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**FOURTH ORDINARY SESSION OF THE SPECIALISED
TECHNICAL COMMITTEE ON SOCIAL DEVELOPMENT,
LABOUR AND EMPLOYMENT (STC-SDLE-4)
04-08 APRIL 2022
ADDIS ABABA, ETHIOPIA**

Theme: “Building Forward Better Well Being and Living Standards in Africa”

**THE AFRICAN UNION ACCOUNTABILITY FRAMEWORK
ON THE ELIMINATION OF HARMFUL PRACTICES**

2022

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Section 1: Harmful Practices and Accountability

Background

The African Union's (AU) [Agenda 2063](#): "The Africa We Want", commits under **Aspiration 6, priority 6.1.2** to achieve "*An Africa whose development is people driven, relying on the potential of African people, especially its women and youth, and caring for children*". The continental agenda has set a momentum to accelerate the domestication of existing continental commitments of ending all forms of gender-based violence, and violence against women and girls. In particular, it provides the platform for the implementation of the AU Gender Strategy and, the Protocol on the Rights of Women (Maputo Protocol) of the African Charter on Human and People's Rights (ACHPR), as well as the African Charter on the Rights and Welfare of the Child (ACERWC).

The African Union Agenda 2063 and its 10-year action plan, covering 2014–2023, highlights key priorities with a focus on gender equality and women's empowerment and establishing linkages with civil society organizations including on capacity building at all levels to champion accountability and action all relevant commitments for young and adolescent girls and women.

As part of this continental agenda on girls and women empowerment, the African Union Commission is committed to advocating for and working with decision-makers to take strong action to accelerate an end to harmful practices – particularly child marriage and female genital mutilation (FGM). Governments around the world have committed to end harmful practices by 2030 under the 2030 Agenda's Sustainable Development Goals (SDGs)¹, particularly SDG 5, under target 5.3. In addition to Agenda 2063 pronouncements, it is important to hold governments accountable for the SDG commitments. And at the request of African Union Heads of State and Government, the AU is issuing this comprehensive Accountability Framework on the Elimination of Harmful Practices – articulating the policy and legal conviction and architecture for action.

1.1. Context

- i. In 2011, African Union Heads of States at the 17th Ordinary Session held in Malabo, Equatorial Guinea from 30th June to 1st July 2011, adopted the Decision [Assembly/AU/Dec.383\(XVIII\) on the "Support of a Draft Resolution at the Sixty Sixth Ordinary Session of the General Assembly of the United Nations to Ban Female Genital Mutilation in the World"](#). This resulted in United Nations (UN) General Assembly resolutions [A/RES/67/146 \(2012\)](#), [A/RES/69/150 \(2014\)](#) and [A/RES/71/168 \(2016\)](#) on "*Intensifying global efforts for the elimination of female genital mutilations*";
- ii. At the 32nd Ordinary Session of the AU Heads of State and Government Assembly, Heads of State and Government adopted [Assembly/AU/Dec.737\(XXXII\) on](#)

¹ State of the World Population, 2020 [UNFPA](#)

[“Galvanizing Political Commitment Towards the Elimination of Female Genital Mutilation in Africa”](#), which endorsed the AU’s Initiative on Eliminating Female Genital Mutilation – the Saleema Initiative;

- iii. In 2014 the AUC launched a Campaign to eliminate Child marriage and involved different stakeholders: Member States, legislators, parliamentarians, law enforcement agencies, UN Agencies, private sector organizations and civil society organizations.
- iv. In 2017, the AU launched the African Common Position on AU Campaign on ending child marriage.
- v. Furthermore, the African Union launched in 2019 a continental initiative to end female genital mutilation the “Saleema Initiative”. The initiative focuses on;
 - a) Mobilising political action;
 - b) Promoting legislation enforcement;
 - c) Advocating for increased allocation of domestic, financial resources and;
 - d) Strengthening partnerships to end female genital mutilation, particularly within communities most affected by the harmful practice.

1. Harmful Practices; Definitions and Prevalence

Child Marriage and Female Genital Mutilation are harmful practices that adversely impact the lives of millions of adolescent girls and women around in Africa. Therefore, the AU is determined to play its leadership role towards the elimination of these harmful practices.

2.1. Female Genital Mutilation

FGM is defined as: “All procedures involving partial or total removal of the external female genitalia or other injuries to the female genital organs whether for cultural or other non-therapeutic reasons.”² The procedure is generally carried out on young girls, with research also documenting that adult women are also subjected to the practice. The injurious practice is predominantly performed by traditional cutters, in addition to health practitioners including doctors and midwives (as well as traditional birth attendants) on infant girls and young women about to be married. In communities, FGM is often performed in an unsanitary way and with sharp objects such as knives, scissors, razor blades or broken glass.

FGM is a social and gender norm, which is intended to control women and girls’ sexuality and preserve chastity and prevent pregnancy out of wedlock. It is part of an initiation rite accompanied by explicit teaching about a woman’s role in her society. It is also done to enhance the girl’s femininity, often synonymous with docility and obedience. In practicing

² Female Genital Mutilation: a joint WHO/UNICEF/UNFPA statement Geneva: WHO, 1997

communities, women and girls that are not subjected to FGM are often discriminated and excluded from social interaction and engagement. In such communities, FGM is also used as a sort of cultural identity and identifies who belongs to the community.

Globally, FGM is recognized to be one of the worst forms of gender-based violence and a harmful practice. Furthermore, it was recently designated a “Human Rights Violation” by the United Nations Human Rights Council, that severely infringes on women’s sexual rights and bodily autonomy. It affects women and girls’ sexual and reproductive health and presents adverse, negative health effects and is one of the many forms of social injustice that girls and women suffer. Generally, FGM is defined as a complex human rights issue, requiring a comprehensive response.

