembly of the Council of Europe adopted a resolution inviting 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.<sup>40</sup> Most recently, in May 2009, the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe adopted a draft resolution on the urgent need to combat so-called “honour crimes”.

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<sup>40</sup> *Council of Europe Press Release (2009)* PACE calls for prohibition and penalization of gender-based human rights violations 28/04/2009, available online at: <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2168>, last accessed 4 May 2009.

## 3. Recommendations for legislation on “harmful practices”

### 3.1. Human rights–based and comprehensive approach (cross-reference section 3.1 of the Handbook)

#### 3.1.1. Review of the Constitution

##### Recommendation

The Constitution should be reviewed to ensure that, where multiple legal systems exist, they are consistent with human rights and gender equality standards, and do not disadvantage women victims/survivors of violence (cross-reference section 3.1.5 and 3.1.6 of the Handbook).

##### Commentary

There are examples where multiple legal systems have resulted in negative outcomes for women victims/survivors of “harmful practices”. This has particularly been the case in countries where multiple legal systems are either explicitly or tacitly endorsed by the Constitution.<sup>41</sup> To counteract this, a number of States have adopted Constitutional provisions which explicitly state that, where customary or other legal systems exist, they must function in accordance with human rights standards. For example, under Uganda’s Constitution, “[l]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution”. The South African Constitution states that “[w]hen interpreting any legislation, and when developing the law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights”.

#### 3.1.2. “Harmful practices” as forms of violence against women and manifestations of gender-based discrimination

##### Recommendation

Legislation should:

- Acknowledge that all forms of violence against women, including all “harmful practices”, are a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women’s human rights (cross-reference section 3.1.1 of the Handbook);

<sup>41</sup> See, information on the W/o Kedija case in Ethiopia: Meaza Ashenafi and Zenebeworke Tadesse (2005) *Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia*, available online at: [http://content.undp.org/golcms-service/download/asset/?asset\\_id=1706393](http://content.undp.org/golcms-service/download/asset/?asset_id=1706393).

- Refer to regional human rights conventions and standards, where they exist; and
- Provide that no custom, tradition or religious consideration may be invoked to justify “harmful practices” against women.

### Commentary

There are comprehensive international and regional legal and policy frameworks calling on Member States to adopt legislation in relation to all forms of violence against women, including those referred to as “harmful practices.” An increasing number of countries are enacting laws in line with these frameworks, which highlight international treaties and emphasize that “harmful practices” are forms of violence against women and violations of women’s human rights. Eritrea’s *Proclamation 158 /2007 to Abolish Female Circumcision* states that female genital mutilation “violates women’s basic human rights by depriving them of their physical and mental integrity, their right to freedom from violence and discrimination, and in the most extreme case, their life”. Sierra Leone’s *Child Rights Act* of 2007, which in article 34 prohibits child and forced marriage, states that it was enacted in order to implement the Convention on the Rights of the Child and its two Optional Protocols, as well as the African Charter on the Rights and Welfare of the Child. India’s *Protection of Women from Domestic Violence Act* (2005), which addresses, inter alia, dowry-related harassment, refers to international standards, including the United Nations General Assembly’s *Declaration on the Elimination of Violence against Women* (1993) in its statement of object and purpose.

### 3.1.3. Comprehensive legislation on “harmful practices” to be enacted either as stand-alone legislation, or within comprehensive legislation on violence against women

#### Recommendation

Legislation should:

- Ensure that so-called “honour” crimes, female genital mutilation and “harmful practices” related to marriage, including child marriage and forced marriage, are the subject of comprehensive legislation (cross-reference section 3.1.2 of the Handbook), either as a stand-alone law or as part of a law which addresses multiple forms of violence against women.

### Commentary

To date, most laws enacted to address “harmful practices” have consisted of amendments to national criminal laws. These amendments have demonstrated societal condemnation of these forms of violence and constitute an important step toward ending impunity. However, they do not provide for support and assistance to victims/survivors, nor do they mandate preventative measures to be taken. It is therefore important that “harmful practices” are the subject of comprehensive legislation, either through the enactment of stand-alone legislation on one particular “harmful practice”, or through the inclusion of “harmful practices” as part of a comprehensive law which addresses multiple forms of violence. Given the unique social dynamics that surround female genital mutilation, the enactment of a comprehensive stand-alone is recommended. The most promising example in this regard to date is Italy’s *Law No. 7/2006 on the Prevention and the Prohibition of Female Genital Mutilation Practice*, which not only criminalizes female genital mutilation, but also mandates a range of preventative activities, including: information campaigns for immigrants from countries where female

genital mutilation is practiced; specific training programmes for teachers in primary and junior high schools; and implementation of training and information programmes; and the creation of anti-violence centres, as a part of development cooperation programmes. The Bangladesh *Prevention of Oppression Against Women and Children Act* (2000) provides an example of where a “harmful practice” (dowry death) is addressed in the context of legislation on multiple forms of violence.

## 3.2. Implementation (cross-reference section 3.2 of the Handbook)

### 3.2.1. Extraterritoriality and extradition powers

#### Recommendation

Legislation should:

- Provide for the principle of extraterritoriality in respect of “harmful practices”;
- Allow for the extradition of perpetrators of “harmful practices” for trial; and
- Eliminate diplomatic protocols or policies that may impede a victim’s access to assistance in cases where she has dual citizenship.

#### Commentary

“Harmful practices” have been transferred to different places and transformed as a result of factors such as globalization, commercialization and migration. Cases of “harmful practices” often involve actions and actors on more than one continent. As a result, it is important that legislation provides for punishment and remedies in instances where these crimes are planned and committed across borders. This principle of extraterritoriality is now found in many European laws pertaining to female genital mutilation, as well as in relation to other “harmful practices”, including forced marriage. *Constitutional Act 3/2005* makes female genital mutilation committed abroad a crime in Spain. The United Kingdom’s *Forced Marriage (Civil Protection) Act* (2007), which provides for the issuance of protection orders in cases of forced marriage, was first applied in 2008 in the case of a Bangladeshi national who had been living in the United Kingdom and was at risk of forced marriage upon her return to Bangladesh. In response to a protection order issued under the United Kingdom’s *Forced Marriage Act*, the Bangladesh High Court ordered that the woman’s passport and credit cards be returned by her parents and she eventually returned to the United Kingdom.<sup>42</sup> The importance of extradition powers was evidenced in the case of an Iraqi citizen accused of committing a so-called “honour” murder in the United Kingdom who has been extradited to face trial.<sup>43</sup> Norway has promulgated new rules governing marriages outside of Norway when at least one of the spouses is a Norwegian citizen or permanent resident. A marriage that occurs outside of Norway will not be recognized in Norway if one of the parties is under the age of 18 at the time of the marriage, the marriage is entered into without both parties being physically present during the marriage ceremony or one of the parties is already married. Article 17 (1) of the European Convention on Nationality provides that “Nationals of a State Party in

<sup>42</sup> For further information, see O. Bowcott and J. Percival (2008) “Bangladeshi ‘forced marriage’ GP due back in Britain tomorrow”, *Guardian*, 15 December 2008, available online at: <http://www.guardian.co.uk/uk/2008/dec/15/gp-bangladesh-forced-marriage>.

