



## CHILDREN VICTIM OF HARMFUL TRADITIONAL PRACTICES

### INTRODUCTION

*To open the Internet links, click on texts in blue.*

Every year millions of children are still the victims of traditional practices having various consequences on their health and on their development.

First of all, the meaning of « traditional practices harmful to health » must be defined in order to determine what it includes or does not include. The international instruments do not provide any such definition.

The practice is defined as the fact of following an action rule on a moral or social level. It is traditional when it is rooted in a way of thinking, of doing or of acting that is an inheritance from the past. Finally, this practice must be damaging to the health, this means that it must damage the physical and/or psychical health of the child and/or put his/her development at risk.

Usually this rule of action is considered compulsory in the process of social inclusion of the child and/or of the parents in the community, or it is considered beneficial for the child<sup>1</sup>. The child accordingly comes only very rarely away from it, for fear of social and familial exclusion or even damage to his/her life.

In the light of international public law and international human rights protection, there is no such thing as valid justification to such practices (religion, tradition, culture...).

Those practices have varying consequences on health; likely to lead even to death. « Traditional interventions affecting the physical integrity of the child are the more so dangerous for his/her health that they are operated by people lacking any medical training and in the absence of hygienic precautions. Moreover, they are done without anaesthetic which increases the suffering of the child.<sup>2</sup>»

In the drafting of the Convention on the Rights of the Child, redactors were focused on Female Genital Mutilation (FGM). Among harmful practices, it has a high degree of prevalence. But a lot of other practices are performed every day on children, and often in impunity.

### LEGISLATION

You are invited to visit our [legislative database](#).

#### **INTERNATIONAL LEGISLATION**

- Art. 24 alinea 3 of the 1989 [Convention on the Rights of the Child](#) (CRC) urges State Parties<sup>3</sup> to « take all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of children».

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<sup>1</sup> For instance the « Coin rubbing » practice , supposedly a treatment for several illnesses in traditional Chinese medicine. (See below p. 17)

<sup>2</sup> UNICEF, [Implementation Handbook for the Convention on the Rights of the Child](#), 2002

<sup>3</sup> Only two States have not ratified the Convention : the United States and Somalia

Protection granted by this article is enhanced by art. 19 CRC (protection from all forms of physical or mental violence) and 2 CRC (non-discrimination)<sup>4</sup>.

- The 1979 [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW) in its article 5 lit. a sets forth that State Parties « take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women».
- Art.16 CEDAW must also be taken into account when addressing the issue of forced marriage.

#### **REGIONAL LEGISLATION**

- Art. 3 of the [European Convention of Human Rights](#)
- Art. 21 of the [African Charter on the Rights and Welfare of the Child](#)
- [African Charter on Human and People's Rights](#)
- Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa (said [Maputo Protocol](#)), notably articles 5 and 6.
- The Interamerican Convention for prevention, sanction and elimination of violence against women.

#### **NATIONAL LEGISLATIONS**

In several concerned countries, national legislation has been promulgated to curb some traditional practices, but implementation usually lags behind. In other countries, numerous practices remain totally ignored by Parliaments and/or Governments.

## **UN TREATY BODIES AND SPECIAL RAPPORTEURS**

### **UN TREATY BODIES**

#### **COMMITTEE ON THE RIGHTS OF THE CHILD**

[The Committee on the Rights of the Child](#) (thereafter « CRC Committee ») monitors the implementation of the CRC and its Optional Protocols by the State Parties.

#### **General Comment n°4 (2003) : Adolescent health and development in the context of the Convention on the Rights of the Child**

In this General Comment, the Committee on the Rights of the Child stresses the State Parties' obligations to « take all appropriate legislative, administrative and other measures for the realization and monitoring of the rights of adolescents to health and development as recognized in the Convention » and ensure implementation. State Parties obligations towards this aim include : :  
[...]To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation [...] »<sup>5</sup>.

In numerous General Comments, the Committee on the Rights of the Child has addressed the issue of harmful traditional practices.<sup>6</sup>

#### **COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

[Committee on the Elimination of Discrimination Against Women](#) (thereafter 'CEDAW' Committee) monitors the implementation of the CEDAW and its Optional Protocol by State Parties. Many traditional practices engender discrimination against women, and pursue an aim of enslavement, that

<sup>4</sup> UNICEF, *Implementation handbook for the Convention on the Rights of the Child*, UNICEF 2007, p. 371.

<sup>5</sup> CRC/GC/2003/4, § 39.

<sup>6</sup> More examples will be provided in the present document.

is why the Committee has addressed this question several times, be it in General Comments or [General Recommendations](#) :

- **General Recommendation n° 14 (1990) on female circumcision**
- **General Recommendation n° 19 (1992) on violence against women**
- **General Recommendation n° 21 (1994) equality in marriage and family relations**
- **General Recommendation n° 24 (1999) on article 12 CEDAW – women and health**

## SPECIAL RAPPORTEURS

### SPECIAL RAPporteur ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES

Mrs. Yakin Ertürk (Turkey) was [Special Rapporteur on Violence](#), its Causes and Consequences for 2003-2009 and has constantly dealt with the present issue.

For instance, in her February 21th, 2008 report, following her visit in Ghana<sup>7</sup>, the Special Rapporteur denounced the existence of ritual slavery as a traditional practice in the country, as well as the perpetuation of female genital mutilation.

In January 2002, Mrs. Radhika Coomaraswamy, the first Rapporteur on Violence, its Causes and Consequences issued a report on cultural family practices that are violent against women<sup>8</sup>. Apart from female genital mutilation, she tackled the issues of honour crime, caste, forced marriage and son preference.

### SPECIAL RAPporteur ON TRADITIONAL PRACTICES AFFECTING THE HEALTH OF WOMEN AND GIRLS

On July 11th, 2005, Mrs Halima Embarek Warzazi handed in her [report](#)<sup>9</sup> on this issue, rating that these practices had been identified and acknowledged as expressions of violence against women, and that the sufficient mechanisms for their follow-up were available. This report identifies the main practices and attempts to track down their origin.<sup>10</sup>

## FEMALE GENITAL MUTILATION (FGM)

### INTRODUCTION

Female Genital Mutilation (FGM) is defined as complete or part removal of the extern and/or intern genital organs without any medical reason<sup>11</sup>.