More than 200 million girls and women have been cut across 30 countries in Africa, the Middle East and Asia.³ Estimates suggest that, more than 68 million girls age 0 to 14 worldwide (50 million in Africa),⁴ are at risk of being subjected to female genital mutilation by 2030 if current trends are not reversed. Further to this, 60 countries around the world have adopted national laws penalising the practice, of which 23 are in Africa.

2.2. Child Marriage

Child marriage refers to any formal marriage or informal union between a child under the age of 18 and an adult or another child. Child marriage is similarly a human rights violation and a manifestation of gender inequality. Child marriage exists in most countries in the world. Increasingly, the global burden of child marriage has shifted from South-Asia to sub-Saharan Africa.

The projected population growth in Sub-Saharan Africa will lead to a higher number of child brides during the coming years. Child marriage, combined with early childbearing, high fertility rates and inadequate access to sexual and reproductive health and maternal health services are the main contributing factors to the high number of maternal deaths among young women in Africa.

Girls subjected to child marriage are always married to older men, and do not have power or skills to negotiate over sex or birth control, with the resultant outcome of teenage pregnancies, high birth-rates and high maternal and child mortality rates. Other morbidities include obstetric fistula; premature births; still-births; sexually transmitted diseases (including HIV/AIDS and cervical cancer), as well as domestic violence.

According to the United Nations Children’s Fund (UNICEF);

- i. About 12 million girls under the age of 18 are married in Africa in Africa. In developing countries, 1 in 5 girls is married by the age of 18 and 1 in 20 by the age of 15.

³ SWOP 2020 UNFPA

⁴ UNICEF: <https://www.unfpa.org/unfpa-unicef-joint-programme-female-genital-mutilations>

- ii. In Africa 125 million girls [have been] married before age 18. There are 41 countries worldwide with a child marriage prevalence rate of 30% or more, and of those, 30 are in Africa. In the least developed countries, that number doubles, with 40% married before their 18 birthday, and 12% married before 15 years of age. In Sub-Saharan Africa, 35% of young women are married before 18.
- iii. In West and Central Africa, where 6 out of the 10 countries with the highest child marriage prevalence levels in the world are located, 40.5% young women were married before 18. Niger, in particular, has the highest prevalence of child marriage in the world at 76%, with the Central African Republic (CAR) at 68% and Chad at 67% prevalence.
- iv. In Eastern and Southern Africa the prevalence rate of women married before 18 years of age is 34,6%. Among the 20 countries with the world's highest prevalence rates are Mozambique 48%, Malawi 42% and Madagascar 41%.
- v. Child marriage does not affect only young girls. In 2020 global study,⁵ the impact of child marriage on boys is expounded in greater detail. Although, child marriage rates are significantly higher for girls than for boys, with 1 in 5 girls being married as a child globally compared to 1 in 21 boys. While boys and girls who marry in childhood do not face the same risks and consequences due to biological and social differences, the practice is nonetheless a rights violation for children of both sexes. Globally, 115 million boys and men were married before age 18. The highest rates in Africa of men aged 20 - 24 first married or in union before age 18 are 13% in Madagascar and 12% in Comoros.

Like young adolescents and girls, young boys are forced to take on adult responsibilities for which they are not prepared. The union may bring early fatherhood and result in additional economic pressure in the form of providing for the household; it may also constrain the boy's access to education and opportunities for career advancement.

While child grooms are less numerous than child brides, they similarly have experienced a rights violation that cuts short their childhood and limits their future income-earning opportunities.

2. Impact of COVID-19 on Harmful Practices

Emerging evidence indicates that child marriage, FGM and adolescent pregnancy are rising in the COVID-19 context. The COVID-19 pandemic could delay the implementation of programmes to eliminate harmful practices, with social distancing preventing impacting some of the most effective prevention programming such as community empowerment and public abandonment declarations, which are typically implemented in group settings. In addition, it is possible that economic uncertainty and school closures may and or have caused an

⁵ UNICEF, Child Marriage Evidence Report 2021

increase in the incidence of FGM and child marriage.⁶ Furthermore, lockdowns have had a high cost for women and girls living in volatile and unsafe situations.

Recent studies also suggest that the ongoing COVID-19 pandemic will further increase these estimates hindering the progress and ongoing efforts to end child marriage and FGM. In particular, 10 million girls are at risk of being forced into child marriage and an additional 2 million cases of FGM are expected 2030 that would have otherwise been prevented.

Evidence shows that adolescent girls have been severely impacted by the pandemic and are experiencing increases in violence, child marriage, FGM and teenage pregnancies, driven partially by disruptions to schooling and access to social services including sexual and reproductive health services.

3. Root Causes and Consequences

In societies where FGM is practiced, the harmful is treated as a pre-requisite for marriage. Both FGM and child marriage are harmful practices underpinned by negative, gendered social norms and discriminatory attitudes in institutions (families, schools and religious settings) that fail to protect the rights of children and adolescents. Both FGM and child marriage can threaten the lives of girls and women and lead to lifelong physical and mental suffering.

4.1. Root causes

In particular cases, FGM and child marriage have been found to have correlation. Where this is the case, FGM is pre-requisite for marriageability. For other cases, it is a precursor to marriage, with young girls being subjected to FGM as rite of passage into womanhood. However, there is no generic correlation between the harmful practices. In a recent global study, among the 10 countries with the highest prevalence rate for female genital mutilation and child marriage respectively, only three (3) countries are found to have occurrences of both harmful practices. And the intersection between both harmful practices varies considerably between countries, where for the most part, where girls and women are more likely to have been subjected to only one practice or neither.