<sup>43</sup> Daily Mail reporter (2009) “Extradited Iraqi appears in court accused of strangling woman in ‘honour’ killing”, *Daily Mail*, 30 June 2009, available online at: <http://www.dailymail.co.uk/news/article-1196609/Extradited-Iraqi-accused-strangling-woman-honour-killing.html>.

possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party”.

### 3.2.2. Training of religious, customary, community and tribal leaders

#### Recommendation

Legislation should:

- Mandate the training of all religious, customary, community and tribal leaders and, in particular, State-registered preachers and religious officials, to promote women’s human rights and denounce violence against women, including “harmful practices”.

#### Commentary

In many societies, religious, customary, community and tribal leaders have strong influence and are in contact with the population through weekly communication, including religious and marriage services. In Turkey, the participation of religious leaders in work to address so-called “honour” crimes has had promising results, where Amnesty International Turkey has conducted a women’s human rights education project entitled “Raising awareness and increasing capacity of religious leaders”. The project provides training to staff of the Turkish Presidency of Religious Affairs, which is directly connected to the office of the Prime Minister, on women’s human rights and violence against women. Training of religious officials on “harmful practices” and women’s human rights should occur during their vocational training, and be conducted by specialists in the particular system of law to which they subscribe.

### 3.2.3. Training of health professionals

#### Recommendation

Legislation should:

- Mandate the training of health professionals, particularly those working in maternity, obstetrics, gynaecology, and sexual health, in order to promote women’s human rights and denounce violence against women, including “harmful practices”, as well as on how to identify and sensitively and appropriately treat victims/survivors of “harmful practices”.

#### Commentary

Health professionals often have first contact with a victim/survivor of a “harmful practice” if there has been a medical complication. It is therefore imperative that these professionals are trained on how to identify and sensitively and appropriately treat victims/survivors of these forms of violence. There have been instances of health professionals in Europe who have reacted to the discovery that a woman has undergone female genital mutilation in a way which has traumatized the victim/survivor causing her to lose trust in the health-care system overall. Legislation should therefore mandate regular and systematic training for health professionals, particularly those working in maternity, obstetrics, gynaecology and sexual health. Article 4 of Italy’s *Law No. 7/2006 on the Prevention and the Prohibition of Female Genital Mutilation Practice* requires the training of health professionals and the adoption of regulations for this purpose, along with allocating of 2.5 million euro for the implementation of such training.

### 3.2.4. Training of teachers

#### Recommendation

Legislation should:

- Mandate the training of teachers in primary and secondary schools as well as institutions for further education to promote women’s human rights and denounce violence against women, including “harmful practices”, as well as to create awareness among teachers of the particular “harmful practices” to which girls at their school may be at risk.

#### Commentary

Teachers represent one of the first points of contact for girls who have been subjected to, or are at risk of, “harmful practices”. Legislation should therefore mandate the training of teachers on this topic to ensure that they can play an effective role in preventing “harmful practices” prior to their occurrence, as well as in referring girls to appropriate services and authorities if they become aware that a “harmful practice” has been committed. Chapter 7 of the United Kingdom’s *Multi-agency Practice Guidelines: Handling Cases of Forced Marriages* is specifically aimed at teachers, lecturers and other members of staff within schools, colleges and universities.

## 3.3. Definitions of “harmful practices” and criminal law considerations

### 3.3.1. Considerations for criminal offences related to “harmful practices”

#### 3.3.1.1. *Accountability of anyone who condones or participates in any “harmful practice”*

#### Recommendation

Legislation should:

- Provide for effective sanctions against anyone who condones or participates in any “harmful practices”, including religious, customary, community and tribal leaders and health professionals, social service providers and education system employees.

#### Commentary

Legislation on “harmful practices” should provide for the sanctioning of anyone who carries out, aids, abets or promotes “harmful practices” against a particular woman or girl. Religious, customary, community and tribal leaders play an important role in many communities and often have significant influence over the behaviour of those within their communities. Legislation on “harmful practices” should provide for the sanctioning of religious, customary, community and tribal leaders if and when they promote “harmful practices”, as well as in instances where they endorse the carrying out of a “harmful practice” against a particular woman or girl. Section 11 of the *Prohibition of Child Marriage Act (2007)* in India states that whoever performs, conducts, directs or abets a child marriage shall be punished unless he proves that he had reason to believe that the marriage was not a child marriage. Mandating



those who perform marriages to require proof of age of the parties is a promising practice. Eritrea's *Proclamation 158/2007 to Abolish Female Circumcision* provides that whosoever performs, requests, incites or promotes female circumcision shall be punishable.

Medical professionals have in recent years become perpetrators of some forms of violence against women, particularly female genital mutilation and pre-natal sex selection. It is fundamental that legislation regulates the practice of medical professionals and establishes sanctions against those medical professionals who either condone or perpetrate any "harmful practice". Section 2 of the *Act Relating to Prohibition of Female Genital Mutilation* in Norway states that a fine or a prison sentence of up to one year may be imposed on practitioners of professions and employees in day-care centres, child welfare services, health and social services, schools and out-of-school care schemes and religious communities who deliberately refrain from trying to prevent an act of genital mutilation by making a report or in another manner. Article 9 of Benin's *Law 3 of 2003 on the Repression of the Practice of Female Genital Mutilation in the Republic of Benin* provides for the punishment of those who fail to act to prevent female genital mutilation. Under the Austrian *Medical Practice Act*, it is punishable to "mutilate or otherwise injure the genitals in such a way as to cause permanent impairment of sexual sensation" and physicians who carry out the procedure are liable for prosecution. Under Eritrea's *Proclamation 158/2007 to Abolish Female Circumcision*, where the person who performs female circumcision is a member of the medical profession, the penalty shall be aggravated and the court may suspend such an offender from practicing his/her profession for a maximum period of two years. The *Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act* (1994), which was enacted in India to prevent the misuse of diagnostic techniques resulting in sex selective abortions, penalizes any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a genetic counselling centre, a genetic laboratory or a genetic clinic or is employed in such a centre, laboratory or clinic who contravenes any of the provisions in the *Act*.

