

The African Women's Development and Communication Network



A POLICY BRIEF

HARMFUL PRACTICES, A DEEP-ROOTED REALITY IN KENYA

A look into female genital mutilation, early and child marriages & safe abortion



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HIGHLIGHTS

FEMALE GENITAL MUTILATION

- In Kenya, 3% of girls under age 15 have undergone female genital mutilation (FGM).
- 21% of Kenyan women between the age of 15 and 49 have undergone FGM, which is an estimate of four million women across the country.
- The Kuria community has one of the highest rates of prevalence of FGM in Kenya, affecting 84% of women.
- FGM is still practiced widely in North-eastern Kenya and in certain ethnic groups.
- Most people in Kenya think FGM should stop, though opposition is most common among ethnic groups that still practice.
- Girls and women from rural areas, living in poor households, with less education or who identify as Muslim are at greater risk of FGM.

EARLY AND CHILD MARRIAGE

- The COVID-19 pandemic lockdown restrictions provided an enabling environment for an increase of child marriages across the country
- Kenya has the 20th highest absolute number of child brides in the world. 23% of girls are married before the age of 18 and 4% are married before they even reach the age of 15.
- Child marriages differ across the country, Northern, Eastern and Coast regions have the highest prevalence rates.

ACCESS TO SAFE ABORTION

- In Kenya, about seven women and girls die every day due to unsafe abortions.
 - More than 40% of pregnancies in Kenya are not planned to result in unwanted pregnancies.
- Kenya's maternal mortality is the highest among women of peak reproductive (25-39) at about 6,000 deaths per year, and up to about 17% of deaths are associated with unsafe abortion.

SYNOPSIS

armful traditional practices such as early marriage, female genital mutilation (FGM), as well as access to safe abortion have a major effect in the lives of girls and this last to their womanhood. While there has been a reduction in the incidence of these practices, they are still widely practiced in some communities and remain major barriers to improving the health and wellbeing of girls and women in Kenya. Harmful practices are both underpinned, and perpetuated by, gender inequality and harmful social norms that value girls less than boy. According to the June 2020 UNFPA report, girls who are married early are also more likely to perpetuate stereotypical gender roles and to transmit these norms to their own children – making very difficult to end such practice s. Without intervention from governments, organizations, and activists, many more young girls in Kenya will continue to be subjected to harmful practices and lack access to safe abortion.

This policy brief follows a broad overview of issues related to harmful practices, access to safe abortion as well as the applicable legal framework. The brief contains a summary of some of the initiatives undertaken by Kenya to eliminate such practices, and an analysis of the continued challenges. The report contains a number of conclusions and recommendations that policy makers, the government, civil society and relevant players can draw from, and expand thereon.





BACKGROUND

FEMALE GENITAL MUTILATION

According to the UNICEF 21% of girls and women aged 15 to 49 years and 3% of girls under the age of 15 in Kenya have undergone FGM. This is an estimate of about four million, ² however, in 2020, president, Uhuru Kenyatta, put the figure at 9.3 million. ³ The most common type of FGM is flesh removal and the most severe form of FGM, in which the vaginal

opening is sewn closed is practises among certain ethnic groups. Young women and girls living in the rural areas, in poor households, with less education or

and those from the Muslim communities are at a greater risk. ⁴ The North-Eastern region is considered a hotspot for the practice, and it is very high in some ethnic such as the Somali, Kisii, Samburu and Maasai. In the South-Western region, the Kuria community has one of the highest rates of prevalence of FGM, affecting 84% of women. ⁵ While communities believe that FGM is needed for social acceptance and it increases marriage prospects, the World Health Organisation shows that there is no conceivable benefit of FGM as it causes severe bleeding and other health issues, infections, infertility, and complications in childbirth.