« According to estimates, there are today between 100 and 130 million women in Africa, who have undergone one of the forms of FGM. In reference to current birth rates, it can be considered that about 2 million girls between 4 and twelve, are at risk every year of being victim of one of these practices.

<sup>7</sup> A/HRC/7/6/Add.3 § 42-53.

<sup>8</sup> E/CN.4/2002/83.

<sup>9</sup> *Pratiques traditionnelles affectant la santé des femmes et des fillettes*, Ninth report and final report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, prepared by Special Rapporteur spécial Halima Embarek Warzazi, July 2005, E/CN.4/Sub.2/2005/36.

<sup>10</sup> The report deals with : female genital mutilation, son preference and its consequences like double standards in feeding, female infanticide and pre-birth selection, harmful practices related to marriage, dowry-related murder and violence, inferior status of the bride, traditional delivery practices and honour crime.

<sup>11</sup> République et canton de Genève, camarada, *Protégeons nos filles de l'excision, STOP MGF*, Genève, March 2008.

This means that every 15 seconds, a small girl is mutilated somewhere in the world. Most of the women who have been mutilated live in 28 African countries, although some of them live in Asia. »<sup>12</sup>

Today, the issue of FGM is not anymore limited to African or Asian States. An increased migrant population concerned by the practice has given rise to a non-negligible risk of FGM in host countries. In several countries, cases of FGM conducted outside the country of origin have come out. Moreover, the risk of sending small girls back home for summer holidays, in order to have them mutilated, is considerable. That is why countries with no rooted FGM tradition must also be sensitive to this issue, including in legislation and repression of such acts. For a long time, the problem has been deemed part of the privacy and cultural life of families, where the State should not interfere. Following high-profile media cases, and the necessity to protect girl children, destination countries have decided to react, notably by promulgating specific laws banning such practices, by raising awareness, and by setting up prevention programmes in concerned communities.

The age when girls are mutilated differs : in some Ethiopian tribes, baby girls are mutilated as early as seven days. In Western Africa, the ritual is performed between the age of 7 and 13. In Nigeria, some women are circumcised before their wedding day, or just before giving birth.

« Generally the operation is performed in poor hygienic conditions, by untrained elderly women, [...], using a razor blade, a piece of glass or a knife. In most countries, these very women are traditional midwives and healers. In Mali, Nigeria and Sierra Leone, FGM is an income generating activity for traditional practitioners. In Sudan, Somalia, Djibouti and Nigeria, some mothers take their daughters to health clinics, to grant that the operation be performed under medical supervision. In remote areas, barbers (or shoemakers) are in charge of the ritual. »<sup>13</sup>

It is essential to keep in mind that countless girls die every year due to a form of FGM. The CRC and CEDAW Committees have repeatedly expressed concern for the perpetuation of FGM in their Concluding Observations.

## TPOLOGY

The [World Health Organization](#) (WHO) singles out 4 types of FGM<sup>14</sup> :

**Type I** : Sunna ; removal of the prepuce and Partial or total removal of the clitoris

**Type II** : Partial or total removal of the clitoris.

**Type III** : « Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation). The orifice left ensures the evacuation of urine and menstruation. »<sup>15</sup>

**Type IV** : All other harmful procedures : cauterization (burn), pricking, piercing, incising and stretching the clitoris and/or labia minora, introcision<sup>16</sup>, drying-up of the vagina, scratching of the vagina, removal of the hymen ring. Desinfibulation and reinfibulation are also likely to enter this category.

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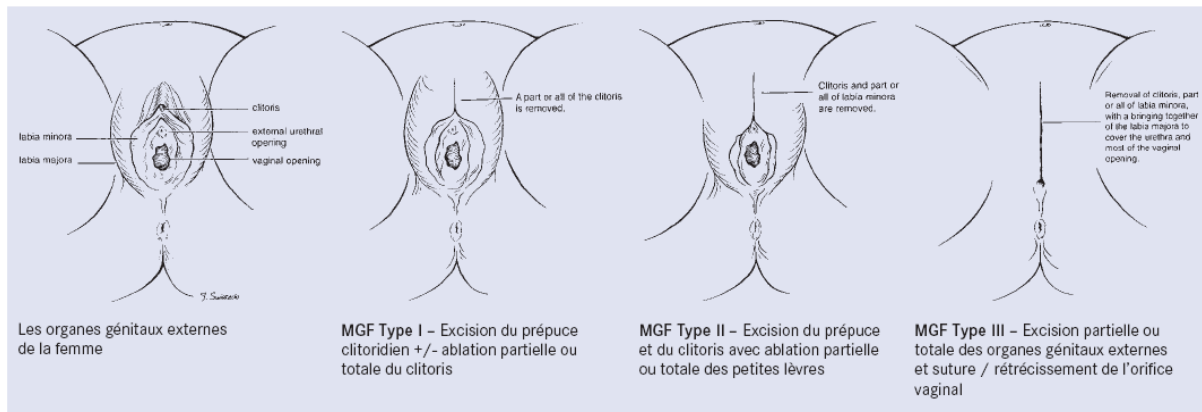
<sup>12</sup> Riva Gapany Paola, *Les mutilations génitales féminines en Suisse : point de la situation d'après les études d'UNICEF*, Awareness-raising day to Female Genital Mutilation (FGM) in the Valais, IDE 2006, p.8.

<sup>13</sup> Ras-Work Berhane, *L'excision : Contexte culturel et juridique*, in UNICEF, Rapport final de la journée consacrée à l'excision, le 21 mai 2001, Berne, p. 6.

<sup>14</sup> WHO, [Female Genital Mutilation, Integrating the Prevention and the Management of the Health Complications into the curricula of nursing and midwifery](#), p.18ss 2001.

<sup>15</sup> *Ibidem*.

<sup>16</sup> Practiced in Peru and in some Australian aboriginal tribes, introcision means tearing downwards the vagina opening of prepubile girls, to make sexual intercourse possible. See Human Rights High Commissioner, *Harmful Traditional Practices Affecting the Health of Women and Children*, Fact Sheet n° 23.



## CAUSES AND CONSEQUENCES

The first historical mentions of FGM seem to date back to old Egypt, where Pharaoh's priestesses were infibulated in order to grant him their total faithfulness.