### 3.3.2. Female genital mutilation

#### 3.3.2.1. Defining female genital mutilation

##### Recommendation

Legislation should:

- Define female genital mutilation as any procedure involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons, whether committed within or outside of a medical institution.<sup>44</sup>

##### Commentary

While female genital mutilation has been criminalized in several countries, many laws do not contain a specific definition of this "harmful practice". It is imperative that legislation provides a clear definition of female genital mutilation so as to allow effective prosecution and punishment of perpetrators, as well as protection and support for potential and actual victims/survivors. Given the trend toward medicalization of female genital mutilation in a number of countries, it is particularly important that any definition of this form of violence clearly condemn the practice whether committed within or outside a medical institution. Benin's *Law 3 of 2003 on the Repression of the Practice of Female Genital Mutilation in*

<sup>44</sup> United Nations (2008), *Eliminating Female Genital Mutilation: An Inter-Agency Statement*, available online at: [http://www.un.org/womenwatch/daw/csw/csw52/statements\\_missions/Interagency\\_Statement\\_on\\_Eliminating\\_FGM.pdf](http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf).

the Republic of Benin adopts this approach, defining female genital mutilation as the partial or total removal of the external female genitalia or any other operation on these organs for non-medical purposes.

### 3.3.2.2. Considerations for criminal offences related to female genital mutilation

#### Recommendation

Legislation should:

- Not distinguish between the different types of female genital mutilation for the purposes of punishment;
- Clearly state that consent cannot be a defense to a charge of female genital mutilation;
- Establish a separate and distinct offence of the act of female genital mutilation; and
- Establish that perpetrators are subject to higher criminal penalties associated with crimes against children.

#### Commentary

It is important for the law not to distinguish between the four different classifications of female genital mutilation, so as to ensure that all types of female genital mutilation are considered and responded to with the same degree of seriousness. Similarly, it is critical that consent not be a valid defence against a charge of female genital mutilation, regardless of the age of the victim/survivor. In an amendment to its Penal Code in 2002, Austria introduced article 90 (3) which stipulates that it is not possible to consent to a mutilation or other injury of the genitals that may cause a lasting impairment of sexual sensitivity.

### 3.3.2.3. Duty to report female genital mutilation

#### Recommendation

Legislation should:

- Mandate that all relevant professionals, including practitioners and employees in day-care centres, child welfare services, health and social services, schools and out-of-school care schemes and religious communities report cases of female genital mutilation to the appropriate authorities.

#### Commentary

Girls and women who are subjected to female genital mutilation are reluctant to approach the police for a number of reasons, including lack of awareness of the law and mistrust in the police (or because of overt police endorsement for the practice). It is therefore important for those professionals who are alerted to the fact that female genital mutilation has occurred or is at risk of occurring to report this to the appropriate authorities. The duty to report has been legislated in a number of countries, particularly in Europe, for doctors, social workers and teachers. In some countries, even citizens have a duty to report female genital mutilation to social services or prosecution authorities. For example, under article 9 of Benin’s Law 3 of 2003 on the *Repression of the Practice of Female Genital Mutilation in the Republic of Benin*, anyone who has knowledge of an instance of female genital mutilation must immediately report the act to the closest prosecutor or police. Eritrea’s *Proclamation 158/2007 to Abolish Female Circumcision* contains a similar provision, stating, “whosoever, knowing that female circumcision is to take place or has taken place, fails, without good cause, to warn or inform,

as the case may be, the proper authorities promptly about it, shall be punishable”. In Djibouti, article 333 of the *Penal Code* provides that individuals with knowledge of a woman or girl at risk of undergoing female genital mutilation who do not report the threat/incident to the authorities can be held liable. The duty to report should be exercised with appropriate sensitivity and, preferably, should be accompanied by appropriate protocols setting out guidance on what should be reported and to whom.

### 3.3.3. So-called “honour” crimes

#### 3.3.3.1. Defining so-called “honour” crimes

##### Recommendation

Legislation should:

- Define so-called “honour” crimes broadly so as to include the full range of discrimination and violence committed against women to control their life choices, movements, sexual behaviour and reputation, in the name of “honour”.

##### Commentary

So-called “honour” crimes stem from the deeply rooted social belief that family members and, in particular male family members, should control the sexuality and/or protect the reputation of women in their families, in order to protect the family “honour”. According to this belief, if women transgress, or are seen to transgress, societal gender norms, blemishing their family’s “honour”, they should be disciplined, have their movements and life choices constrained, or be harmed or killed. It is therefore important that legislation define so-called “honour” crimes as broadly as possible, so as to include the full spectrum of discrimination and violence committed against women involving power, control, domination and intimidation to preserve the family “honour”. So-called “honour” crimes are distinguishable from crimes of passion in that the latter are usually perpetrated by one partner against the other, while the former may be perpetrated by any member of the family with the espoused intention of redeeming the family’s “honour”.

#### 3.3.3.2. Considerations for criminal offences related to so-called “honour” crimes

##### Recommendation

Legislation should:

- Establish specific and separate offences for:
- Perpetrating, facilitating, aiding or condoning so-called “honour” crimes;
- Inciting minors to commit so-called “honour” crimes;
- Inciting women to commit suicide or burn themselves in the name of “honour”; and
- Crimes committed in the name of “honour” which are portrayed as accidents.

##### Commentary

Experience has shown that without a specific offence for so-called “honour” crimes, judges will often employ defences such as provocation in order to reduce the sentence of those who have committed such crimes, or perpetrators will not be charged at all. Where legislation defines crimes of “honour” too narrowly, or uses wording that may be narrowly construed, it

is highly probable that not all so-called “honour” crimes will be punished. In 2004, Pakistan’s *Criminal Law Amendment Act (2004)* established a specific offence for crimes “committed in the name or on the pretext of honour”.

The introduction of specific laws on so-called “honour” crimes, however, can also result in unanticipated and negative consequences. For example, families may coerce a minor into committing the offence, as he will receive a lesser sentence. There are also known cases of women being incited to commit suicide in the name of “honour”. It is therefore important that specific offences be enacted which provide for the culpability of those who incite minors to commit harm in the name of “honour” and women to self-inflict harm in the name of “honour”. Provisions such as article 109 of Tajikistan’s *Criminal Code* on “driving to suicide” can be used to prosecute those who have moral culpability for suicide. However, such provisions may be difficult to enforce given that there is often a lack of witnesses other than family members who were complicit in the crime. Further, no such provision yet exists which specifically addresses the issue of women driven to suicide in the name of “honour”.

### 3.3.3.3. Decriminalization of adultery

#### Recommendation

Legislation should:

- mandate the repeal of any criminal offence related to adultery.