21% of girls and women aged 15 to 49 years and 3% of girls under the age of 15 in Kenya have undergone FGM

_ UNICEF



EARLY AND CHILD MARRIAGES

According to UNICEF, Kenya has the 20th highest absolute number of child brides in the world. 23% of girls are married before the age of 18 and 4% are married before they even reach the age of 15. Every year, the Gabra tribe (amongst others) of north-east Kenya holds a three-day mass-marriage ceremony. Across the region, hundreds of couples get married during a single auspicious weekend of celebration. Research shows that, for a period of five years, due to climate change, Kenya's northern region, in particular, increasingly face frequent droughts, plagues of locusts, water shortages and depletion of grazing land - resulting in the death of livestock, which are the economic backbone of pastoralist communities. ⁶ While there aren't widely

agreed figures as yet, gender experts through some reports for Janu (Wadekar, 2020) ary and June, highlight that there is a strong link between the rise of child marriage and climate change. To cope with tough economic circumstances, desperate families often pull their daughters from schools and marry them off in exchange for dowries, which comprises of new clothes, drums of fresh milk and several camels 9 (Camels are highly valued for their milk and meat, and their use in transporting people and goods across long distances in Kenya's northern desert land.)

ACCESS TO SAFE ABORTION

Kenya's constitution eased access to abortions in 2010 but the procedure is extremely difficult to access at state hospitals. Some private health providers perform the procedure, for a fee of around 3,000-4,000 Kenyan shillings, on which many women and girls cannot afford even the pills that are used to curtail shorter-term pregnancies ⁷. For women who turn to these sources fear of disapproval and shame runs deep. Entrenched stigma about the procedure means many women and girls will do anything to avoid that fate, and resort to traditional practices or backstreet clinics which put their life in danger.

About seven women and girls die every day due to unsafe abortions. Restricted access to abortion disproportionately affects the poor who are often unable to support a child. There is a high number of foetuses and abandoned babies in the slums. With no access to safe abortion, children are abandoned and become orphans forced to live in the slums in groups of about 10-15 without anyone providing for them. Cultural and religious beliefs in the deeply particularly in the Christian communities contributes towards creating a stigma so strong that even women who procure safe abortions believe they have committed a sin by doing so even in the case of rape. In some instances, those who are publicly known that they aborted, they are condemned, criminalised, and some even chased from the community.





POLICY & LEGAL FRAMEWORK

FGM

Kenya outlawed FGM in 2011 and imposed tough penalties on perpetrators and those abetting the practice. Despite this law, FGM remained rife in the country even when President Uhuru Kenyatta's vowed to end the practice by 2023. Earlier this year, Kenya's High Court voted to uphold a ban on FGM, following Dr Tatu Kamau' 2017 constitutional petition that called for the Prohibition of Female Genital Mutilation Act to be declared unconstitutional as it discriminates against "national heritage". She argued that women above the age of 18 would have the right to choose.⁸ Under this law, individuals who are found partaking in the practice could be sentenced to three years in prison, even if it is done outside Kenya's border. This has enabled Kenya to be seen as "progressive" in ending the harmful practice, but there is still more that needs to be done in tightening the laws as millions of girls are still at risk.

EARLY AND CHILD MARRIAGES

Kenya banned Child marriage in 1990 following the Convention on the Rights of the Child, a United Nations human rights treaty between nations to protect children against various types of abuse. Additional, Kenya is a signatory to various laws that prohibits child marriage including the Children's Act of 2001, the Sexual Offences Act of 2006, and the Marriage Act of 2014, which explicitly prohibits the marriage of children under 18 and further criminalized this practice.

In 2013, Health and Education Minister committed to end child marriage by 2020. While the country has put some efforts in this commitment, Kenya's efforts have worked to some extent: the share of young women between 20 and 24 years of age who were married before their 18th birthday dropped from 34% in 1994 to 23% in 2016. ⁹ But the country has already missed targeted year (2020) for completely eliminating child marriage is fast approaching, and the country is still far from meeting that goal.





ACCESS TO SAFE ABORTION

policy brief

In Kenya, abortion is prohibited except for certain circumstances including danger to the life and health of the expectant mother, emergency treatment if necessary and rape. Pregnancies that are the result of a rape can be terminated by experts. The 2010 Kenyan constitutional referendum broadened access to abortion by allowing it for maternal health reasons. However, this received opposition from the National Council of Churches of Kenya with fear that it would lead to the legalisation of abortion.

The constitution upheld the reproductive healthcare bill of 2019, but it does not include abortion for all women and girls. The Court affirmed that the government of Kenya has the obligation to ensure the availability of trained health care providers, essential medicines, and equipment for the provision of abortion and post-abortion care in all public health facilities across the country, but still the country has limited policy focus on PAC, especially at primary care level. ¹⁰



CHALLENGES AND GAPS

With all the efforts that the government, civil society, and various NGOs put to end FGM, child marriage and access to safe abortion, research reveal a number of gaps and challenges.