Numerous false beliefs surround FGM, and perpetuate their practice. Several **justifications** are put forward to maintain it :

1. Religion : Many men and women think that FGM is required by Islam. As a matter of fact, all specialists agree on saying that no religion ever recommended FGM.
2. Preservation of virginity and guarantee of faithfulness : The control over young women's sexuality is the main reason for practicing FGM. Alleged suppression of the libido of the young woman is supposed to allow her to keep her virginity until she gets married and a faithful behaviour after. Infibulation is a 100% faithfulness guarantee, since the girl must be desinfibulated to have intercourse. Some women are reinfibulated when the husband sets on a travel, and during pregnancy.
3. Social inclusion : Some woman have their daughters undergo FGM for them to establish social belongingness, and be fit for favorable wedding, although mothers are often aware that this practice is harmful and inhuman, for having been through it.
4. The notion that the human being is born with features of both genders : According to an old belief, the child comes to the world with characteristics of both sexes. That is why the foreskin of the young boy is removed, as well the girl's clitoris, associated to a penis : hence the frequent confusion between male and female circumcision.
5. The idea that if during childbirth the baby's head touches the clitoris, he/she will have the evil eye.
6. Hygiene : FGM is also claimed to be practiced for hygienic reasons, since women's genitalia are dirty. This argument is irrelevant, too, since a women having undergone FGM is more likely to develop urinary and genital infections.
7. Fecundity: Some people imagine that mutilation makes the woman more fecund, what is untrue. Some ethnic groups also think that if a man has intercourse with a non mutilated woman, he will become sterile.
8. Rite of passage : FGM is often assimilated to an ancestral rite of passage, allowing the girl child to enter adulthood and womanhood.

The main physical and psychological consequences of FGM <sup>17</sup>:

**SHORT-TERM :**

- Death
- Acute pain, bruising of tissues
- Sometimes serious state of shock, risk of death
- Haemorrhage, infections (hepatitis, tetanus, HIV, blood poisoning) sometimes fatal
- Broken bones and luxation when the girl struggles
- Burning pain when urinating.

**LONG-TERM :**

- Acute pain during menstruation and when urinating
- Vulvar and urinary infections likely to evolve towards septicemia, causing sterility or death
- Serious incontinency problems
- Obstructed labour and difficult deliveries, with high mother and child mortality risk
- Decrease or absence of sensitiveness in external genital organs
- Very painful sexual intercourse
- Serious ripple effect on mental health : post-traumatic stress disorder (PTSD), depression (notably after giving birth and when breast-feeding), sleep disorders, suicidal ideas, loss of self-confidence, anxiety, panic fits.

## FIGURES

A lot of statistics are available on the issue. Statistics by country can be found on <http://www.unicef.org>.

Countries with the highest FGM prevalence are <sup>18</sup> :

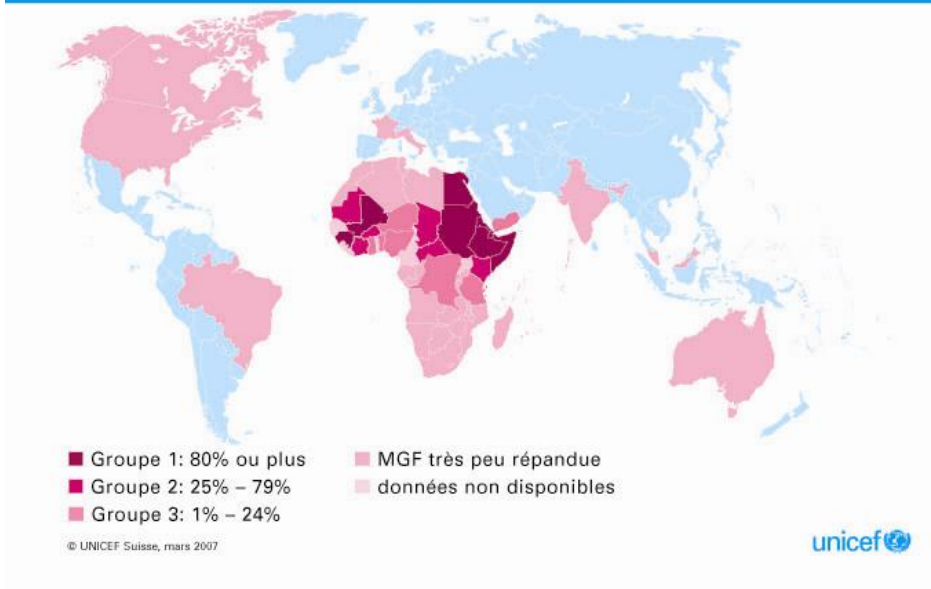
- Somalia ; 98%, of which 95% of infibulation
- Mali ; 92 % of which 50 % infibulation
- Sudan ; 90 % of infibulation
- Guinea ; 89 % of which 20% infibulation
- Erythrea ; 88% of infibulation
- Ethiopia : 85 % of which 80% of infibulation

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<sup>17</sup> *Protégeons nos filles de l'excision, Stop MGF*, op.cit.

<sup>18</sup> M. Eya Nchama Cruz Melchor, *Mutilations Génitales Féminines (MGF) en Afrique et dans le monde*, Bureau de l'intégration des étrangers, République et canton de Genève, October 2007.

## Fréquence de l'excision dans le monde



The highest rate of FGM prevalence is to be found on the African continent, but it is also practiced elsewhere<sup>19</sup>. Many countries in Asia (Malaysia, India, Indonesia, Oman, Singapore, Sri Lanka, Pakistan), in the Arabic Peninsula (Yemen, where 69% of women are mutilated in coastal areas, United Arab Emirates), Peru where introcision is traditional, as well as Kurdish populations are concerned by FGM. And last but not least, many women mutilated or under threat today live in Western countries, because of migration.

### WHAT ABOUT SWITZERLAND?

According to a study made by UNICEF Suisse, circa 7000 women concerned by the MGF practice are supposed to live in Switzerland, either they have been mutilated, or they're risking it.

The year 2008 saw a progress in the criminalization of MGF in Switzerland.

In Fribourg, a woman was condemned to 6 months suspended prison sentence for violating her duty of assistance and education, after having sent her stepsister back to Somalia, where she was forced to submit genital mutilation.

In Zurich, the parents of a little girl have been condemned to 2 years suspended prison sentence for letting their 2 years old daughter being mutilated on the Swiss territory. They were recognized guilty of instigation to serious personal injury.