#### Commentary

In many countries around the world, adultery continues to be a crime punishable by severe penalties, including, in the most extreme instance, stoning. Adultery laws have often been drafted and implemented in a manner prejudicial to women, both because religious procedural law in some countries makes it difficult to prove adultery by a man, and also because women who have been raped and are unable to prove the crime are then charged with having committed adultery. Recognizing this inequality, a number of countries have moved to decriminalize adultery. Haiti’s 2005 *Decree Modifying Offences of Sexual Aggression and Eliminating Discrimination Against Women* removed a number of discriminatory provisions, including repealing a provision which had absolved a husband of the murder of his wife in certain instances, and decriminalized adultery.

### 3.3.3.4. Removing criminal defences related to adultery and “honour” and limiting the partial defence of provocation

Legislation should:

Eliminate any reduction or exemption in the sentence imposed for murders committed against female intimate partners or family members suspected of, or found in the act of, adultery;

- Eliminate any defence based on “honour”; and
- Disallow the partial defence of provocation in cases of so-called “honour” crimes as well as domestic homicide more generally.

#### Commentary

A number of countries around the world continue to include in their penal codes provisions reducing the sentence applicable for murder in cases where the perpetrator is an eyewitness to adultery or it appears without doubt that the victim was engaged in adultery.

In many countries, this provision extends to the murder of female relatives as well as to the murder of intimate partners. In recent years, countries have begun to remove such provisions. For example, in 2003 Turkey abolished article 462 of its Penal Code, which had provided for reduction in sentences for murder in cases of suspected or actual adultery.

In addition to reductions or exemptions in sentences for murder committed in the context of suspected or actual adultery, several countries around the world continue to have in place provisions which specifically refer to “honour” as a defence or reason for reduction in sentencing in cases of murder. It is imperative that such provisions be removed in order to ensure that so-called “honour” crimes are punished with the same degree of severity as other crimes.

Research has shown that the aspect of criminal law most often utilized to reduce or eliminate penalties for perpetrators of so-called “honour” crimes (as well as for domestic homicides more generally) has been the partial defence of provocation, which reduces a charge of murder to manslaughter. This has been true even in those countries that have had or continue to have specific exemptions or reductions in sentencing in circumstances of perceived or actual adultery or an insult to “honour” in their criminal law. It is therefore important that any law addressing so-called “honour” crimes mandates the reform of criminal law to state that the partial defence of provocation should not be applicable in such cases. In 2005, the State of Victoria in Australia reformed its Criminal Code and abolished the partial defence of provocation. Victoria’s Attorney General, in his public statements regarding the reform, explicitly noted the adverse impact the partial defence had on women killed by their partners. Provocation may still be taken into account in sentencing but can no longer be used to reduce the criminal charge.

### 3.3.4. Dowry-related violence and harassment

#### 3.3.4.1. Defining dowry-related violence and harassment

##### Recommendation

Legislation should:

- Define dowry-related violence or harassment as any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage.

##### Commentary

Demands for dowry can result in women being harassed, harmed or killed, including women being burned to death, and in deaths of women which are labelled as suicides. It is necessary for dowry to be defined as broadly as possible to capture the full range of exchanges given, or asked for, in the name of dowry. For example, Article 2 of the Indian *Dowry Prohibition Act* 1961 defines dowry as “any property or valuable security given or agreed to be given either directly or indirectly (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies”.

### 3.3.4.2. Considerations for criminal offences related to dowry-related violence and harassment

#### Recommendation

Legislation should establish:

- A specific offence for dowry-related violence and harassment;
- A separate offence of “dowry death” in cases where a woman’s death is caused by other than normal circumstances, such as burning or bodily injury and it is shown that she had been subjected to dowry-related violence and harassment prior to her death;
- A specific offence for demanding dowry; and
- A set of guidelines to determine whether gifts given in connection with the marriage were given voluntarily.

#### Commentary

The introduction of specific offences regarding dowry death and dowry-related violence and harassment demonstrates the clear societal condemnation of these practices. Section 304B of the Indian Penal Code defines a “dowry death” as the death of a woman caused by any burns or bodily injury or which does not occur under normal circumstances within seven years of her marriage. The section requires that it be shown that before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Section 498A of the Indian Penal Code provides for the punishment of a husband who subjects his wife to cruelty. In practice, “cruelty” has been interpreted to include dowry-related harassment. The Indian *Protection of Women from Domestic Violence Act* (2005) includes dowry-related harassment in its definition of “domestic violence”.

In many instances, dowry payments are demanded in coercive circumstances. It is essential that the law prohibits the demanding of dowry and provides guidelines to distinguish between gifts given voluntarily from dowry that is demanded. The Indian *Dowry Prohibition Act* (1961) allows for gifts to be given voluntarily in connection with marriage, provided that such gifts are entered into a list maintained in accordance with the law and that the value of such gifts “is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given”.

### 3.3.5. Stove burning

#### 3.3.5.1. Defining stove burning

#### Recommendation

Legislation should:

- Define stove burning as a specific offence in cases where a woman is injured or dies as a result of harm inflicted through the use of fire, kerosene oil or other stove-related matter.

#### Commentary

In some countries, particularly in South-East Asia, there has been a growing number of incidences in which families harm a woman by burning her and then portray the incident as an accident in order to avoid punishment. While these acts of violence may be inflicted

in the name of “honour” or in relation to dowry disputes, they may also be associated with other forms of violence, such as domestic violence, and discrimination against women more generally, such as anger at a woman for failing to give birth to a son. It is important that legislation defines stove burning broadly so as to incorporate all incidents of violence against women which are perpetrated through the use of fire, kerosene oil and other stove-related matter. Where comprehensive domestic violence legislation has been developed, countries may wish to consider including crimes involving stove burning in the provisions of that law.

### 3.3.5.2. Considerations for criminal offences related to stove burning

#### Recommendation

Legislation should:

- Establish a specific offence of stove burning;
- Mandate medical officials to report to the police any case of grievous bodily harm occasioned by fire, kerosene oil, or other stove-related matter; and
- Mandate that police officers investigate any case of stove burning reported by a medical official.

#### Commentary

Stove burning is associated with many different forms of discrimination and violence against women and has, to date, frequently been ignored by law enforcement authorities due to the ability to present the violence as an “accident”. In order to counteract impunity for stove burnings, Pakistan introduced a new section 174-A into its *Criminal Procedure Code* in 2001 which requires that where a person, grievously injured by burns through fire, kerosene oil, chemical or by any other way, is brought to a medical officer on duty or is reported to a police station, the relevant official must report the event to the nearest magistrate and the medical officer must record the statement of the injured person.

## 3.3.6. Acid attacks

### 3.3.6.1. Defining acid attacks

#### Recommendation

Legislation should:

- Define an acid attack as any act of violence perpetrated through an assault using acid.

#### Commentary

In recent years there has been a growing occurrence of attacks against women using acid. The main reasons for these acts of violence have reportedly been dowries, refusal of marriage, love, or sexual proposals, or land disputes. While such attacks have been most common in South Asia, they have been reported in a range of geographical locations, including Africa and Europe. As the motivation for such violence varies, it is important to include in legislation a broad definition, focusing on the modality of the crime, rather than the specific motivation.