FEMALE GENITAL MUTILATION

- Legislation in Kenya provides for large fines and prison sentences for those who engage in FGM, but the prosecutions remain rare. This is partly due to the nature of the practice, which poses particular investigation challenges to law enforcement officials.¹¹
- In a number of places, the enforcement of laws against female genital mutilation and the punitive legal approach has driven the practice underground or to be performed in the privacy of the family or community and shrouded in secrecy.
- It is also not immediately obvious that a woman or a girl has been subjected to female genital mutilation, and law enforcement officials often lack accessibility to rural areas where it is carried out.
 - There is a gap in the protection afforded by existing legal frameworks. While Kenya has criminalized FGM in the instances that takes place nationally and when a citizen girl or permanent residency girl is taken abroad for mutilation it however fails to recognize the obligation of other states to protect all children within their jurisdiction and does not take into consideration the mobile, transnational character of practicing communities.
- There is insufficient collaboration among governments across borders. Girls living near border areas are most vulnerable.

EARLY AND CHILD MARRIAGES

- Kenyan laws prohibit child marriage, but such laws are not tightened due to the plural legal systems where customary, traditional, or religious norms appear to support child marriage.
- Marriage in the society is considered as the only way for a girl to be socially accepted and respected.
- Perpetrators of child marriage often get away with these violations. The laws, therefore, need to be effectively enforced.
- Where poverty is acute, parents may feel that giving a daughter in marriage will reduce family expenses, or even temporarily increase their income, in cases where a bride's parents are paid a bride price.
- In many places, child marriage persists because it has happened for generations and straying from tradition could mean exclusion from the community. In many areas, marrying o a girl as a child is seen as a way to ensure her safety, especially in areas where girls are at high risk of physical or sexual assault.
- Crucially, gender inequalities across Kenya also drive child marriage: in many communities where child marriage is practised, girls are not valued as much as boys they are considered to be a burden or a commodity.

ACCESS TO SAFE ABORTION

- More than 40% of pregnancies in Kenya are not planned to result in unwanted pregnancies.
- Kenya's maternal mortality is the highest among women of peak reproductive (25-39) at about 6,000 deaths per year, and up to about 17% of deaths are associated with unsafe abortion.¹²
- Most women who go to hospital after unsafe abortion suffer from moderate or severe complications such as organ failure, sepsis and shock requiring specialized treatment and sometimes with lasting health effects.



CHALLENGES AND GAPS

- Women performing unsafe abortion range from young teenagers to married women in their mid-30s and usually from poor backgrounds.
- In Kenya not all women have access to contraception resulting in unsafe abortions.
- The costs of treatment for unsafe abortion has had a huge negative impact on women and on the healthcare system.
- In Kenya, two in five people survive on less than 200 shillings a day in such situations, the cost of safe abortion can be high and getting the care needed can be a barrier.
- The provision of quality PAC in healthcare facilities in Kenya is still low, with access hindered by restrictions on abortion.
- Poor PAC service availability and lack of capacity to manage complications in primary care facilities result in multiple referrals and delays in care following abortion, leading to further complications.
- Safe abortion activists receive opposition from the public, religious groups, and many political figures.
- The conservative groups in Kenya do not support abortion and about 85% of the population is identi fied as Christians .
- Abortion is not talked about; women often keep it to themselves.





CAMPAIGNS

FGM

According to UNICEF, there seem to be a considerable progress towards the eradication of FGM in Kenya stronger than that of other nations in eastern or southern Africa - making the country a champion in advocation to end this practice. However, some communities such as the Kuria community amongst others are coming up with new ways of eluding the law and to protect the practice and those involved. In some instance the organisers of the practice dress young girls as boys to avoid any threats from the law enforcement. Further, there are various Media clips showing some Kuria men carrying machetes to threaten those who oppose the practice such as the police and activists; to urge others to join the initiation festivals, known as esaro, and also to protect perpetrators. This makes it difficult to advocate against the practice as the personnel involved are often threatened.¹⁴

A rapid assessment from a group of activists shows that there is a new trend of taking girls for the cut at a very younger age when they don't understand what has happened to them especially in the Somali community. Girls who have undergone FGM in Kuria are paraded in the region's main urban centres, where they were showered with gifts, and money to encourage other young girls to undergo the practice. These parades are seen as a setback to the efforts to eradicate the practice by 2022.