The Member of Parliament Maria Roth-Bernasconi has proposed a parliamentary initiative aimed at explicitly repress FGM in the penal code, both if they're committed in Switzerland and abroad by every persons being in Switzerland. She has also proposed a motion in order for the Federal Government to release funds to set up prevention and awareness campaigns in Switzerland. These two initiatives were both accepted and they are for the moment waiting for implementation.

<sup>19</sup> *Ibidem*.p.20

At the level of right to asylum, the risk of genital mutilation could justify the filing of an asylum request, provided that some proofs are given<sup>20</sup>.

See under References the Fight against FGM program (IDE).

## TORTURE ?

Several countries worldwide have ratified [The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#). When a State does not draft legislation against harmful traditional acts or punish these acts in an efficient way, can it be considered that it bears responsibility for torture or inhumane or degrading treatment, in the meaning of the Convention?

Practice shows that this is the case at least as far as Female Genital Mutilation is concerned<sup>21</sup> :

- [Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#) (2004-2008), Mr Manfred Nowak (Austria) voices concern in his January 6th, 2008<sup>22</sup>, Togo report, over the high rate of mutilation among Togolese women (33%), and the fact that only one conviction against parents has been pronounced.
- In its 2007 Concluding Observations and Recommendations on Benin, the [Committee Against Torture](#) declares itself “concerned about reports of trafficking, exploitation, prostitution , female genital mutilation rape and killing of newborn babies. The Committee regrets the lack of statistical data on reports of violence against children and related convictions<sup>23</sup>.”

## LAW

In Africa, in accordance with the ratified human rights instruments, the governments of some countries have adopted laws banning FGM. Here are a few examples :

- Benin : Specific Law Against FGM, March 3rd, 2003.
- Burkina Faso : Law Against FGM, November 13th, 1996.
- Egypt : Law banning FGM, June 2008.
- Erythrée : une loi spécifique contre le MGF a été adoptée en mars 2007.
- Ethiopia : promulgation of a specific law in 2004.
- Guinea : promulgation of a specific law in 1965.
- Chad : promulgation of a specific law in 2003.

Unfortunately, numerous countries like Mali, Somalia and Guinea-Bissau are not endowed with any specific law banning FGM. This kind of mutilation should come under the Criminal Code, category body damage, inasmuch as FGM be acknowledged as such by the Courts. Unfortunately, underlying justification often turns out to be tradition, in these customary legal systems.

As for European countries, many of them possess specific laws criminalizing FGM (Norway, Belgium, Sweden). In remaining countries, mutilation is qualified body damage, present in Criminal Codes. But implementation lags behind due to absence of denunciation.

## JURISPRUDENCES

In African countries, the laws banning FGM unfortunately go unheeded in many cases, but some countries do repress them.

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<sup>20</sup> The Minister Evelyne Widmer-Schlumpf, chief of the Federal Department of Justice and Police, has answered a question of Maria Ruth-Bernasconi concerning genital mutilation as a reason for asylum and there she explains the conditions sine qua non for his achievement.

<sup>21</sup> Other practices are likely to be apprehended with the same reasoning, but we pointed out only two examples.

<sup>22</sup> A/HRC/7/3/Add.5 § 54

<sup>23</sup> CAT/C/BEN/CO/2

For example in Burkina Faso an excisor was condemned on May 7th, 2008 to 24 months in jail, and the mothers of 14 small girls to a suspended sentence of twelve months<sup>24</sup>.

In Europe, France was the first European country to issue arrests against excisors, and against the parents of mutilated girls, as early as 1979. More than 36 cases have already been judged<sup>25</sup>.

The major current issue for European and North-American States is to consider whether FGM is a relevant motive to claim asylum. Governments show diverging stands<sup>26</sup>. An appeal had been lodged at the European Court of Human Rights in 2007<sup>27</sup>. The Court rated that the plaintiff had not succeeded in producing evidence of a real and concrete risk of female genital mutilation in case of a return to Nigeria. The appeal was declared inadmissible from the Court : due to insufficient motivation.

## REFERENCES

### IDE : PROGRAMME FIGHTING FEMALE GENITAL MUTILATION (FGM)

Since 2006, IDE has joined forces with several partners, local and from abroad, to conduct the Programme [Fighting Female Genital Mutilation](#). This work is based on children's rights, health, well-treatment and intercultural mediation. Two working tools have been elaborated as support to this fight : the documentary film "Mutilated Women Never More" and the Didactic Handbook for Professionals in Switzerland. (See below).

### IDE PUBLICATIONS

- *Les mutilations génitales féminines, Manuel didactique à l'usage des professionnels*, IDE, 2009
- *Journée de sensibilisation aux mutilations génitales féminines (MGF) en Valais*, IDE, 2006
- *Les Droits de l'Enfant : et les filles ?* IDE, 2003

See these three books in our [Publication Page](#).

### MEDIA

- Ali Aden Fatxiya, Osman Sahra, *Mutilated women Never More !* Switzerland, 35 min, 2007. Available from the IDE.

### GENERAL BIBLIOGRAPHY

- UNICEF, *Female genital mutilation/cutting. A statistical exploration*. UNICEF, 2005.
- Office of the High Commissioner for Human Rights (OHCHR) (1994). [Harmful traditional practices affecting the health of women and children](#) (Factsheet N. 23/1994). Geneva: OHCHR.
- UNICEF – IRC, *Changing a Harmful Social Convention : Female Genital Mutilation / Cutting*, Innocenti Digest 12, 2005

<sup>24</sup> <http://www.avmaroc.com/pdf/burkina-femmes-actualite-a128635-d.pdf>.

<sup>25</sup> V. Commission nationale consultative des droits de l'homme, propositions sur la pratique des mutilations sexuelles féminines en France, p. 51ss.  
[http://www.cncdh.fr/IMG/pdf/Etude\\_et\\_propositions\\_sur\\_la\\_pratique\\_des\\_mutilations\\_sexuelles\\_feminines\\_en\\_France.pdf](http://www.cncdh.fr/IMG/pdf/Etude_et_propositions_sur_la_pratique_des_mutilations_sexuelles_feminines_en_France.pdf)

<sup>26</sup> See. In re Fauziya KASINGA v. U.S Department of Justice Executive Office for Immigration review, Board of Immigration Appeals, Interim Decision #3278 June 13, 1996. March 21<sup>st</sup> and June 5<sup>th</sup>, 2002 Austrian arrests granting asylum for risk of FGM. See also the April 28th, 2008 arrest of the Federal Administrative Court (Switzerland) (E-2506/2008) ruling out a mother fleeing Nigeria to spare her daughter female genital mutilation.