### 3.3.6.2. Considerations for criminal offences related to acid attacks

#### Recommendation

Legislation should:

- Establish a specific offence for acid attacks;
- Criminalize the unlicensed sale of any type of acid;
- Regulate the sale of any type of acid; and
- Mandate medical personnel to report to police any case of bodily harm caused by acid.

#### Commentary

In order to end impunity for acid attacks, it is critical to punish not only those involved in the acid attack itself but also anyone who trades illegally in acid. Bangladesh’s *Acid Crime Prevention Act* (2002) and *Acid Control Act* (2002) provides for punishment in both of these instances.

### 3.3.7. Forced marriage and child marriage (cross-reference to section 3.13 of the Handbook)

#### 3.3.7.1. Defining forced marriage and child marriage

#### Recommendation

Legislation should:

- Define a forced marriage as any marriage entered into without the free and full consent of both parties;
- Set the minimum age for marriage as 18 for both females and males; and
- Define a child marriage as any marriage entered into before the age of 18.

#### Commentary

It has long been established under international law that marriage must be entered into with the free and full consent of both parties and that States must specify a minimum age for marriage. It is also critical that laws, be they civil, common, religious or customary, do not mandate the payment of bride price or dowry in order to complete a marriage.

Any definition of forced marriage must be broad enough to encompass the whole array of practices related to this issue, including *sororate* (where a husband engages in marriage or sexual relations with the sister of his wife) and *levirate* (in which a woman is required to marry her deceased husband’s brother), kidnapping for the purposes of marriage, exchange marriages (*bedel*), temporary marriages (*mut’ah and ’urfi*), widow/wife inheritance, the forced marriage of a woman to a man who has raped her, barter marriages, and the practice of *trocosi* (ritual enslavement of girls), among others. Lack of free and full consent should be the key element of the definition of forced marriage. Rwanda has condemned forced marriage at the highest legal level through stating in article 26 of its *Constitution* that no person may be married without his or her free consent. Under the Belgian *Civil Code*, there is deemed not to be a marriage when it is contracted without the free consent of both spouses or when the consent of at least one spouse was given under duress or threat. The European Parliamentary Assembly Resolution 1468 “Forced Marriages and Child Marriages” (2005) addresses situations where there are doubts about free and full consent by authorizing a registrar to interview both parties prior to the marriage. Norway and Ireland have similar provisions in their laws.



Child marriage continues to exist in many countries and in many manifestations around the world. It is critical for laws to be enacted which clearly state that the minimum age for marriage is 18 and that any marriage below this age is a child marriage. The marriage registration process should require that both parties list their birth dates to ensure that the parties are of legal age to be married. Proof of age should be compulsory for marriage. Where official birth records are not available, laws should provide for alternative means of age validation, such as witness affidavits and school, baptismal and medical records. Also, laws should take into account illiteracy rates that may prevent parties from registering their marriages, for example there should be provisions for oral registration and an alternative signature, such as a fingerprint. Article 34(1) of Sierra Leone's *Child Rights Act (2007)* provides a good example of this approach. Sierra Leone's *Registration of Customary Marriages and Divorce Act (2007)* requires the registration of customary marriages. Either or both parties must notify the local council in writing within six months of the marriage.

### 3.3.7.2. Considerations for offences related to forced marriage and child marriage

#### Recommendation

Legislation should:

- Create a specific offence of forced marriage;
- Create a specific offence of child marriage;
- Criminalize those involved in the arrangement or contracting of a forced marriage or child marriage; and
- Prohibit betrothal before the age of 18.

#### Commentary

The creation of a broad offence on forced marriage is important as it allows the full range of such marriages to be punishable under the law. For example, under the *Criminal Code* of the Kyrgyz Republic, the coercion of a woman to enter into marriage or to continue marital cohabitation and the abduction of a woman to enter into marriage against her will are prohibited. In some contexts it may be important, in addition to creating a broad offence of forced marriage, to criminalize explicitly specific types of forced marriage. For example, the Pakistani *Criminal Law (Amendment) Act (2004)* criminalizes the giving of females in marriage as part of a compromise to settle a dispute between two families or clans. Under Article 23 of Georgia's *Criminal Code*, bride abduction qualifies as a "crime against human rights and freedoms" and a perpetrator can receive a sentence of four to eight years in prison or up to twelve years if the act is premeditated by a group. Under Article 16 of the Barbados *Sexual Offences Act (2002)*, abduction for the purposes of sexual intercourse or marriage is prohibited.

Parents and guardians are heavily involved in the betrothal and marriage of children. It is therefore important for laws on this topic to address explicitly the criminal responsibility of those involved in the arrangement of a child marriage. For example, under article 168 of the Tajikistan *Criminal Code*, giving in marriage a girl who has not reached marriage age by parents or guardians is a punishable offence. Contracting a marriage with a person who has not reached the marriage age is also punishable. The Indian *Prohibition of Child Marriages Act (2007)* provides rigorous penalties for those entering into child marriages and includes specific penalties for those either performing, abetting or directing child marriages or involved in solemnizing, promoting, permitting or failing to prevent child marriages.

Given that child marriages are often preceded by the betrothal of children, laws should also prohibit betrothal before the age of 18. Article 34 of Sierra Leone's *Child Rights Act*

(2007) provides that the minimum age of marriage of whatever kind is 18 years; no person is able to force a child (a) to be betrothed, (b) to be the subject of a dowry transaction or (c) to be married; and notwithstanding any law to the contrary, no certificate, licence or registration shall be granted in respect of any marriage unless the registrar or other responsible officer is satisfied that the parties to the marriage are of the age of maturity. Gambia’s *Children’s Act* (2005) similarly prohibits child marriage as well as child betrothal.

### 3.3.7.3. Removing sentencing provisions which force a victim of rape to marry the perpetrator

#### Recommendation

Legislation should:

- Remove any exemption from punishment for perpetrators of rape who marry the victim/survivor.

#### Commentary

In many countries, a legal provision remains which states that if a perpetrator marries a victim/survivor of rape he may be exempted from punishment. This provision tacitly endorses forced marriage and is a severe violation of the victim’s/survivor’s human rights. In recent years, a number of countries have removed legislation which permitted a perpetrator to escape punishment if he married the victim/survivor. For example, Egypt’s *Law No. 14 of 1999* abolished the pardon formerly granted to a perpetrator who married a kidnapping victim/survivor. In 2005, Brazil amended its Penal Code in order to revoke the provision which had exempted a perpetrator from punishment in cases where he married the victim.