Despite the threats from FGM practice perpetrators and the parades to entice other girls, Kenya has seen a lot of individual activists even from the Muslim community rising against this practice and through political leadership, a national and county-level governance structure and civil society action. There have been various initiatives to end FGM including those led by religious groups and 'alternative' ritualistic programmes (ARPs) combined with intensive community sensitisation about FGM to achieve attitudinal and behavioural changes. This kind of advocacy seem to have played a crucial role in changing mindsets towards FGM, but the practice continues in certain groups.





CAMPAIGNS

EARLY AND CHILD MARRIAGES

Various international organisations have created an ecosystem approach to bring together all the relevant actors advocating to end child marriage including the government, civil society, young people, media, politicians, community leaders, schools, and families in their local and national contexts. They all come together to share challenges, successes, and then align, intensify, and accelerate their efforts towards a joint goal. Those organisations work at a community level in initiating intergenerational dialogues that include village elders, local government, parents, and young girls. This advocacy approach creates an enabling environment where a girl directs her own future, championed by everyone who has an impact on her life, from the household level to the national government. There is some advocacy to tackle cross border challenges

ACCESS TO SAFE ABORTION

The campaigns on access to safe abortion often provoke a backlash from conservative groups in Kenya, particularly in the area where 85% of the population identifies as Christian. With efforts from various international organisation, the impact in such areas is not highly visible. Under the She Makes Her Safe Choice Programme in Kenya, civil society organisations are working together to ensure as many women and girls as possible have access to information on safe abortion as well as access to quality products and services. ¹⁵





COVID 19 IMPACT

FGM

Increased rates of FGM were reported in Kenya. The Covid-19 lockdowns were an opportunity for parents who support FGM spent most of the time with their children and got to realise those who were going through puberty. According to anecdotal evidence from the local activist, almost 2,800 girls from the Kuria community undergone FGM during lockdown (amongst other regions). In Kenya, FGM was not integrated to Covid-19 response which raised a serious concern on the increased lack of essential health services and safe spaces for girls at risk and survivors of FGM.

A rapid assessment from activists in different communities show that number of FGM cases jumped up even when lockdown phases were eased. When schools reopened in October 2020, many young girls were missing classes in order to undergo FGM. Some girls went back to the class bleeding, and some did not show up at all. Research shows that every day from late September 2020 throughout the month of October, girls who undergone the practice were paraded on the street and went to school showcasing that they have undergone FGM and the gift that they received such as mattresses, so that other girls find it as a good thing. Such kinds of challenges allured many girls into the practice and some schools to close, for example at Garissa in Somali community.

The effects of the Covid-19 hit hard in many households and, in some cases, returning to the abandoned FGM practice in order to receive gifts. The restriction of movements hindered community-based, grassroots, women-led and international organisations to flexibly conduct their advocacy roles of protecting girls against FGM, especially reaching out to the remote communities. Their resources were also dwindled which made it difficult to expand their services provision beyond FGM prevention efforts and to respond to girls who needed additional services such as shelter. With all these challenges, one notable development was an extensive use of social media, which was used to reach to communities with girls and risk and change behaviour in FGM prevention.

EARLY AND CHILD MARRIAGES

policy brief

Despite a significant progress that has been made to eliminate child marriage in Kenya, UNICEF states that child marriage increased at an alarming rate in the country, particularly during the tight Covid-19 measures. The pandemic exacerbated some of the main social and economic drivers of early marriage, such as limited access to education, disrupted child marriage programs and services, early pregnancies and poverty. ¹⁶ The economic shock caused Kenya to become a tough place for families as many relied heavily on the informal economy. Economic hardship turned a generation of girls into commodities at they were given away in exchange for 'bride prices. A young bride can fetch a considerable price, securing livestock, blankets, food and money for her struggling parents and siblings.