Many factors interact to place a child at risk of marriage, including poverty, lack of educational and economic opportunities, unavailability or inaccessibility of sexual and reproductive health services. In addition, the perception that marriage will provide “protection” and family honour, as well as respect for and observance of social norms, customary or religious laws that condone the practice, as well as an inadequate legislative framework and weak enforcement of laws; and the state of a country’s civil and birth registration system.

Female genital mutilation is performed to control women’s sexuality where virginity is prized and to ensure “marriageability”. In those communities, they are considered as a rite of

⁶ COVID-19 DISRUPTING SDG 5.3: ELIMINATING FEMALE GENITAL MUTILATION TECHNICAL NOTE | APRIL 2020. UNFPA-UNICEF Joint-programme

passage from childhood to womanhood. Therefore, when a girl undergoes FGM, it means in those communities that the girl is ready for marriage.

4.2. Consequences

Child marriage and FGM deprive girls of a wide range of their rights, it affects their health, wellbeing and potential. They often drop out of school, defying opportunities to develop skills to secure a better future for themselves, their families and communities.

Social consequences

The harmful practices are performed in response to strong social conventions and supported by key social norms; thus, failure to conform often results in harassment and, exclusion from important communal events and support networks, as well as discrimination by peers.

Health consequences

The complications of FGM can include death, haemorrhage, fistula, scars, shock, infection, urine retention and severe pain. In some communities, girls subjected to FGM are also at high risk of child marriage and experiencing complications during childbirth.

Child marriage deprives girls of their childhood. Girl child brides are often at risk of complications during pregnancy and childbirth. According to UNICEF, the child of a mother aged below 18 years also has a 60 % greater risk of dying in his/ her first year. Girls married before 18 are also more likely to experience domestic violence. Child marriage and teenage/ early pregnancies have serious health consequences; the leading cause of maternal mortality and morbidity for girls aged 15 to 19 is pregnancy and childbirth.

In addition, both FGM and child marriage can lead to mental health issues. FGM can affect a woman's mental health⁷ long after the procedure, into her adult life. Women that have undergone FGM or child marriage can present signs of psychological trauma – manifesting in the form of anxiety, depression, post-traumatic stress and other mood disorders. This can often lead to physical and sexual violence.

Economic consequences

FGM and child marriage involve economic costs at individual, family and household, community and societal levels. Poverty as well as gender-based violence and gender discrimination are key drivers of female genital mutilation and child marriage.

However, ending child marriage and female genital mutilation worldwide is possible within 10 years by scaling up efforts to keep girls in school longer and teach them life skills and,

⁷ Mental Health consequences of female genital mutilation:
http://www.who.int/reproductivehealth/topics/fgm/mental_problems_and_fgm/en/

engage men and boys in social change. According to the United Nations, investments totalling \$3.4 billion a year through 2030 would end these two harmful practices.⁸

4. Continental and International Human Rights Frameworks and Conventions

Female genital mutilation and child marriage are harmful practices denounced at the continental level and internationally as human rights violations and harmful practices. States have made commitments under continental and global conventions, declarations and strategies to eliminate all forms of gender-based violence, to which these practices fall under.

5.1. Continental Frameworks and Legal Instruments

The African Union guided by Agenda 2063's priority 6.1.2. is working to deliver on the commitment to eliminate within this generation ***"...all harmful social norms and customary practices against women and girls and those that promote violence"***.

This is highlighted and operationalized by a strong continental human right framework to protect and safeguard the rights of girls and women from harmful practices – particularly FGM and child marriage, and these include;

Charters and Frameworks

- i. African Charter on Human and People's Rights (ACHPR 1987) and its Protocol on Women's Rights (the Maputo Protocol). The Charter is operationalized by the Banjul Commission;
- ii. The African Charter on the Rights and Welfare of the Child (ACRWC 1990) is implemented through the African Committee of Experts on the Rights and Welfare of the Child (ACERWC 1990);
- iii. African Court of Justice on Human and Peoples' Rights (ACJHPR 2004); and
- iv. Pan African Parliament (PAP 2004).

Declarations

- v. Solemn Declaration on Gender Equality in Africa (2004)

African Union Assembly Decisions

- vi. 2011 Decision [Assembly/AU/Dec.383\(XVIII\) on the "Support of a Draft Resolution at the Sixty Sixth Ordinary Session of the General Assembly of the United Nations to Ban Female Genital Mutilation in the World"](#);
- vii. 2019 Assembly Decision [Assembly/AU/Dec.737\(XXXII\) on "Galvanizing Political Commitment Towards the Elimination of Female Genital Mutilation in Africa"](#);
- viii. **Child Marriage Decision(s)...**

⁸ UNFPA State of the World Population (SWOP) Report of 2021

5.2. International Conventions

At the international level, States have the obligation under International Law to prevent, investigate, and punish violence against women, including harmful practices as stated in the UN Declaration on the Elimination of Violence Against Women of 1993. The declaration provides in Article 4, paragraph 1, that: “*States should not invoke any custom, tradition, or religious consideration to avoid their obligation to eliminate violence against women, and that they must exhibit due diligence in investigating and imposing penalties for violence and establishing effective protective measures.*”

Numerous international conventions, declarations and resolutions provide coverage for protecting women and girls from the practice of FGM and child marriage including:

Conventions

- i. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979). ***Out of the 28 African countries that practice FGM, 26 have ratified the Convention;***
- ii. Convention on the Rights of the Child (CRC, 1989). All AU Member States have ratified the Charter; and
- iii. Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention 2011).

United Nations Resolutions

- i. UN Resolution 56/128 on traditional or customary practices affecting the health of women and girls (2001);
- ii. The United Nations Sustainable Development Goals call for global action to end Child Marriage and FGM by 2030;
- iii. UN General Assembly resolutions on “*Intensifying global efforts for the elimination of female genital mutilations*”;
- iv. UN General Assembly resolutions on “*Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence*” and on Child, early and forced marriage;
- v. Human Rights Council Resolution on Child, early and forced marriage; and
- vi. The Human Rights Council (HRC) resolutions on FGM.