## 3.3.8. Bride price

### 3.3.8.1. Considerations for offences related to bride price

#### Recommendation

Legislation should:

- Prohibit the giving of bride price;
- State that divorce shall not be contingent upon the return of bride price but such provisions shall not be interpreted to limit women’s right to divorce;
- State that a perpetrator of domestic violence, including marital rape, cannot use the fact that he paid bride price as a defence to a domestic violence charge; and
- State that a perpetrator of domestic violence, including marital rape, cannot use the fact that he paid bride price as the basis for claiming custody of the children of the marriage. (cross-reference to section 3.13 of the Handbook)

#### Commentary

Bride price includes money, goods or property given by the husband’s family to the wife’s family prior to marriage. It is practiced in one form or another in many countries around the world, including in Africa, the Pacific and some parts of Asia. It is a significant factor in perpetuating violence by men against their wives as it gives women the status of

“property” and is seen, even by women, to give men the right to control their wives, with violence if necessary. In order to address this issue, legislation should prohibit bride price and should define bride price broadly. It is similarly important that the law state that any divorce shall not be contingent upon the return of bride price. In September 2008, the Tororo District in Uganda adopted the *Tororo Ordinance on Bride Price*, which makes bride price voluntary and decreed that it is illegal to demand the return of bride price upon the breakdown of a marriage.

Given that the payment of bride price continues to result in the attitude that the husband then “owns” his wife, it is important that legislation explicitly state that the payment of bride price cannot constitute a defence to a charge of domestic violence. For example, section 10 of Vanuatu’s *Family Protection Act* (2008) states that it is not a defence to an offence of domestic violence that the defendant has paid an amount of money or given other valuable consideration in relation to his marriage to the complainant.

### 3.3.9. Polygamy

#### 3.3.9.1. Defining polygamy

##### Recommendation

Legislation should:

- Define polygamy as having more than one spouse at a time.

##### Commentary

Polygamy continues to exist in many countries throughout the world and most often takes the form of polygyny, i.e., marriages in which a man has more than one wife. Polygamy is one of the range of marriage practices which is discriminatory toward women. Where polygamy exists, violence against women by their husband, as well as violence between co-wives, tends to be high. It is important that the law contain a clear definition of polygamy.

#### 3.3.9.2. Considerations for offences related to polygamy

##### Recommendation

Legislation should:

- Prohibit polygamy and ensure that the rights of women in existing polygamous relationships are protected.

##### Commentary

The Committee on the Elimination of Discrimination Against Women has stated, in its general recommendation No. 21 on equality in marriage and family life: “Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited”. In order to ensure that this discriminatory practice ends, legislation is required that prohibits polygamy. The Rwandan *Constitution* explicitly bans all forms of non-monogamous marriages in article 25, stating that only monogamous marriages shall be recognized. Article 22 of the Rwandan *Law on Prevention and Punishment of Gender-based Violence* of 2008 prohibits polygamy and establishes applicable penalties.

One negative consequence of the enactment of laws prohibiting polygamy has been that women who are the second and third wives in polygamous relationships may lose their rights and status. It is therefore important to ensure that the rights of those women in existing polygamous relationships are protected when new laws banning the practice are put into effect.

### 3.3.10. “Payback” rape

#### 3.3.10.1. Defining “payback” rape

##### Recommendation

Legislation should:

- Define “payback” rape as the rape of a woman to punish her father, brothers or other members of her family for an act they have committed.

##### Commentary

“Payback” rape, also referred to as punishment rape or “revenge rape”, is a form of violence against women which occurs, inter alia, in several Pacific countries. In such cases, a group of men or youths rape a woman to punish her father, brothers or other family members for an act they have committed. For example, if men from one clan rape a woman from another clan, the members of the victim’s/survivor’s clan will rape a woman from the other clan in retribution. Instances of “payback” rape are particularly prevalent during and after conflict.

#### 3.3.10.2. Considerations for offences related to “payback” rape

##### Recommendation

Legislation should:

- Prohibit any reduction in sentence or exemption from punishment in cases of “payback” rape.

##### Commentary

“Payback” rapes often go unpunished due to a societal understanding that they are an acceptable part of conflict resolution. It is therefore critical that legislation on sexual violence states that instances of “payback” rape are to be punished in accordance with the general law on rape and that no reduction in sentence or exemption from punishment shall be granted due to the fact that the rape was committed as an act of retribution.

### 3.4. Protection, support and assistance for victims/survivors and service providers (cross-reference section 3.6 of the Handbook)

#### 3.4.1. Provision of specialized shelter services for victims/survivors of different “harmful practices”

##### Recommendation

Legislation should:

- Mandate that appropriate and specialized shelter services be available for victims/survivors of “harmful practices” within established shelters for victims/survivors of violence; and
- Where necessary, mandate that specialized shelters be established for victims/survivors of certain “harmful practices”, including child and forced marriage, female genital mutilation and so-called “honour” crimes.

##### Commentary

Although the number of services available for victims/survivors of violence against women has increased in recent years, shelters often continue to be accessible, if at all, only in large cities and for limited numbers of women. Furthermore, such shelters are built and run with the assumption that most women who require them are victims/survivors of domestic violence. Consequently, the services provided may not be appropriate for victims/survivors of other forms of violence, such as child and forced marriages, female genital mutilation and so-called “honour” crimes. In some countries, shelters refuse to accept potential victims of so-called “honour” crimes when the police have referred them, as they are considered to pose a danger to other women in the shelter. Potential victims/survivors of female genital mutilation and forced marriage face the prospect of having to leave their family and support network at a very young age. In some countries, potential victims/survivors of so-called “honour” crimes continue to be placed under “protective custody” due to the lack of appropriate shelter facilities. It is therefore important that legislation mandate the availability of appropriate shelter services for victims/survivors of each form of violence.

There are now a few examples of laws mandating the creation of shelters for victims/survivors of certain “harmful practices”. For example, Italy’s *Law No. 7/2006 on the prevention and the prohibition of female genital mutilation practice* provides for the creation of anti-violence centres that can host young women who want to escape female genital mutilation or women who want their daughters or their relatives to escape female genital mutilation. Bangladesh’s *Acid Crime Prevention Act (2002)* and *Acid Control Act (2002)* mandate the creation of a centre for the treatment of victims/survivors of acid attacks.

#### 3.4.2. Protection officers and protocols

##### Recommendation

Legislation should:

- Mandate the appointment of specialized protection officers who have undergone dedicated training in relation to each specific “harmful practice” and are tasked with developing an individual safety plan for each victim/survivor: ensuring that the victim/survivor has access to legal aid; maintaining a list of service providers to whom they can refer the victim/survivor; preparing an incident report which is to be submitted to a magistrate; taking the victim/survivor to a shelter, as well as to be medically examined and/or treated if it is so required;

- Provide for the appointment of a sufficient number of such protection officers in order to ensure that they are not overburdened; and
- Require the development of protocols for various sectors setting out guidance on risk assessment, reporting, service provision and follow up in cases of suspected or actual “harmful practices”.