<sup>27</sup> European Court of Human Rights, Case Emily COLLINS and Ashley AZAKIEBIE c. Sweden, 08/03/07.

## FORCED MARRIAGE

### INTRODUCTION

« *Marriage shall be entered into only with the free and full consent of the intending spouses* »  
- [Universal Declaration of Human Rights](#), art. 16 al. 2 -

This is unfortunately not always the case. Mainly in Africa and Asia, but also in South America, the institution of « forced marriage », deprives numerous young girls of the right to dispose freely of their future and their bodies. In various countries, girls just entering puberty, or not yet, are being married, sometimes to men 20, 30 years older. They precociously become wives and mothers, having to cope with untimely sexual intercourse.

Some girls are promised since the day they were born, and thus belong to their husband for their few childhood years, and all their life.

The practice generally concerns girls, but it must not be overlooked that men are also victim of it. The prevalence of child marriage, a violation of child and girl rights, is high, and sadly, this violation is tolerated by some governments, by way of the legislation in force. For many countries still endorse marriage before 18, and a gap in the threshold between boys and girls. The CRC and CDEAW Committees have repeatedly recommended that States raise the age of admission to marriage, by introducing a uniform 18-year limit for boys and girls.

By allowing girl to marry before 18 years, State lend their support to the practice.

The CRC has repeatedly condemned the practice of child marriage, and this for many countries, as India<sup>28</sup>, Angola<sup>29</sup>, Nicaragua<sup>30</sup> or Pakistan<sup>31</sup>.

The CEDAW Committee also condemns child marriage in its Concluding Observations, including Serbie<sup>32</sup>, Togo<sup>33</sup> or Philippines<sup>34</sup>.

The current Special Rapporteur on Violence Against Women also denounces the existence of forced marriage in some countries she visited, as was the case for the République Démocratique du Congo in February 2008<sup>35</sup>.

### DEFINITIONS ET TYPOLOGY

- Forced Marriage :

« Forced marriage is defined as the union of two persons at least one of whom has not given their full and free consent to the marriage »<sup>36</sup>. Consent is accordingly the cornerstone of the institution of marriage. Forced marriage comes in various forms:

- Early forced marriage of child forced marriage :



<sup>28</sup> CRC/C/15/Add. 228 § 60.

<sup>29</sup> CRC/C/15/Add. 246 § 46.

<sup>30</sup> CRC/C/15/Add. 265 § 25.

<sup>31</sup> CRC/C/15/Add. 217 § 56.

<sup>32</sup> CEDAW/C/SCG/CO/1 § 35.

<sup>33</sup> CEDAW/C/TGO/CO/5 § 14.

<sup>34</sup> CEDAW/C/PHI/CO/6 § 11, 29, 30.

<sup>35</sup> V. Rapport de la rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences, Mme Yakin Ertürk - Mission en République démocratique du Congo, A/HRC/7/6/Add.4 § 21.

<sup>36</sup> Zapfl-Helbling Rosemarie, *Forced marriages and child marriages*, Report, Committee on Equal Opportunities for Women and Men, Group of the European People's Party, p.1.

Child marriage means any situation where at least one of the spouses is under 18.

The idiom « child marriage » is generally preferred to « early marriage ».

Child marriage contravenes human rights protection treaties, for young children do not have the necessary maturity to give free and informed consent, although they might wish so. Many States accept or turn a blind eye to the practice of forced child marriage.

- Arranged Marriage :

Forced marriage must be distinguished from arranged marriage, although the limit is not clear cut. Generally, the difference revolves around consent, for turning down the suitor is possible. However, a child being unable to give valuable consent to an arranged marriage, his/her consent must be considered void.

- Marriage by abduction :

The categorization of forced marriage also includes marriage by abduction, still rampant in a few countries. In Kirghizistan e.g., « young ladies are forcefully taken, or lured into, their future spouse's home. They are sequestered, until the women of the family succeed in topping their head with the bride's scarf, the final sign of abdication and consent. The kidnapper's parents then bring to the future in-laws a letter of consent written by the young lady, in order to soothe their anger»<sup>37</sup>. This practice was explicitly condemned by the Committee on the Rights of the Child in its 2004 concluding Observations about Kirghizistan<sup>38</sup>.

In other countries, similar methods are used to constraint young ladies to get married.

## CAUSES ET CONSEQUENCES<sup>39</sup>

The **root causes** of the practice are various :

- Poor families may consider a young girl as a financial burden. In this case the practice is about economic strategy
- The will to protect the girl against the woes of sexual violence and entrusting her to the care of a male protector
- Avoid premarital pregnancies, and preserve girls' virginity
- A way to tighten links between families
- A way to reinforce patriarchal supremacy
- The remittance of a dowry by the bridegroom's family is a ludicrous operation, notably in countries where there is a shortage of girls, like India.

Child marriage has numerous **consequences** on psychological and physical health :

- Girls are unprepared to marriage and have no understanding of it, neither of the consequences. They are often raped during the wedding night.
- The girls's body is generally not mature for a pregnancy, neither for giving birth. The ensuing complications in giving birth can lead to the mother's and/or the child's death. Many women are also affected by obstetrical fistula<sup>40</sup> due to unattended and prolonged obstructed labour, the result being often reject by the husband and social exclusion.
- Studies show that these "child-women" are more often than not victim of physical, sexual and/or psychological violence from their husband or in-laws. They are moreover forced to have early sexual intercourse.

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<sup>37</sup> Travis Beth, *Ala Kachuu : la tradition pour justifier l'injustifiable*, Le Trouble Friday, 11 novembre 2005.

<sup>38</sup> CRC/C/Add. 244 § 26.

<sup>39</sup> UNICEF, *Child protection from exploitation, violence and abuse*, <http://www.unicef.org>, Fédération internationale pour la planification familiale et le Forum sur le mariage et les droits des femmes et de filles, *En finir avec le mariage d'enfant. Un guide pour les initiatives stratégiques au plan mondial*, septembre 2006, pp. 20-23.

