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Children's Rights and the elimination of harmful practices

General Comment No. 18 of the UN Committee on the Rights of the Child

Information

In 2014 the UN Committee on the Elimination of Discrimination against Women and the UN Committee on the Rights of the Child joined forces to produce General Comment No. 31/ No. 18. The main objective of this General Comment is to clarify the States parties' obligations regarding the elimination of harmful practices. This publication summarizes the General Comment and outlines approaches on how development cooperation may contribute to the elimination of harmful practices.

Female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour, and dowry-related violence are examples for harmful practices, which the Committees criticize in General Comment 31/18¹. Underlying all of these practices is a societal attitude according to which women and girls are regarded as inferior to men and boys. They are also used to justify gender-based violence as a form of "protection" or control of women.

- **Female genital mutilation (FGM)** is the practice of partially or completely removing the external female genitalia. It is performed in all regions of the world. In some societies it is a requirement for marriage and believed to be an effective method for controlling women's and girls' sexuality.
- **Child marriage**, also referred to as early marriage, is any marriage where one of the parties is under 18 years of age. Any person under the age of 18, or in exceptional cases under

the age of 16, is not considered to have given their full, free and informed consent. In exceptional cases a marriage below the age of 18 is allowed when the child is at least 16 years old. This decision has to be taken by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity without deference to cultures or traditions.

- **Forced marriages** are characterised by the fact that one or both parties have not expressed their full and free consent. There are various forms of forced marriages such as child marriages, exchange or trade-off marriages, coercing a widow to marry a male relative of her deceased husband or in some contexts, when rapists escape criminal sanctions by marrying their victims.
- The **payment of dowry** often leads to violence against women and girls. The family of the husband commits acts of violence, including murder, burning and acid attacks, for failure to fulfil expectations regarding the payment of dowry or its size.
- **Polygamy** continues to be practiced in some countries, despite legal bans or restrictions. There are several countries in which polygamy is allowed by law and other countries where it is officially banned but still practiced. It is contrary to women's and girls' dignity and human rights such as equality and protection within the family.

- **So-called honour crimes** are acts of violence committed mainly against women and girls. They are committed by family members because the woman or girl is perceived to have behaved in a way that dishonours the family. This behaviour may be entering into sexual relations before or outside of marriage, refusing to agree to a forced marriage, seeking divorce, dressing in an unacceptable way, working outside the home, etc. The crimes include murder and are frequently committed by a spouse, relative or member of the community. They are often viewed by the community as a means to preserve or restore the integrity of the norms. Many laws consider the defence of honour a mitigating circumstance, resulting in reduced sanctions or impunity.

Further, there are many other practices which have been identified as harmful practices such as neglect of girls, virginity testing, scarring, branding/tribal marks, corporal punishment, accusations of witchcraft, infanticide, incest and violent initiation rites of boys. The Committees thus recognize that boys are also victims of violence and harmful practices.

The causes of harmful practices are multi-dimensional. They include stereotyped sex- and gender-based roles, the presumed superiority or inferiority of either of the sexes, attempts to exert control over the bodies and sexuality of women and girls, social inequalities and the prevalence of male-dominated power structures.

Definition of harmful practices

The Committees emphasise the key principles of the Convention on Rights of the Child (CRC) in this General Comment. These are crucial to an understanding of how the substantive articles of the CRC should be implemented. Further, the Committees also refer to the evolving capacities of the child. As children mature they develop their capacities to take decisions concerning their lives – these are the evolving capacities which in the end lead into adolescence and adulthood.

In the light of these principles the following issues have been defined to be of particular importance for the understanding of the General Comment (see Box below).

The Committees have identified four main criteria which may help to determine whether a practice is harmful. These are:

- denial of dignity and/or integrity,
- discrimination resulting in harmful physical, psychological, economic or social consequences and/or in limitations on the capacity to participate fully in society or develop and reach full human potential,
- social norms that perpetuate male dominance and inequality of women and children,
- the imposition of the practice by family members, regardless of whether the individual girl/woman provides or is able to provide her consent.

Relevant Articles of the CRC

Key principles and articles of the CRC can be used when addressing harmful practices:

- Article 2: Non-discrimination
- Article 3: The best interests of the child
- Article 6: The right to life, survival and development
- Article 12: The right to be heard

Further articles of particular importance:

- Article 19: Protection from all forms of violence
- Article 24: Highest attainable standard of health in particular Article 24(3) calling on States parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children
- Article 37: Freedom from torture or other cruel, inhuman or degrading treatment or punishment

Limited data

The overall number of women and girls affected by harmful practices remains extremely high. In geographical terms harmful practices may spread when members of practicing communities migrate elsewhere. They may become more emphasised within a community in an attempt to preserve their cultural identity in a new environment. Disaggregated data on harmful practices remain limited and are seldom comparable across countries and over time, resulting in a limited understanding of the extent of the problem. This may also be due to the fact that information about these practices is kept secret for fear of punishment where they are officially forbidden.