### Commentary

One of the issues that victims/survivors often endure is that the public officials dealing with their case are not familiar with the form of violence that they have suffered and either do not take their case seriously or do not know how to respond appropriately. The appointment of protection officers who are trained to be specialists in one or more “harmful practices” can significantly decrease the possibility of a victim/survivor being subjected to secondary victimization and enhance the public authority’s response. Under the Indian *Prohibition of Child Marriage Act (2007)*, Child Marriage Prohibition Officers may be appointed and tasked with preventing the solemnisation of child marriages, collecting evidence for the effective prosecution of persons contravening the Act, advising individuals, creating awareness of the issue, and sensitising the community. A similar approach is adopted under the Indian *Dowry Prohibition Act*, which provides for the appointment of Dowry Prohibition Officers.

Experience has shown that, when public officials who already have multiple other tasks are appointed as focal points or as specialized officers, they are unable to dedicate sufficient attention and time to cases of “harmful practices”. It is therefore integral that legislation mandate the allocation of dedicated funding in order to ensure the appointment of a sufficient number of officers and provide for specialized training.

The issuance of protocols is important to guide professionals in assessing and following up on cases of “harmful practices”. Promising practices include the 2008 Protocol for the Management of Female Genital Mutilation (FGM) for School Nurses and Health Visitors issued by the Birmingham Primary Care Trusts in the United Kingdom.

It is important to note that many “harmful practices” target girls and, in this context, countries have developed child abuse and child maltreatment laws and corresponding child protection systems which have proven effective in the protection of human rights of girls.

### 3.4.3. Registration and protection of service providers

#### Recommendation

Legislation should:

- Provide for the registration of service providers who have as their objective the protection of the rights of women victims/survivors of violence; and
- State that no legal or other proceedings shall be brought against a service provider or member of the service provider who is, or is deemed to be, acting in good faith towards the prevention of “harmful practices” or the protection of victims/survivors of “harmful practices”.

### Commentary

In many countries around the world, those who provide services to victims/survivors of violence against women and, in particular “harmful practices”, continue to be the subject of criticism and, in some instances, oppressive activities or legal proceedings. It is important that any legislation on “harmful practices” grant service providers a specific legal status and provide that no legal or other proceedings shall be brought against them in instances in

which they were acting in good faith to prevent violence or protect victims/survivors. A good example of such a legislative provision can be drawn from section 10 of the Indian *Protection of Women from Domestic Violence Act* (2006).

### 3.5. Protection orders (cross reference section 3.10 of the Handbook)

#### 3.5.1. Protection orders in cases “harmful practices”

##### Recommendation

Legislation should:

- Provide for the issuance of both emergency and long-term “protection orders” in relation to any form of “harmful practice”; and
- Provide that, in cases of “harmful practices”, such protection orders may need to be issued against more than one person and, in some instances, an entire group, such as a tribe or extended family.

##### Commentary

Civil protection orders have proven to be one of the most effective legal mechanisms in protecting women from violence. There are many issues surrounding protection orders that should be considered in the language of any law providing this remedy. For example, it is important to recognize the autonomy of adult victims of violence and respect their own assessment of the value of a protective order in individual situations. For a discussion of these issues, see Handbook section 3.10.

There are a growing number of countries in which protection orders (or general injunctions which have served as protection orders) can or have been issued in relation to “harmful practices”. For instance, in 2009 police issued an order for protection for a young woman and man who married without their families’ permission in Pakistan and had been sentenced by a tribal court to death in absentia.<sup>45</sup> In Kenya in 2000, a court in Rift Valley Province issued a permanent injunction against the father of two teenage girls, preventing him from forcing them to undergo female genital mutilation. The magistrate also ordered the father to continue providing the girls with financial support.<sup>46</sup>

The “harmful practices” in relation to which legislation on protection orders has progressed the furthest are forced and child marriages. The *Forced Marriage (Civil Protection) Act* (2007) in the United Kingdom allows courts to issue an order for the purposes of protecting (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or (b) a person who has been forced into a marriage. Under section 13 of the Indian *Prohibition of Child Marriage Act* (2007), magistrates can issue an injunction against any person, including a member of an organization or an association of persons, prohibiting a child marriage where they are convinced that such a marriage has been arranged or is about to be solemnized.

<sup>45</sup> Due to inadequate support mechanisms the couple have been forced to remain in hiding. See Hasan Mansoor (2009), *Pakistani Couple Married for Love, Hiding in Fear*, AFP, 10 June 2009, available online at: <http://www.google.com/hostednews/afp/article/ALeqM5jAvCBwHPEf4OzJVSycwecDJ8iLGA?index=0>.

<sup>46</sup> BBC News (2000), *Kenyan Girls Win Circumcision Ban*, BBC 13 December 2000, available online at: <http://news.bbc.co.uk/2/hi/africa/1069130.stm>.

## 3.6. Legal proceedings and evidence

### 3.6.1. Prohibition of “friendly agreements”, payment of compensation to the victim/survivor’s family and other means of reconciliation in cases of “harmful practices”

#### Recommendation

Legislation should:

- Not allow perpetrators to escape punishment through reaching an agreement with the family of the victim/survivor and providing them with payment (cross reference section 3.9.1 of the Handbook).

#### Commentary

The use of mediation and other conciliatory practices to resolve cases of “harmful practices” is common place. These practices prioritize the restoration of social and/or family cohesion over the rights of the victim/survivor. They range from practices operating outside of the formal justice system, such as “payback” rape in the Pacific Islands, to the legislated resolution of cases through payment of compensation to the victim’s/survivor’s family, such as is provided for by the *Qisas and Diyat* law in Pakistan. While there have been some positive experiences by women seeking to resolve cases of violence against them in a conciliatory manner, the dominant experience has been that these methods of conflict resolution more often than not provide a negative outcome for victims/survivors. For example, although Pakistan’s *Criminal Law (Amendment) Act (2004)* increased the penalty for so-called “honour” crimes, the *Qisas and Diyat* law, which covers all offences against the human body, continues to make the sentence for such offences open to compromise as a private matter between two parties by providing for qisas (retribution) or diyat (blood-money). In addition, the heirs of the victim/survivor can forgive the murderer in the name of God without receiving any compensation or diyat (Section 309), or reach a compromise after receiving diyat (Section 310).

## 3.7. Prevention

### 3.7.1. Amendments to laws to prevent “harmful practices” related to marriage (cross-reference section 3.13 of the Handbook)

#### 3.7.1.1. Registration of birth, marriage, divorce and death

#### Recommendation

Legislation should:

- Require the creation and/or enforcement of a system of birth, marriage, divorce and death registration which encompasses legal, customary and religious marriages;
- Require that the birth of a child be registered regardless of whether the marriage of the parents is registered;
- State that registration of marriage should not require the consent of both parties, but be possible based on the request of one party; and
- Mandate awareness-raising regarding the importance of such registration, as well as the distribution of relevant forms to all localities.