School closures limited the range of life options, extra-curriculum services and educational opportunities available to young girls, putting them at a higher risk of unplanned child marriage. The uncertainty of Covid-19 pandemic coupled by cultural, religious, and social pressures created a path for many girls to marry as they could not stay with their family doing nothing since most schools were closed. Many parents who support child marriage did not see a need to wait for the pandemic to ease so that their girls return to school. In a media interview, many parents highlighted that they could not pay fees for their daughters hence marriage is a chance for a girl to settle down and it also reduced the number of people in the household. During the pandemic girls were coerced into sex in exchange for basic necessities, leading to unexpected pregnancies that in turn create pressure to marry.

In the northern region of Kenya, the pandemic is combined with the effects of climate change and the sudden loss of safari tourism on which the region heavily relies on. Young women and girls who were beneficiaries of this sector opted for marriage as a means to survival of their families.



COVID 19 IMPACT



ACCESS TO SAFE ABORTION

The pressure on health services, reduced access to contraception, increases in domestic violence, and uncertain economic conditions due to Covid-19 lead to an increase in (unsafe) abortions in Kenya. In July 2020, President Kenyatta undercut his pledge in July by cracking down on clinics offering contraceptives to underage girls, saying the practice encouraged promiscuity. Experts showed concern that as more girls become pregnant, their fears of the social and economic consequences of revealing their pregnancy, combined with clinic closures and the disruptions of the supply of abortion pills, will lead to an escalation in unsafe, makeshift abortions.







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The media makes it easy for other advocacy organisations and individuals to obtain information on the ground, particularly in places such as the Kuria community where people who support FGM often threaten those who try to oppose it. With the latest digital media technologies such as smartphones and social media, activists can shoot videos, take picture from a distance, and share with the rest of the community and sometimes with the rest of the world. And that on its own has a potential to reduce FGM, child marriage and increase access to safe abortion. There is a documentary called 'Her Choice' that talks about reality of abortion in Kenya, based on personal stories. The media can use lived experience that also focus on FGM and child marriages where girls and family member can gain awareness and education in these areas.



CONCLUSIONS



Despite the efforts and commitments to respond to FGM, early and child marriage and access to safe abortion practice, there is still more that need to be done in order to see a greater impact in Kenya's regions. There is a need for capacity building and institutional strengthening, including child and women protection system strengthening, generation and use of evidence and data for improved programming. While Kenya makes provisions in law or policy to offer protection following allegations harmful practices as they do not fit easily into systems to prevent violence against women or child protection systems, however support in the form of shelters and other services for victims and girls at risk are inadequate. There is a need to scale up service provision, including life skills education and parenting skills for FGM, child marriage, and the prevention, protection and care of unaccompanied minors and orphans.



STOP

FEMALE

TILATION



RECOMMENDATIONS

Institutional recommendations

DATA COLLECTION

For now, information about child marriages in the pandemic remains largely anecdotal. There is a lack of accurate data on rates of FGM and child marriage in Kenya. Cases are only infrequently reported to law enforcement, and communities dispute the legitimacy of national laws against child marriage and cutting. There is a need to include the topic of harmful practices and access to abortion in the current education curriculum as it is potentially crucial to realizing change.

ADVOCACY

FGM and child marriage are prohibited under Kenya's laws and people have an obligation to respect, protect and fulfil the rights of women and girls to live free from such practices. There is a need to create awareness on harmful practices targeting young people as well as tightening and implementing legislative measures. Governments

PARTNERSHIPS

Partnerships with faith-based agencies and associations foster anti-harmful practices and access to abortion messages in mosques and churches can help delink the practice from any religion. Community dialogue sessions and other outreach programs should involve respected religious figures and they can exert a powerful influence in persuading communities to abandon harmful practices. There is a need to promote locally grown and led initiatives including reviving, supporting, and building on existing initiatives such as the community policing strategy. To address such deeply embedded issues which are fueled by poverty and inequality, there is a need to work collaboratively with all stakeholders, from the grassroots to the treetops. This approach is crucial in building on concerted efforts to ensure that girls' childhoods are no longer stopped by early marriages. There is a need to catalyze movements through joint venture work with neighboring countries to prosecute those who evade the law and support those in need.



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Harmful Practices, A Deep-Rooted Reality in Kenya Female genital mutilation • Early & Child mariages • Safe Abortion

Kenya

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