Responsibilities of States parties

The Committees' key recommendations in this General Comment:

- Collect and analyse data on harmful practices disaggregated on the basis of sex, age, geographical location, socio-economic status, education levels and other key factors.
- Establish a rights-based strategy to eliminate harmful practices. It must be holistic and locally relevant and should include supportive legal and policy measures. It should also engage a broad range of stakeholders, especially those who are engaged in practice. The implementation of this strategy requires adequate organisational, human, technical and financial resources. Further, it must be mainstreamed and coordinated from local level to national level in all relevant sectors.
- Adopt legislation that effectively addresses and eliminates harmful practices. The drafting process should be fully inclusive and participatory. There is a requirement for legislation in many areas such as equal access to justice for women and children affected by harmful practices, repealing all legislation which condones harmful practices, mandatory reporting for professionals to document actual incidences, and provision of legal remedies and reparations.
- Support the development of human rights-based social and cultural norms through measures such as human rights education,

dialogue, and awareness-raising programmes. Any effort to change social norms must be holistic and community-based. Communities should be enabled to explore and agree on alternative ways to fulfil their values and celebrate traditions without causing harm.

- Ensure equal access to education for girls. Low educational attainment of girls and high-drop-out rates are correlated to the prevalence of harmful practices. Secondary education should be made mandatory. Vocational education and training should be provided for girls and non-formal education for girls who do not attend school. General empowerment of women and girls can be achieved through training in livelihood and entrepreneurship as well as through the creation of safe spaces where women and girls can meet their peers, mentors, teachers and community leaders.
- Provide all relevant professionals with information on applicable human rights norms and standards. This should include persons working within traditional justice systems, law enforcement personnel as well as health care providers and professionals within child welfare services. Equip youth with information on their reproductive health and rights.
- Establish adequate protection services. This should include medical, psychological and legal services. A free-of-charge 24-hour helpline is recommended as a referral point. Access by migrant women and children to services should be ensured regardless of their legal status. When women and girls seek justice they often face a risk of re-victimisation, harassment and possible retribution. It is therefore important to ensure that their rights are protected throughout proceedings.

Strategies for prevention of harmful practices

The Committees emphasize in the General Comment: Each State party is under an obligation to send a clear message of condemnation of harmful practices, provide legal protection for victims, enable State and non-State actors to protect women and children at risk, ensure the availability of redress and ensure an end to impunity. Legislation

must be supplemented by a set of measures to facilitate its implementation, including incentives for effective actions, enforcement, follow-up, monitoring and evaluation of the results achieved. A holistic strategy to combat harmful practices needs to be underpinned by action in a diverse range of fields. Relevant legislation with a clear message of condemnation of harmful practices is necessary. This should also include the provision of legal protection for victims. Contrary to States parties' obligations many laws still contain provisions which justify, permit or lead to harmful practices. This includes legislation which allows for child marriage, allows the defence of honour or enables a rapist to avoid sanctions if he marries the victim.

Professionals providing services for women and children, such as teachers and medical personnel, are in a unique position to identify actual or potential victims of harmful practices. Rules of confidentiality may conflict with their obligation to report. Specific regulations must be put in place which make it mandatory for these professionals to report such incidences. Further, a wide range of stakeholders need to be engaged in strategies to combat harmful practices including National Human Rights Institutions, health, education and law enforcement professionals and civil society, as well as those engaged in the practices. However, approaches should not only

target individual behaviour change since harmful practices are usually undertaken in the belief that something positive/socially desirable will result from them for the victim, members of their family and the community at large. Therefore, sustainable large-scale elimination of harmful practices will most likely result from culturally sensitive interventions that reinforce human rights and enable practicing communities to explore and agree on alternative ways to fulfil their values.

Monitoring and evaluation of implementation

To eliminate harmful practices, data collection and analysis is needed. These can also be used to evaluate the impact of actions taken and to monitor the progress achieved. Data should be disaggregated by sex, age, geographical location, socio-economic status, education levels and other key factors. This should allow for the identification of high-risk and disadvantaged groups of women and children. Data should be collected regularly within health care and social services, and education, judicial and law enforcement sectors. The Committees further recommend that States parties use qualitative research to generate in-depth data, through focus group discussions, key informant interviews with a wide variety of stakeholders, structured observations, social mapping and other appropriate methodologies.

Approaches for bilateral development cooperation based on this General Comment

Development cooperation can advise partner countries on how harmful practices can be eliminated and can use General Comment No. 31/18 as guidance. All development measures should be based on the understanding that harmful practices are a severe violation of human rights. One of the main reasons for the persistence of these practices is prevailing gender inequality and the lesser value attributed to girls and women. All efforts must lead to a change in attitudes and behaviour in order to be effective and sustainable.

