

## **KENYA'S 3<sup>RD</sup> CYCLE UPR REVIEW**

### **SUBMISSIONS ON CHILD RIGHTS – HARMFUL TRADITIONAL PRACTICES**

**ORGANIZATIONS:** The East African Centre for Human Rights, Amref Health Africa, 28 Too Many, Forum for African Women Educationalist Kenya Chapter (FAWE), Akili Dada, Mama Africa Centers, Mtoto News, Youth Anti-FGM Network, Child Fund, Plan International, VSO International, Daughters Of Kenya (DoK), Empiris Emakat Women Group, Association of Media Women in Kenya (AMWIK), Coexist initiative, Network For Adolescent and Youth Of Africa (NAYA), Chepngoror Foundation, Integrated Development Programme (IDAP), Msichana Empowerment Kuria, Nyanza Initiative for Girls' Education & Empowerment (NIGEE), Pastoralist Girls Initiative (PGI), Inua Girls Group, Murua Girls Children Education Programme, Youth Horizons, We World, Pastoralist Women For Health and Education – Isiolo, Enduet Women Group, Marakwet Girls Foundation Kenya, Samburu Girls Foundation, Hope Beyond Transitional Centre.

### **HIGH PREVALENCE OF CHILD MARRIAGE**

Kenya was recommended in the first cycle (101.86) to promote the law on the minimum age of marriage at 18 years. The government undertook the review of the Marriage Act, 2014 that sets out the minimum age of marriage at 18years<sup>1</sup> and initiated the development of a Draft National Action Plan for Ending Child Marriages in Kenya (2016 -2025). The country does not have an existing End Child Marriage Policy which is a hindrance to the co-ordination of efforts and channeling of resources towards ending child marriage. The policy will be instrumental in the design, formulation, planning, financing, and coordination of all activities related to ending child marriage.

Recent research reports indicate that child marriage remains a huge problem in Kenya with the national prevalence at 23.9% and the median marriage age at 17 years<sup>2</sup>. Whereas the national prevalence is at 23.9%, there are counties that have a higher prevalence rate that surpasses the national prevalence due to poverty, weak protection mechanisms, retrogressive cultural practices such as female genital mutilation and beading. In addition, in-country statistical data on child marriage is not readily available to inform the design and programming of interventions towards tackling child marriage.

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<sup>1</sup> Section 4

<sup>2</sup> UNICEF's State of the World's Children, 2017

In the second cycle, it was recommended that Kenya needs to eliminate stereotypes and harmful practices against women (142.44) and ensure the strict enforcement of the laws prohibiting child marriage (142.48)

### **Recommendation**

1. The State should commit to the timely finalization, adoption, and implementation of the Draft National Action Plan to Ending Child Marriage in Kenya (2016 – 2025).
2. The State should fast track the formulation of an End Child Marriage Policy.
3. The State should create a central data depository to track child marriage cases.
4. The State should establish a National Agency to coordinate efforts towards ending child marriage.
5. The State should adopt and implement cohesive national legal and policy frameworks relating to ending child marriage that uphold international human rights standards related to the protection of girls from child, early, and forced marriages.

### **HIGH PREVALENCE OF FEMALE GENITAL MUTILATION/CUTTING (FGM/C).**

In the first cycle (101.52, 101. 53, 101.54, 101.55, 101.56, 101.57), there were numerous recommendations for Kenya to adopt and implement to eradicate FGM/C. In the second cycle it was recommended that Kenya should undertake protective measures against gender stereotypes and harmful cultural practices.

The government enacted the Prohibition of Female Genital Mutilation Act, 2011 then formulated, adopted, and launched the National Guidelines on Alternative Rites of Passage and Community Dialogues, a Communication Strategy and a Female Genital Mutilation Reference Guide. However, the finalization of the National Anti-Female Genital Mutilation Policy is still currently pending.

According to the Kenya Demographic Health Survey<sup>3</sup>, the national prevalence of female genital mutilation is on a steady decline from 38% in 1998 to 21% in 2014<sup>4</sup>. The prevalence varies substantially by region with the highest prevalence being the North Eastern region at 98% and lowest prevalence being the Western region at 1%<sup>5</sup>. In addition, the highest rates of female genital mutilation is amongst the ages of 10-14years, 15 plus years, and 5-9years respectively.

Poor enforcement of existing legislations to ending female genital mutilation as well as the absence of an operation policy framework has also contributed to the high prevalence of female genital mutilation. Particularly, the Prohibition of Female Genital Mutilation Act<sup>6</sup>

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<sup>3</sup> 2014

<sup>4</sup> Kenya Demographic Survey 2014, <https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>

<sup>5</sup> Shell-Duncan 2017\_FGM/C

<sup>6</sup> 2011

faces challenges in implementation due to conflicting interpretations. The spirit and letter of this law needs to be interpreted vis-à-vis individual's right to privacy and communities' rights to culture and association which are also parts of the Bill of Rights within the Constitution.

This loophole has been exposed with the filing of a Constitutional Petition<sup>7</sup> at the High Court by Dr. Tatu Kamau challenging the constitutionality of the Act<sup>8</sup>. The petitioner claims that amongst other things the law infringes on the rights of women to participate in their culture and denies women autonomy over their bodies to participate in cultural activities of their choice such as female genital mutilation.

### **Recommendation**

- 1. The State should commit to fast track the finalization, adoption and implementation of the National Policy on the Abandonment of Female Genital Mutilation.**
- 2. The State should create a central information and data depository at the Anti-Female Genital Mutilation Board to enhance knowledge management on female genital mutilation.**
- 3. The State should undertake county-specific research on the prevalence, emerging trends, and impact of female genital mutilation.**
- 4. The State should enforce medical ethics, norms, and standards that bar medical practitioners and personnel from performing medicalisation and para-medicalisation of female genital mutilation.**

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<sup>7</sup> Petition No. 8 of 2017 [kenyalaw.org/caselaw/cases/view/154401](http://kenyalaw.org/caselaw/cases/view/154401)

<sup>8</sup> Anti-FGM Act, 2011