<sup>40</sup> V. Fonds des Nations Unies pour la population, *Campagne pour éliminer les fistules*, [www.fistules.org](http://www.fistules.org).

- Married girls cannot take any measure against HIV, due to the lack of information and the duty to obey their husband.
- School drop-out leaves them with poor educational level and few opportunities for proper income. They then face a future exclusively raising their children, serving their husband and carrying out household chores.
- Some young girls are isolated from their family, friends, and community.
- This practice also exposes young women to poverty. « In many countries child marriage is associated with poverty, for it is rampant more particularly in deprived populations, and contributes to reinforce poverty cycles. Early spouses tend to have a higher number of children, and a limited number of options when it comes to independent income»<sup>41</sup>.
- Finally, the girls often found themselves in deep psychological and affective distress.

## FIGURES

Statistics on the issue are uneasy, making it hard to tell how many people worldwide have been subjected to forced marriage. Moreover, the fact that no clear-cut limit exists between forced and arranged marriage complicates the building of statistics.

Country information on child marriage are available on [www.unicef.org](http://www.unicef.org) in the « Info by country» section.

For example, according to UNICEF, the percentage of women already married when reaching 18 is 75% in Niger, 46% in India.

## LEGISLATION

### INTERNATIONAL AND REGIONAL LEGISLATION :

Several international texts condemn the practice :

- Beside art. 24 al. 3 CRC, art. 16 CEDAW sets forth that women must enjoy the same right as men to freely choose their spouse.
- [The Convention on consent to marriage, minimum age for marriage registration of marriages](#) (1963) also stipulates that no marriage shall be legally entered into without the full and free consent of both parties (art. 1).
- Art. 21 al 2 African Charter on the Rights and Welfare of the Child explicitly bans child marriage and sets the minimum age at 18. So does art. 6 of the Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa (said [Maputo Protocol](#)).
- The articles quoted above on harmful traditional practices are also applicable to child marriage.

### NATIONAL LEGISLATION:

At the European level, national legislations condemn the practice of forced marriage, be it through penal, civil or administrative procedures.<sup>42</sup>

In Africa and Asia, the legal age set by laws makes up a whole span, and civil laws generally demand the consent of spouses for a wedding to be celebrated. Many countries also have laws banning forced marriage<sup>43</sup>. But the problem is two-fold : on the one hand, the persons to blame are rarely prosecuted, and secondly most of those child marriages are concluded only in a customary way and not under State supervision, which make any control quasi impossible. In-depth social change is accordingly the only way to overcome this practice.

<sup>41</sup> Fédération internationale pour la planification familiale et le Forum sur le mariage et les droits des femmes et de filles, *op.cit*, pp. 10-18.

<sup>42</sup> For the legislation in Council of Europe member States, See : Edwige Rude-Antoine, [Forced Marriages in Council of Europe Member States](#), Strasbourg 2005, pp. 67 ss.

<sup>43</sup> E.g. 2006 'Prohibition Child Marriage Act', India.

In Belgium, the police and social services collaborate with an NGO keeping its whereabouts secret, to rescue minors threatened with forced marriage, from the pressure and danger, and start a mediation process.<sup>44</sup>

## JURISPRUDENCE

### INTERNATIONALES :

The Special Court for Sierra Leone as acknowledged in a February 22nd, 2008 arrest, that forced marriage in wartime is a crime against humanity<sup>45</sup>. During armed conflict, in fact, numerous girls are abducted and forcibly married to warlords for cooking and « entertainment ».

### NATIONAL :

A real judgment and conviction of a case of forced marriage is hard to find in countries where it is socially accepted. However, slow progress is seen for example in Yemen, where an 8-year young girl was granted divorce, after filing a complaint against her father who had forcibly married her away<sup>46</sup>.

## REFERENCES - MEDIAS

- *Mariage forcé, plus jamais !*, Carole Roussopoulos avec la collaboration de Paola Riva Gapany, IDE, disponible dès septembre 2008.
- Edwige Rude Antoine, *Forced marriages in Council of Europe Member States législation comparée et actions politiques*, Strasbourg 2005
- Ali Nujood, *Age 10 and Divorced*, Three Rivers Press, New York, 2010

## FORCE-FEEDING

This ancestral practice consists in letting pre pubescent-young girls gulp down a huge amount of food or milk in order to make them put on weight and thereby become obese. This practice is widespread in Mauritania (especially in the maure ethnic group), and to a less extent in the north of Mali and in Niger. Young girls are entrusted to "gaveuses" who have to make sure that girls swallow sometimes up to 8 litres milk per day or the equivalent of a sheep. Children have sometimes their feet chained and, in order to avoid vomiting, they are subjected to physical pain (pinch, knock...). Even if they vomit, they have to perpetually continue eating, a gaveuse verifying that the plate is never empty.

Initially, it consists in a sign of wealth for the child's family that can also marry her easily. Weddings take also place precociously, because the overweight give the illusion of a female body to these misshapen children. Parents will then have faster a child less to take care of.

Overweight is considered as a beauty standard for the Mauritanian man. "The glory of a man is measured by the size of his woman. A proverb says also that a woman occupies a place in hearth as big as her size"<sup>47</sup>.

Once women are married, they stay at home, with no activity. Some of them can't stand up anymore or have a short walk outside. They have domestics for household chores, they don't work and continue to eat enormously, their stomach being used to receive a lot of food.

This practice aims at increasing female passivity, especially in the sexual domain.

This tradition tends to lose extent into cities where girls go to school and cannot be fed the whole day. More and more women also want to work and that generally implies to be able to move easily.

In the country, the practice disappears in a less significant way and only because of starvation and food deprivation.

<sup>44</sup> Source : TF1, Programme [Sept à huit](#) , October 3rd, 2010

<sup>45</sup> See Althaus Anne, *Le mariage forcé enfin reconnu comme crime contre l'humanité*, 29 juin 2008, disponible sur : <http://trial-ch-fr.blogspot.com/2008/06/le-mariage-forc-enfin-reconnu-comme.html>.

<sup>46</sup> See *I am Nujood, Age 10 and Divorced*, [blog End Human Trafficking](#), March 7<sup>th</sup>, 2010

<sup>47</sup> Jeune Afrique l'Intelligent, *Eloge de la rondeur*, 05.05.2004.