Any efforts to combat harmful practices should be based on the best interests of the child (article 3) and the right to be heard (article 12).

The participation of all parts of society, especially young girls and adolescents, is important when designing development measures.

Good Governance

- Development cooperation measures in the field of justice sector reform should focus on relevant legislation when advising legal reforms. Firstly, this includes raising marriage age to 18 years for both sexes and secondly, the introduction of compulsory birth- and marriage registration services, preferably in an easily accessible, one-stop system. This will allow for an unquestionable reference point

to define the age of any person. Here the use of Information and Communications Technology should be explored. Thirdly, reference to harmful practices should be made when advising legal reforms in countries where these are prevalent. For example when advising penal reforms, paragraphs related to the so-called "defence of honour" should be repealed.

- Development cooperation measures should accompany legal reform processes with Capacity Development for legal and administrative professionals and develop campaigns that raise awareness among key stakeholders and in the communities. Professionals in the field of alternative dispute resolution, traditional justice systems and law enforcement as well as religious leaders and community elders should be included in awareness-raising activities.
- Development cooperation measures should support the bringing of laws into practice by advising effective prosecution and supporting the establishment of protection systems, including the provision of legal support services for affected girls and women.

Education

- Harmful practices can only be eliminated or effectively prosecuted if children, adolescents and women are empowered to resist these practices or to seek legal and psychosocial support. Development cooperation should therefore implement Capacity Development measures for vulnerable groups on harmful practices, human rights and legal remedies.
- Development cooperation should address harmful practices in curriculum development and support pupils, parents and the wider communities to declare themselves as "free from harmful practices". Teacher training measures should include education on harmful practices, with the objective that teachers are sensitized to cases of harmful practices and are able to take preventive actions.

- Non-formal education providers should be supported to engage in awareness-raising measures, for example through radio, media, public debates, or the establishment of boys' or girls' clubs against harmful practices. Ideally this should also include comprehensive sexuality education. One objective is to break the taboo which surrounds many harmful practices. Adolescents should be put in a position to make informed choices in their future lives.
- Development cooperation should support educational and awareness-raising measures for parents and decision-makers at all levels in order to enhance the general change in opinions. This should include participatory dialogue on cultural values and human rights topics between generations and the sexes.

Health

- Development measures should strengthen health care systems by way of evidence-based data gathering with respect to health consequences of harmful practices. Data should be at least disaggregated by age and gender.
- Development cooperation should provide Capacity Development measures concerning harmful practices and human rights norms to health professionals and health care providers. Health professionals can be advised on the development of ethic codes with regard to harmful practices.
- Engage health professionals in dialogues with practicing communities and individuals, such as community representatives, religious leaders who support harmful practices, those performing harmful practices, and circumcisers. The objective is to find common new ways to continue tradition without inflicting harm.
- Development cooperation should support measures which provide treatment and psycho-social support for victims of harmful practices.

State party obligations

- States parties have a duty to respect, protect and fulfil women's and children's rights. This means that States parties are obliged to prevent violence or violations of human rights, protect victims and witnesses from human rights violations, to investigate and punish those responsible, including private actors, and to provide access to redress for human rights violations. This is a due diligence obligation.
- In order to ensure this, States parties must establish a locally relevant legal framework based on the domestic incorporation of the CRC and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Harmful practices should be promptly, impartially and independently investigated, so that impunity can be combatted. Legislation aimed at the elimination of harmful practices must include appropriate budgeting, implementing, monitoring and enforcement measures.
- States parties are obliged to install an independent monitoring mechanism to track progress in the protection of women and children from harmful practices and the realisation of their rights.
- Ensure the engagement of a wide range of stakeholders when designing strategies aimed at the elimination of harmful practices. This should include independent National Human Rights Institutions, health, education and law enforcement professionals, civil society as well as those engaged in the practice.
- Any reservations which have the effect of broadly limiting States parties' obligation to effectively address harmful practices are incompatible with the object and purpose of the CRC and CEDAW. Therefore, States parties are required to withdraw/repeal any such reservations in order to ensure their obligation to respect, protect and fulfil women's and children's right to live free from harmful practices. This should include the withdrawal of reservations to articles such as Policy Measures (article 2), Sex Role Stereotyping and Prejudices (article 5) and Family Life and Marriage (article 16) of the CEDAW.

1 UN, Committee on the Rights of the Child (2014): Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices. 04 November 2014. CEDAW/C/GC/31/CRC/C/GC/18. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f31%2fCRC%2fC%2fGC%2f18&Lang=en (last accessed: Feb. 15, 2017).

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