Declarations, International and Global Strategies

- iv. UN Conferences;
 - o World Conference on Human Rights (Vienna, 1993);
 - o International Conference on Population and Development (ICPD, Cairo, 1994);
 - o 4th World Conference on Women (Beijing, 1995);
 - o Agreed conclusions of the Committee on the Status of Women; and
- v. The 2030 Agenda on Sustainable Development (2015).

5. Rapid Assessment of Key AU Organs

The following AU Organs were selected as per the terms of reference, because they are part of the regulatory framework of the African Union implemented by various institutional structures:

- i. The African Charter on Peoples' Human Rights (Banjul Commission ACPHR);
- ii. The African Committee of Experts of the Rights and Welfare of the Child (ACERWC);
- iii. The African Court on Human and Peoples' Rights (ACPHR); and
- iv. The Pan African Parliament (PAP).

The four AU organs were assessed to identify entry points to monitor progress and challenges within their reporting mechanisms. The purpose of the reporting is to create a space for constructive dialogue among stakeholders on their accountability in ending harmful practices. However, dialogue is not the final goal of the reporting, rather it is a means for achieving other goals.

Generally, States have the misconception that the reporting system is a forum to embarrass them. However, those that have presented reports have realized that it is the best way for Member States to build confidence, capacities and a strong partnership base with independent National Human Rights Institutions (NHRIs) as well as learn best practices from other Member States.

The Chairman of the Commission, Dr. I Badawi (at the 9th Ordinary Session of the Commission), reiterated that the request for reporting and accountability is "*not going to take place as a confrontation (...) but as a dialogue in the framework of cooperation. The questions to be addressed to the representatives of the State(s) must not be understood as a challenge to the State(s) but as a positive criticism or ...dialogue [that] aims at completion of the facts and the legislation in the State(s)*". Commission and the Member States are partners for one objective, which is the promotion and protection of human rights as stipulated in the Charter.

The table below indicates the number of countries that have ratified the respective charters establishing the 4 Organs out of 55 African Union Member States.

Organs	Signed	Ratified	Deposited
African Charter on Peoples' Human Rights (ACPHR)	45	54	54
African Charter on the Rights and Welfare of the Child (ACRWC)	44	49	49

African Court of Justice for Human and Peoples' Rights (ACJHPR)	52	30	30
Pan African Parliament (PAP)	51	51	51

Annex 2 provides a visual presentation with all countries for the respective charter instruments above.

6.1. African Commission on Peoples' Human Rights (ACPHR) or Banjul Commission

The African Charter on Human and People's Rights established the African Commission on Human and Peoples' Rights. The Commission was inaugurated in 1981 in Addis Ababa, Ethiopia. The Commission's Secretariat has subsequently been located in Banjul, The Gambia. The Charter is the founding treaty of the African human rights system. It guarantees the principle of non-discrimination; the right to equality before the law and to equal protection from the law; the right to a hearing before competent national courts.

According to Article 62 of the ACPHR, each State Party undertakes to submit a report every two years.

Out of the 54 Member States that have ratified the Charter, thirty have submitted reports to the Commission. Morocco that recently joined the AU is the only Member State who has yet to ratify the Charter.

Articles below from the Charter have provisions to demand the elimination of harmful practices:

Articles	Provision
Art. 4	"Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."
Art. 5	"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."
Art. 16	Alinea 1. "Every individual shall have the right to enjoy the best attainable state of physical and mental health"
Art. 18. Al.3	Alinea 3: "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women or the "Maputo Protocol" was adopted in 2003 and entered into force in 2005.

The Maputo Protocol sets out the human rights principles of non-discrimination, universality, equality, inalienability and participation. It commits State Parties to the adoption of special measures to eliminate violence against women, especially sexual violence and authorizes medical abortions in situations involving sexual assault, rape and incest.

Furthermore, Article 2.2 of the Maputo Protocol obligates State Parties to prohibit and condemn all forms of harmful practices, which negatively affect the human rights of women and calls for the elimination of harmful practices and stereotypes. In addition, it guarantees comprehensive rights to women including the right to participate in political processes, social and political equality between men and women, reproductive health and ending harmful practices, including FGM and child marriage.

The table below highlights the different articles in the Maputo Protocol to support the elimination of the harmful practices:

Articles	Provision
Art.2	<p><i>Alinea 1:</i> "States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures:</p> <ul style="list-style-type: none"> i. Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application; ii. Enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women; iii. Integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life; iv. Take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist; v. Support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women."

<p>Art. 3</p>	<p>Alinea 1: “Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights”.</p> <p>Alinea 3: “States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women”.</p> <p>Alinea 4: “States Parties shall adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence”.</p>
<p>Art. 4</p>	<p>Alinea 1: “Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited”.</p> <p>Alinea 2: “States Parties shall take appropriate and effective measures to:</p> <ul style="list-style-type: none"> i. Enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public; ii. Adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women; iii. Identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence; iv. Actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women; v. Punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims; vi. Establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women”

<p>Art. 5</p>	<p><i>Alinea 1:</i> “States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:</p> <ul style="list-style-type: none"> i. Creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes; ii. Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them; iii. Provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting; iv. Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance”.
<p>Art. 6</p>	<p><i>Alinea 1:</i> “States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that;</p> <ul style="list-style-type: none"> i. No marriage shall take place without the free and full consent of both parties; ii. The minimum age of marriage for women shall be 18 years; iii. Monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected; iv. Every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised”.
<p>Art. 8</p>	<p><i>Alinea 1:</i> “Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure;</p> <ul style="list-style-type: none"> i. Effective access by women to judicial and legal services,

	<p>including legal aid;</p> <p>ii. Reform of existing discriminatory laws and practices in order to promote and protect the rights of women”.</p>
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To date, the African Women’s Rights Protocol has not secured universal ratification. Out of 55 African Union Member States⁹;

- i. 49 countries have signed;
- ii. 42 have ratified;
- iii. 6 have not signed;
- iv. 13 have not ratified; and
- v. 3 have not signed or ratified.