A new practice must also be denounced, the one of “auto-gavage”. In fact, women swallow animal drugs in order to “blow up” and thus appeal their men and in order to avoid the accusation of suffering HIV disease<sup>48</sup>.

According to the report of the Mauritanian government to CEDAW Committee most of the women subjected to force-feeding live in centre (30%) and south (39%)<sup>49</sup> Mauritania.

In his final considerations about Mauritania (2001)<sup>50</sup>, the CDE Committee condemns this harmful traditional practice and enjoins the Mauritanian State to take measures. The CEDAW Committee did the same at the time of his final considerations concerning Mauritania in 2002<sup>51</sup> and Mali in 2006<sup>52</sup>.

## GIRAFFE-WOMEN

Also known under the name of women “with long neck”, these women are characterised by bronze spirals that they wear around their neck. This practice is widespread essentially in Myanmar (Karens ethnic group) and Thailand (Padaung ethnic group)<sup>53</sup>. This tradition can also be found in South-Africa, in the Ndebele ethnic group.

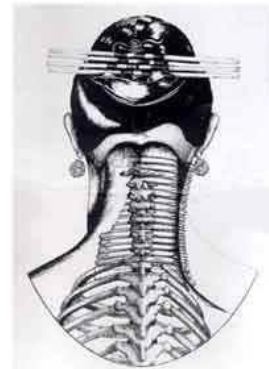
In the Padaung ethnic group, starting from the age of six, a bronze spiral is placed around the girls’ neck. Bigger spirals are regularly placed (about every two years) until the marriage.

Contrary to the popular belief, neck’s extension is just an illusion. In fact, a gap between the vertebrae would have paralysis as consequence. In reality, the weight of rings changes the growth of ribs, which sag, as well as shoulders and clavicles.



The origin of this practice is not that clear. Some says that it was a way to protect women from tigers’ attacks, seizing them at their throat. Others talk about a way to protect family jewellery from being stolen.

In Myanmar this practice is forbidden through a decree from now on; it is however tolerated in Thailand.



On the left the neck of a woman without spiral, on the right the one of a “giraffe-woman”

It has to be deplored that today these women are considered as touristic attractions in Myanmar, as well as in South Africa and Thailand, where they’re “exposed” at the airport.

The CDE Committee, in its final observations concerning Myanmar, noticed that measures taken by the State member to inform populations about the risks for their health are not sufficient<sup>54</sup>.

## LIP PLATES

The so-called “lip-plated women” live basically in Ethiopia and the last African ethnic groups that perpetuate this practice are members of mursi and surma ethnic groups. Mursi women generally have a circular plate, while the one of surma women is often in a trapeze form. It can be found on the upper

<sup>48</sup> Habibou Bangré, *Mange pour plaire aux hommes ! Le gavage en Mauritanie et au Mali*, Afrik.com, 05.10.2004.

<sup>49</sup> CEDAW/C/MRT/1, §225.

<sup>50</sup> CRC/C/15/Add.159, §43 and 44.

<sup>51</sup> CEDAW/C/MRT/CO/1, §21 and 22.

<sup>52</sup> CEDAW/C/MLI/CO/5, §17.

<sup>53</sup> A lot of Burma giraffe-women went to find refuge in Thailand after Burma’s repression and the decree interdicting the practice of this tradition.

<sup>54</sup> CRC/C/15/Add.237 §58-59.

lip, as well as on the lower lip. Saras and Djinges ethnic groups of Chad formerly wore two plates, one up and one down<sup>55</sup>.



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In order to place the plate, the two up or down incisors of the young girl have to be pulled out. After that, an incision is made on the lip, in which they will start by putting a wisp of straw. The progressive replacement with bigger objects will allow the fitting of a plate. This one is generally made of wood, ivory or backed clay. It can reach 20 cm diameter or even more.

Even if labial ruptures seem to be rare, they don't have to be ignored. Women can remove plates as they wish to, but they generally have to wear them in public, in presence of their husband or children. Only women belonging to upper castes wear the plate. The bigger the plate is, the higher the sum of the girl's dowry.

The origin of this practice is also not clear. Some ethnologists suggest that it would have the purpose of making women look ugly in order to avoid proslavery raids. Others propose divine justifications, such as the veneration of spatula-bird or the belief that all the orifices allow bad spirits to take possession of the person. The problem will certainly never be solved and today the wearing of a plate has only a traditional nature.



In Brazil, by the Kayapo ethnic group, men are wearing lip-plates inside the lower lip, such as Raoni, the famous defender of the Amazon forest. It seems that this practice is intended just for warriors and that it has the purpose to scare enemies. Other ethnic groups from Amazonia wear "labrets", in particular cylindrical and long.

It must be noticed that neither the CDE Committee nor the CEDAW Committee has ever given recommendations on this subject.

## BREAST-IRONING

Breast-ironing is a little known practice, because the secret is kept between mothers and daughters. A lot of people even in Africa ignore its existence.

This practice happens in Cameroun and it has the purpose to limit the development of teenagers' breasts in order to avoid that the body attracts men's desires. Mothers also hope to avoid that their daughters engage early sexual relations, which mean loss of virginity before the marriage, risk of precocious pregnancy and loss of interest in study.

Young girls are subjected to a really painful operation that consists in massaging the new breasts with different heated objects (stones, palette knives, pestles...) combined with the application of oil or salt<sup>56</sup>. Breasts are sometimes also bandaged or tightened with the help of a "serre-sein". The skin and tissues are strongly damaged.

Health consequences are not negligible: abscesses, itches, spots on the breast, loss of milk, cancer, strong pain and total disappearance of the breast<sup>57</sup>.

In Cameroun, 24% of teenagers are subjected to this practice<sup>58</sup>.

<sup>55</sup> Jean Marie Milleliri, *Les femmes-à-plateaux saras-djingés. Regard historique sur une féminité dégradée*, 29/08/2007, <http://afrikibouge.com/publications/Femmessaras.pdf>.

<sup>56</sup> Jean-David Mihamlé, *Cameroun : croisade contre "le repassage des seins"*, BBC Africa, 25/06/2006, available on <http://www.crin.org/>.

<sup>57</sup> V. Flavien Ndonko, Germaine Ngo'o, *Etude sur le modelage des seins au Cameroun*, Programme Germano-camerounais de Santé/Sida, Yaoundé, Janvier 2006.