### Commentary

Children without birth certificates are more vulnerable to violence and “harmful practices” including abuse, trafficking, child marriage and forced marriage, and have less access to government services, such as health and education. It is therefore important that any legislation addressing or prohibiting “harmful practices”, such as forced marriage and child marriage, mandates the creation of a birth registration system where none yet exists, or the proper enforcement of such a system when already in existence. Birth registration should be compulsory and not dependent in any way upon the marital status of the child’s parents.

In many countries around the world marriages continue not to be officially registered, particularly religious and customary marriages. Women in unregistered marriages are exposed to a greater risk of abuse, due to their unclear legal status and rights. In order to ensure that women involved in such marriages receive available social benefits and are aware of and able to enforce their rights, it is essential that any marriage registration system mandate the registration of *all* marriages, whether statutory, customary or religious. Sierra Leone’s *Registration of Customary Marriage and Divorce Act 2009* aims to protect women from the abuses that occur as a result of marriages not being registered by giving them the same legal recognition as civil, Christian and Muslim marriages. The Act requires registration of customary marriages, makes forced marriage illegal and sets 18 as the legal marriage age. Experience has shown that even when the law requires the consent of both parties to register a marriage, men will often not give their consent. It is therefore important that any marriage registration law allow the registration of a marriage when requested by one party to the marriage.

#### 3.7.1.2. Ensuring women’s property and inheritance rights

##### Recommendation

Legislation should ensure that:

- Women have equal rights to occupy, use, own and inherit land and other commodities;
- There is an equitable distribution of property upon the dissolution of a marriage; and
- Women can be the beneficiaries of land tenure reform.

### Commentary

Many “harmful practices” committed against women, and older women in particular, including widow disinheritance and maltreatment of widows, are closely connected to the denial of women’s property and inheritance rights. This is a particular problem in efforts to address domestic violence because men’s perceived or codified exclusive right to property is often an obstacle to women’s ability to live safely. Over the past decade, new laws have been enacted which acknowledge that women should have equal rights to property and inheritance. Article 31(2) of Uganda’s *Constitution*, adopted in 1995, guarantees such rights, stating: “Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit property of their deceased spouses and to enjoy parental rights over their children’. Mozambique’s *Land Law* of 1997 confirms the constitutional principle that women and men have equal rights to occupy and use land and codifies women’s right to inherit land.

### 3.7.2. Support for community abandonment of female genital mutilation

#### Recommendation

Legislation should:

- Acknowledge that communities have an integral role to play in the abandonment of female genital mutilation, and call for governmental support, where requested, for community-based abandonment initiatives; and
- Where appropriate, support community-based initiatives that are targeted at changing behaviour and attitudes, including alternative rites of passage, and the re-training of traditional practitioners for alternative professions, such as midwifery.

#### Commentary

Female genital mutilation is a deeply rooted practice based on beliefs which suggest that it will ensure a girl's proper marriage or family “honour”, or that it is necessary according to the Islamic faith. Challenging these beliefs is a critical step in the process of abandoning female genital mutilation. Many successful initiatives in this regard have been community-led processes whereby information on women's reproductive and sexual health, including the harmful consequences of female genital mutilation, as well as basic information on human rights, has been introduced to communities in a non-confrontational manner. It is important that legislation on female genital mutilation explicitly recognizes the role of communities in ending this practice, and calls upon the government to support community abandonment initiatives in an appropriate manner.

The substitution of alternative rites of passage for female genital mutilation has proven important in the abandonment process in a number of communities. For example, one project conducted by the non-governmental organization BAFROW in Gambia entailed the creation of an “Initiation without Mutilation” ceremony which emphasizes girls' religious rights and responsibilities, health (including information on the negative health consequences of female genital mutilation) and community obligations and good citizenship. A new ceremony site was built and significant success was reported in engaging the local community.<sup>47</sup> Given that carrying out female genital mutilation often constitutes the primary source of income of a practitioner, a number of initiatives have been developed which focus on retraining practitioners as either midwives, or in more general areas, such as micro-enterprise. While neither the creation of alternative rites of passage nor the retraining of practitioners has yet to appear in a law on female genital mutilation, legal endorsement of such initiatives could ensure the implementation of a holistic approach to the abandonment of female genital mutilation.

## 3.8. Asylum law

### 3.8.1. Extension of asylum law to cases of “harmful practices”

#### Recommendation

Legislation should:

- State that a girl or woman may seek asylum on the basis that she has been compelled to undergo or is likely to be subjected to female genital mutilation, or that she is at risk of another “harmful practice”, such as early or forced marriage, or a so-called “honour” crime;

<sup>47</sup> <http://catalog.icrw.org/docs/ribs/BAFROW.pdf>.

- State that a parent or other relative may seek asylum in connection with an attempt to protect a woman or girl from any “harmful practice”; and
- Provide that victims of “harmful practices” are members of a particular social group for the purposes of seeking asylum.

### Commentary

Based on jurisprudence around the world, it is clear that a girl or woman seeking asylum because she has been compelled to undergo, or is likely to be subjected to, FGM can qualify for refugee status under the 1951 Convention relating to the Status of Refugees. Under certain circumstances, a parent may also be able to establish a well-founded fear of persecution, within the scope of the 1951 Convention refugee definition, in connection with the exposure of his or her child to the risk of female genital mutilation.<sup>48</sup> In the *Matter of Fauziya Kassinja*, the United States of America Department of Justice Board of Immigration Appeals granted asylum to a woman who had fled from Togo to avoid being subjected to female genital mutilation.<sup>49</sup> Similarly, in the case of *Zainab Esther Fornah (Appellant) v. Secretary of State for the Home Department (Respondent)* (*House of Lords 2007*), the United Kingdom granted asylum to a 19-year-old woman who fled Sierra Leone to avoid female genital mutilation.<sup>50</sup>

<sup>48</sup> For further information see the UNHCR (2009), *Guidance Note on Refugee Claims Relating to Female Genital Mutilation*, available online at: <http://www.refworld.org>.

<sup>49</sup> *Matter of Fauziya Kassinja*, 21 I. & N. Dec. 357, Interim Decision 3278, 1996 WL 379826 (Board of Immigration Appeals 1996).

<sup>50</sup> *Secretary of State for the Home Department (Respondent) v. K (FC) (Appellant); Fornah (FC) (Appellant) v. Secretary of State for the Home Department (Respondent)*, [2006] UKHL 46, United Kingdom: House of Lords, 18 October 2006.



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