By 2019, more than 80% of AU Member States had ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol).

The major challenge is implementation (enforcement of the standards). For example, only four (4) Member States have submitted their report to the Special Rapporteur on Women’s Rights in Africa.

6.2. African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child adopted in 1990, guarantees the protection of children against sexual abuse and exploitation. It entered into force in 1999. Article 43 requires that Member States submit a report two (2) years after the entry into force.

With this in mind;

- i. 44 Member States have signed the ACRWC;
- ii. 49 have ratified the charter – of which, five have ratified with reservations, meaning the countries have asked not be obligated by a particular article or a provision of the charter;
- iii. 6 countries have not ratified and;
- iv. One (1) country has not signed or ratified¹⁰.

To date, 40 Member States have submitted their initial report and, five (5) have submitted two (2) reports.

In 2001, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established by Article 32, to promote and protect the rights and welfare of the child.

⁹ Please see Annex 2 for the list of countries

¹⁰ Please see Annex 2

The following articles of the ACRWC are in direct support of the elimination of harmful practices, mainly child marriage as there is no specific mention of FGM:

Article	Provision
Art.1 Al.3	Alinea 3. “Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall, to the extent of such inconsistency, be discouraged.”
Art.2	Definition of a Child “Every human being below the age of 18.”
Art.3	“Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinions, national and social origin, fortune, birth or other status.”
Art.4	In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
Art.5. Al.1. and 2	<ul style="list-style-type: none"> i. Alinea 1. “Every child has an inherent right to life. This right shall be protected by law.” ii. Alinea 2. “State Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.”
Art.11. Al 6.	Alinea 6. “State Parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue their education on the basis of their individual ability.”
Art.14.Al .1	“Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.”
Art. 16. Al 1.	Alinea 1. “State Parties to the Charter to take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.”
Art. 21. Al.1 para. a) and b); and Al. 2	Alinea 1. “State Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular;”

	<ul style="list-style-type: none"> i. Those customs and practices prejudicial to the health or life of the child; and ii. Those customs and practices discriminatory to the child on the grounds of sex or other status”; <p><i>Alinea 2.</i> “<i>Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.</i>”</p>
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6.3. African Court of Justice on Human and Peoples’ Rights (ACJHPR)

The African Court of Justice on Human and Peoples’ Rights was established, in June 1998 in Burkina Faso by African Governments, to ensure the protection of human rights across the Continent. It came into force in 2004 after 15 countries ratified the establishment of an African Court on Human and Peoples’ Rights.

The African Court of Justice was signed by 52 Member States and ratified by thirty of them. Four countries have not signed nor ratified the ACJHPR.

The Court is the only judicial organ mandated to protect human rights on the Continent through its decisions and judgments and to reinforce the protective function of the Banjul Commission.

The Court, the jurisdiction of which comprises the application and interpretation of the Act that is currently being merged with the African Court of Human Rights, is hoped to fill in this gap by resolving interstates disputes, by defending fundamental human and peoples’ rights and by developing (African) legal jurisprudence whilst exercising its contentious and advisory functions.

The major challenges the Court is facing is the lack of coordination and implementation of rulings. The Court delivers a judgment and its Executive Council is charged with the decision. A global assessment of the courts rulings has revealed that;

- i. 7% have been complied with;
- ii. 18% partially complied; and
- iii. 75% not complied.

Furthermore, the Court does not have adequate mechanisms to follow upon submissions, as well as compliance of rulings.

6.4. Pan African Parliament (PAP)

PAP was established in 2001 and became operational in 2003, to provide a common platform for African legislative representatives to be more involved in decision-making on the challenges facing the continent.

- i. 51 Member States have signed and ratified the PAP treaty;
- ii. Four (4) countries have not signed nor ratified the treaty.

PAP members are national representatives, designated by the legislatures of their Member States. The PAP has consultative, advisory and budgetary oversight powers within the AU.

In 2014, the AU Assembly adopted the Protocol to the Constitutive Act on which the Pan African Parliament may submit or recommend draft model laws to the Assembly for its consideration and approval. In view of the fact that Members of Parliament are better placed to advocate and push for legislation and implementation of programmes in their countries, there is need to engage members of the Pan African Parliament on the strategic actions towards the elimination of FGM and Child Marriage.

In addition, the PAP convenes a Women Caucus during its ordinary sessions. This can be an important entry point to support the development of the capacity of its members to better play stronger role of monitoring, tracking and reporting on progress in the elimination of FGM and child marriage at country and regional levels. Further to this, members of the PAP Women Caucus can play a leading role in supporting countries in strengthening and implementing legislative frameworks and encouraging regular reporting.