<sup>58</sup> Sylvestre Tetchiada, *Non au repassage des seins des adolescentes au Cameroun*, Inter Press Service News Agency, 23 juin 2006, reproduced by the Swiss magazine « SolidaritéS », n° 90, 5 juillet 2006.

The CDE and CEDAW Committees have never given recommendations on this subject. This can be probably explained by the fact that this practice is still little known.

## OTHER HARMFUL TRADITIONAL PRACTICES RECOGNIZED BY UN BODIES AND NGOS

**Honour Crime:** « Crimes committed in the name of « honour » are being perpetrated in various countries, including Bangladesh, Brazil, Egypt, Jordan, Pakistan and Turkey. Husbands, fathers and brothers have remained unpunished after murdering their wife, daughter or sister in order to save family honour. »<sup>59</sup>. The murdered women are in most cases suspected of adultery, but are sometimes killed for serving a meal too late, for chatting with a male neighbour, or for not answering the phone. Perpetrators are generally not brought to Justice; in case they are, the sanction is symbolic. Numerous Criminal codes mention « provocation by the woman » as a sort of mitigating circumstance. Victims of rape are also killed in the name of family honour. The Committee has repeatedly denounced such practice<sup>60</sup>.

**Dowry:** the practice of dowry consists in setting a price for a bride. It has been tackled many times as harmful<sup>61</sup>. Bringing the woman down to a commodity subjects her the more so to her husband : she « belongs » to him, and he often exerts on her a right of life and death.

**Virginity testing:** According to the CRC Committee, « the traditional practice of virginity testing (...) threatens the health, affects the self-esteem, and violates the privacy of girls. »<sup>62</sup> The practice moreover involves a high risk of defloration.

**Accusation of witchcraft:** «The [CRC] Committee reiterates its concern that infanticide of so-called “sorcerer’s children” motivated by traditional beliefs continues to be practiced in certain communities and on infants with disabilities or, for instance, children presented at birth in the breech position or children teething with the upper teeth»<sup>63</sup>

**Ritual child murder:** The Committee voiced its concern over the continuing existence of ritual killing of children in Nigeria<sup>64</sup>.

**Widowhood rites:** The existence of widowhood practices, such as levirate and sorority<sup>65</sup> or immolation of widows by fire<sup>66</sup> was also denounced by UN Treaty Bodies.

**Caste system:** In Nepal for example, « The Committee notes with concern that certain harmful traditional practices continue to prevail in the State party, most notably the caste system and traditions such as the *Deuki*, *Kumari*, *Jhuma*, *Badi*, *Kamlari* and *Chaupadi*, causing extreme insecurity, health hazards and cruelty to girl children».<sup>67</sup>

**Food taboos:** In Burkina Faso, Niger and Democratic Republic of Congo notably, food taboos engender malnutrition for countless children and mothers<sup>68</sup>. In numerous Sub-Saharan countries, children and women are not allowed to eat eggs and /or fish. According to some beliefs, doing so might turn children into thieves or mutes, and make women sterile. Dans de nombreux pays d’Afrique subsaharienne notamment, les enfants et les femmes n’ont pas le droit de manger des œufs et/ou du poisson. Certaines croyances veulent que le cas échéant les enfants deviennent des voleurs ou

<sup>59</sup> Benninger – Budel Carin, Lacroix Anne-Laurence, *Violence contre les femmes, un rapport*, Organisation Mondiale Contre la Torture, 1999, p.141.

<sup>60</sup> Example : CRC/C/15/Add.217 § 34, about Pakistan.

<sup>61</sup> See for example India: CRC/C/15/Add.228 § 58.

<sup>62</sup> CRC/C/15/Add.122 § 33, for South Africa.

<sup>63</sup> CRC/C/BEN/CO/2 § 30, for Benin.

<sup>64</sup> CRC/C/15/Add.257 § 56.

<sup>65</sup> See for example Mali report, CEDAW/C/MLI/CO/5 § 17.

<sup>66</sup> Named *Sati* in India.

<sup>67</sup> CRC/C/15/Add.261.

<sup>68</sup> CRC/C/15/Add.193 §44 for Burkina Faso.

muets et les femmes stériles. Meat being a costly and scarce nutriment in some parts of the world, the protein input results very limited.

**Uvulectomy or milk teeth extraction:** « In Ethiopia, a 1998 study by the Committee on harmful traditional practices has established that uvulectomy (removal of the uvula) was practiced on 84 % of children and milk teeth extraction on 89 % children »<sup>69</sup>.

**Scarification et circumcision:** In several Concluding Observations, the CRC Committee has judged circumcision conducted in poor hygienic conditions to be a practice harmful to health<sup>70</sup>. It has also voiced concern over the continuing existence of scarification as an initiation rite<sup>71</sup>.

**Systematic son preference:** « In many a society, superior worth is attributed to boys, to the detriment of girls. All along their lives, women are adversely affected by this practice: be it the extreme form of foeticide or new-born murder or discriminatory practices against girls, such as food discrimination, unequal distribution of household chores, and limited access to education. »<sup>72</sup>

**Coin Rubbing (*Cia gio*):**

Chinese traditional medical techniques of rubbing children's body (usually the spine) in order to cure high temperature or other diseases. The rubbing is traditionally done with coins, and the body is smeared with camphor-based products (tiger oil). But administered in heavy doses, camphor is a poison and several children already lost their lives due to intoxication. Moreover, the practice is extremely painful and bruises the body.

**Traditional obstetrical practices:** This generally includes food restrictions for pregnant women, poor hygiene, techniques operated in case of obstructed labour, and post-partum rituals.

**A range of dangerous initiation ceremonies:** Some initiation rites involve dangerous practices, such as lengthy immersion in water, or flogging.

Fanny Balmer 11.08.2008

Up-dated and translated Geneviève Levine 10.10.2010

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<sup>69</sup> Paulo Sérgio Pinheiro, *World Report on Violence Against Children*, Published by the Office for the UN Secretary-General

<sup>70</sup> Pour l'Afrique du Sud v. CRC/C/15/Add.32 § 33.

<sup>71</sup> Pour le Togo, v. CRC/C/15/Add.255 § 56.

<sup>72</sup> Violence contre les femmes un rapport, p.146.