6. Common Challenges

The major challenges common to all the Organs are:

- i. AU does not have binding powers over the Member States to enforce ratification and domestication of regional instruments;
- ii. Slow ratification, domestication, and implementation of regional human rights instruments pertinent to women and girl's empowerment, ending gender-based violence and harmful practices;
- iii. Lack of awareness of the human rights instruments; insufficient enforcement of national legislation and the rule of law;
- iv. Member States not reporting regularly and/ or not necessarily on harmful practices;
- v. Lack of adequate human, technical and financial resources to conduct reporting, implementation and monitoring of recommendations;
- vi. Weak or non-existent monitoring and reporting mechanisms;
- vii. Limited comprehensive health and psycho-social services for survivors of harmful practices;
- viii. Limited coordination of many interventions from various stakeholders;

- ix. Limited utilisation of, as well as dedicated technical support to analyse, manage and expand scope of data and evidence use to support reporting and monitoring processes; and

7. Way Forward

The African Union Accountability Framework on Eliminating Harmful Practices will work through processes of AU Human Rights organs, special mechanisms – including Special Rapporteurs on the Rights of Women, Violence Against Children, Child Marriage and Harmful Practices – to expand discourse in statutory organ reporting meetings and cycles, whilst offering data, evidence and guidance to Member States on progressive actions to accelerate action.

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SECTION 2: THE AU ACCOUNTABILITY FRAMEWORK

Accountability and Accountability Frameworks

Accountability, as a concept, has moved from financial accounting to public accountability and, runs in parallel with the emergence of new public management approaches. In today's political science and scholarly discourse, accountability is often the conceptual basis of underpinning transparency, justice, democracy, efficiency, responsiveness, responsibility and integrity.¹¹

The AU is guided by its vision of ***“An Integrated, Prosperous and Peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena.”*** The Constitutive Act of the African Union and the Protocol on Amendments to the Constitutive Act of the African Union lay out the aims of the AU, including to “promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments”.

The African Union Commission,¹² is the secretariat, and plays a central role in the day-to-day management of the business of the African Union. Among others, it represents the Union and defends its interests; elaborates common positions of the Union; prepares strategic plans and studies for the consideration AU leadership structures; elaborates, promotes, coordinates and harmonizes the programmes and policies of the Union with those of the Regional Economic Communities (RECs); and ensures the mainstreaming of gender in all programmes and activities of the Union, among others. For the African Union and the Commission, accountability is about delivering on this mandate, with effective utilisation of resources and achieving aspirations of an integrated African continent within the context of Agenda 2063.

With this role, AUC is taking the lead role to support and hold Governments of Member States accountable for the domestication of key decisions and legal instruments, which Member States have ratified to eliminate harmful practices and, promote and uphold the human rights of women and girls. And building on this mandate, the Accountability Framework on Eliminating Harmful Practices will expound on and complement the processes and work of AU Human Rights Organs, including ACHPR and ACRWC. It will strengthen delivery of Member States’ reporting obligations on key regional human rights instruments regarding commitments to eliminate harmful practices.

1. Purpose of the AU Accountability Framework to eliminate Harmful Practices

¹¹ RACHED, D. A. N. I. E. L. L. E. H. A. N. N. A. (2016) “*The Concept(s) of Accountability: Form in Search of Substance,*” *Leiden Journal of International Law*. Cambridge University Press, 29(2), pp. 317–342. doi: 10.1017/S0922156516000042.

¹² au.int/en/commission

The purpose of the Accountability Frameworks is to ensure that good performance measurement and monitoring practices are in place to track progress on the elimination of harmful practices by AU Member States. The framework will also catalyse use of data and evidence to conduct regular assessment of progress across the continent, while facilitating engagement and contributions from non-state actors (including civil society organisations) to advance and accelerate action, and strengthen accountability on eliminating harmful practices in Africa. This will be done working through the AU Human Rights organs' processes, by paying particular attention on State party reporting regarding action and progress to eliminate harmful practices.

2. What is an Accountability Framework on Harmful Practices for AU?

Accountability can be defined as the obligation of “power holders” or “duty-bearers” to account for or take responsibility for actions or inactions. “Power-holders” refers to those who hold political, legislative, judicial, managerial, financial, or other forms of power. They hold a responsibility and/ or liability to act vis-a-vis the “right holders”. Accountability needs to be interpreted as a continuous, consistent and transparent process in creating better conditions, efficient processes, quality and timely services and delivery mechanisms. For the AU Accountability Framework, Accountability is regarded as a combination of mechanisms and processes, facilitating engagement of different stakeholders.

Within the context of the African Union Commission, accountability on women and girl's development and empowerment outcomes entails, among others, fulfilment of obligations and commitments to eliminate gender-based violence and harmful practices. Hence, accountability is about compliance. It is a key principle of governance, important for Member States organisations when delivering on legislative, policy and financial commitments.

As part of the accountability process, ownership and reporting on the discharge of obligations, commitments and responsibilities is imperative. As such, a framework - defined as a “structure, a plan or a system” – will be an essential vehicle in outlining both the ownership of responsibilities, as well as information gathering, monitoring and reporting.

3. Why an Africa Union Accountability Framework on Eliminating Harmful Practices?

Accountability – particularly in the context of gender, girls and women development and empowerment outcomes – is important for the African Union Commission in executing its mandate. With this consideration, implementation of the framework will consider the following types of accountability;

- i. Political and governance accountability, which involves Governments and Legislative Bodies in political and democratic processes;
- ii. Policy accountability, which follows operational guidelines, rules and regulations and;

- iii. Programme and budgetary accountability. This involves all levels – from programme managers to lower levels, with clear delineation of roles, responsibilities and reporting lines.

The proposed Accountability Framework will help the African Union Commission, and AU Human Rights Organs to provide technical guidance and oversight, as well as monitor Member States compliance on obligations to accelerate the elimination of harmful practices, guided by AU human rights instruments and processes. It will be unique and the first of its kind in conviction and scope, while working within the boundaries and processes of AU Human Rights organs.

The process of operationalization of the Accountability Framework involves the participation of all the stakeholders, including the duty-bearers, right-holders and facilitated by AU Human Rights Organs.

African Union Member States have made commitments and developed policies and strategies to eliminate harmful practices. The African Union Commission is also implementing strategies and programmes on gender, human rights, youth empowerment and health. It is therefore critical to build synergies and take advantage of ongoing processes to measure the extent to which AU Member States and AUC have fulfilled commitments and obligations on eliminating harmful practices. The Accountability Framework will support the systematic monitoring of progress across its organs.

4. Who are the Stakeholders?

The Accountability Framework will support the AU human rights organs, especially ACHPR and ACRWC, to track progress and further their commitments to protect girls and women from harmful practices. The stakeholders can be categorized as follow:

- i. Relevant Government Ministries, Departments and Agencies at national and local levels;
- ii. Non-governmental organisations, civil society organisations, national human rights institutions (NHRIs), grassroots organizations, the media, religious and traditional leaders, health workers associations, girls and women's' organizations, as well as legislative and judiciary sectors; and
- iii. Development partners such as European Union, United Nations Agencies – including UNFPA, UNICEF and UNWOMEN, and international organisations (IOs).

AUC will engage all the stakeholders in continuous and inclusive dialogue and actions, policies and programmes to end harmful practices. The stakeholders will provide sustained technical, oversight and monitoring support, capacity building and funding to create an enabling environment for the implementation of the Accountability Framework.

5. Rationale for an Accountability Framework

The commitment to democratic principles, human rights and the rule of law have been firmly referred to in the African Union Constitutive Act (2000).

These have been reinforced by the October 2001 pledge by African leaders of the New Partnership for Africa's Development (NEPAD). It has been supplemented later by the 2002 Declaration on Democracy, Political and Corporate Governance and its Action Plan. Accordingly, leaders pledged to take joint responsibility in the promotion and protection of democracy and human rights in their respective countries and regions by developing clear standards of accountability, transparency and participatory governance at the national and sub-national levels¹³.

A critical component of the Accountability Framework will be grounded on the AU Harmful Practices agenda, which includes the AU Campaign to Ending Child Marriage and the Saleema Initiative on Eliminating Female Genital Mutilation. It will provide guidance to *“account and monitor progress at the regional and national level in line with commitments made by Member States”*.

The Framework will build on and benefit from existing AU accountability initiatives, including NEPAD and its specialized agency, the Africa Peer Review Mechanism (APRM) and, the African Governance Architecture (AGA) and other platforms working to ensure Member States account on policy and programmatic actions to eliminate harmful practices.

With stronger accountability and reporting mechanisms, Africa can be on a path where girls and women are empowered to fully engage in the realisation of Agenda 2063 aspirations and “The Africa We Want”, whilst realising their full potential.

¹³ “The AU, NEPAD and the Promotion of Good Governance in Africa”

6. Goal and Objectives

6.1. Goal

The goal of the accountability framework is ***to strengthen Member States accountability on commitments to end harmful practices, particularly female genital mutilation and child marriage, within the context of Agenda 2063.***

6.2. Objectives

The objectives of the Accountability Framework include;

- i. To clarify the process and platform for Member States and Stakeholders reporting on and strengthen action towards the elimination of Harmful Practices, particularly female genital mutilation and child marriage;
- ii. To ensure coordination and linkages between the mandate and processes of African Union Human Rights Organs monitoring the implementation of key legal instruments, especially the African Charter on the Rights and Welfare of the Child and the African Human and People's Rights Charter and its Protocol on Women's Rights – in advancing accountability of State Parties on the elimination of harmful practices; and
- iii. Facilitate direct engagement with Member States through regular reporting and monitoring of challenges and progress on elimination of female genital mutilation and child marriage, building on national strategies and programs, as well as data and evidence.

6.3. Expected outcome

An African Union Accountability Framework to eliminate Harmful Practices will strengthen the AU and its Member States' delivery on Agenda 2063 aspirations on the elimination of female genital mutilation and child marriage, with a clarified process, guidelines and measures of actions on the ground.

7. Implementation of the Accountability Framework

Implementation of the accountability, involving process and platform definition to report on and strengthen action, strengthen coordination between AU human rights organs and expanding engagement of Member States towards the elimination of harmful practices, relies on the ownership by all stakeholders. A detailed operational matrix will be defined and reviewed regularly by AU human rights organs, including ACERWC, ACHPR, ACJHPR, as well as PAP.

7.1. Operationalization of the Accountability Framework

To operationalize the accountability framework, the following strategies and activities will be conducted by the;

Africa Union Commission Level

- i. Advocacy for Member States to comply with obligations and commitments to eliminate harmful practices;
- ii. Advisory and oversight;
- iii. Dissemination of reporting templates and guidelines;
- iv. Compiling data and policy analysis to facilitate substantiate reporting on progress and challenges;
- v. Organization of annual harmful practices side events during Summits and high-level meetings, debriefs, knowledge and good practices sharing; and
- vi. Mobilization of support from key strategic partners CSOs, NHRIs and donors.

AU Human Rights Organs

- i. Capacity building;
- ii. Facilitating and encouraging Member States timely reporting on progress and challenges on eliminating harmful practices; and
- iii. Development of information and reporting tools and guidelines.

Member States

- i. Timely reporting on progress and challenges on the elimination of harmful practices;
- ii. Mobilization of domestic resources to provide adequate funding to programmes for ending harmful practices;
- iii. Use of data and evidence and good practices gathering and dissemination;
- iv. Development of national action plans where non-existent and or strengthening national coordination mechanisms on the elimination of harmful practices;
- v. Monitoring and follow up; and
- vi. Development of a culture of accountability.

7.2. Strategies for the implementation of the Accountability Framework

- i. **Advocacy;** Coordinate regional advocacy campaigns for the ratification of the instruments, the removal of the reservations and the production of timely reports. AU creates the conditions to engage in dialogue with Member States to encourage the change of discriminatory practices related to FGM and child marriage;
- ii. **Capacity Building;** Support the development of capacities of State actors and other stakeholders on reporting requirement, especially on reporting on child marriage and FGM. AU provides support to non-state actors including Civil Society Organizations, National Human Rights Institutions (NHRIs), youth networks, media houses to engage

in advocacy, awareness raising, and capacity building activities among others, that will promote the fulfilment of girls and women's' human rights;

- iii. **Knowledge sharing;** Organize side events on good and promising practices and lessons learned during high level AU meetings;
- iv. **Partnership;** Engage non-state actors to become change agent for FGM and child marriage elimination through their regional networks and social media. In addition, mobilize Faith based Organizations (FBOs) and community leaders (clan leaders, women's associations and young peoples' organizations) to promote positive traditional practices that are not harmful to women and girls.
- v. **Monitoring and Follow-up;** Map the schedule of the reporting and review processes. Organize meetings to review state reports and keep track of progress, periodically. Design a more comprehensive monitoring plan. Develop scorecard to show country progress and gaps on the elimination of harmful practices;
- vi. **Resource Mobilization;** Strengthen human, technical and financial resources (international and domestic).

8. Actions on the Way Forward

- i. Establish a multi sectoral committee or task force under the leadership of the AU Department of Health, Humanitarian Affairs and Social Development, to coordinate an annual AU accountability review on the elimination of harmful practices, and assess the recommendations;
- ii. Advocate for universal ratification of key regional human rights instruments and the removal of reservations;
- iii. Set-up a database to compile reliable data on child marriage and FGM to sustain political commitment;
- iv. Organize an annual forum of peer to peer knowledge sharing on harmful practices to strengthen accountability mechanisms;
- v. Produce biennial publication on the state and progress of harmful practices in Africa;
- vi. Strengthen the use of information, communication technology, mobile technology and social media to promote the digitalization of reporting processes;
- vii. Seek the designation of Harmful Practices Elimination as theme of the year of the African Union by 2030, according to AU procedures to give a special focus on and accelerate action on the elimination of harmful practices;
- viii. Organize cross fertilizing joint meetings, missions, briefings among organs;
- ix. Strengthen partnership with RECs and support the organize annual regional meetings on the theme of harmful practices; and
- x. Invite at least two Heads of State (African Champions on Child marriage and FGM respectively) to conduct and promote the endorsement of the Accountability Framework by the Member States.

9. Annex 1; Proposed Checklist of Questions for Member States Reporting

The following questions are for consideration to facilitate the AU Organs' reporting and the review of the reports:

- i. What are legislative and protective measures in place for girls and women at risk of FGM and child marriage?
- ii. Are operational guidelines and policies in place to detect at risk women and girls to prevent harmful practices?
- iii. Are there reports on investigations and prosecutions in cases of harmful practices?
- iv. Are the reported incidents of FGM or child marriage recorded?
- v. Are there safe, child friendly and gender sensitive procedures and systems for victims to report on incidents of harmful practices?
- vi. Are the awareness raising and education programmes in place for eliminating harmful practices?
- vii. Have the health, education and police professionals been trained to prevent and respond to risk factors of violence?
- viii. Are there awareness raising and education programmes in place to eliminate harmful practices?
- ix. Are sufficient resources allocated to develop the capacity of professionals to prevent, protect and assist victims of harmful practices?
- x. Is there a national monitoring and oversight mechanism that coordinates all the agencies engaging in eliminating harmful practices?
- xi. Are there legal and regulatory frameworks that establish accountability mechanisms for law enforcement?
- xii. What are the internal accountability mechanisms or frameworks in place to prevent harmful practices?
- xiii. Are there collaboration mechanisms with other stakeholders, such as NGOs, partners and local authorities, to fulfil the commitment of eliminating harmful practices?

10. Annex 2: List of Country Signatures, Ratification and Domestication and or Compliance of AU Human Rights Instruments and Organ Rulings

Table and Visualisation here.

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11. Glossary of terms

The proposed glossary of terms aims to clarify the concepts and terms. The list is not complete and the information is not definite.

Accountability: Accountability refers to the obligations of partners to act according to clearly defined responsibilities, roles and performance expectations, often with respect to the efficient use of resources.

Child marriage: Child marriage refers to any formal marriage or informal union between a child under the age of 18 and an adult or another child.

Discrimination: Describes both the process and the outcome of people - women and men taking control over their lives: setting their own agendas, gaining skills (or having their own skills and knowledge recognized), increasing self-confidence, solving problems, and developing self-reliance.

Empowerment: Implies an expansion in women's ability to make strategic life choices in a context where this ability was previously denied to them. It can be a process and an outcome.

Female genital mutilation: FGM comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.

Framework: the ideas, information, and principles that form the structure of an organization or plan on which something is built.

Gender and Sex: Sex refers to the biological characteristics between men and women. Gender refers to social attributes that are learned or acquired during socialisation as a member of a given community, and vary across cultures. In most societies, there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities.

Gender-based violence: any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Gender equality: women and men must enjoy equal opportunities, choices, capabilities, power and knowledge as equal citizens. Equipping girls and boys, women and men with the knowledge, values, attitudes and skills to tackle gender disparities is a precondition to facilitating sustainable development and a future for all.

Gender equity: refers to “fairness of treatment for women and men, according to their respective needs.

Harmful practices: Are persistent practices and behaviours that are grounded on discrimination on the basis of sex, gender, age and multiple discriminations that often involve violence and cause physical and/or psychological harm or suffering.

Social norms: Are common standards within a social group regarding socially acceptable or appropriate behaviours in particular social situations and the breach of which has social consequences.

Violence against women and girls: Refers to “Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life...”

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