



musawah

For Equality in the Family

**BRIEF REPORT ON CHILD MARRIAGE AND
FEMALE GENITAL MUTILATION / CIRCUMCISION (FGM/C) IN
Ethiopia**

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A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on concerns related to child marriage and Female Genital Mutilation/Circumcision, for consideration by the CEDAW Committee in its review of the Government of Ethiopia, reporting before the 72nd Session of the CEDAW Committee in February 2019.

This is CEDAW Committee's fourth engagement with the Ethiopia, which ratified CEDAW in 1981.

Purpose of this report:

Musawah intends for the research, analysis, and recommendations in this report to:

- (1) highlight two key concerns and identify gaps in the State Party report, as they pertain to Muslim women and girls; and
- (2) propose recommendations that address these two issues affecting Muslim women and girls in Ethiopia.

This report incorporates substantive inputs by Ethiopian women's rights activists and lawyers, who provided information and insights on the contemporary lived realities of women in the country.

We hope that the CEDAW Committee will utilize this report as a key resource during its constructive engagement with the State Party. In particular, we hope the Committee will use the recommendations to identify follow-up issues in its Concluding Observations.

B. BACKGROUND & LEGAL FRAMEWORK

The Federal Democratic Republic of Ethiopia has a population of approximately 110 million people and is the 14th most populous country in the world. According to the 2007 National Census, Muslims constitute 34% of the population, most of whom are Sunni. Article 47 of the Ethiopian Constitution states that Ethiopia consists of nine regional states.¹ Three of the nine states (Somali, Harari and Afar) have majority Muslim populations.²

As per Article 50 of the Ethiopian Constitution (1994), Ethiopia functions with a federal state structure that includes a federal government and nine states that each have jurisdiction over legislative, executive and judicial matters of the state. Article 11 of the Constitution affirms separation of religion and state and confirms no official state religion.

Article 25 of the Constitution guarantees equality before the law and equal protection of the law. It states that “*the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.*” Article 9 guarantees supremacy of Constitution by stating the following:

The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.

In 2000 and 2004, the 1960 Civil Code provision on family law and 1957 Penal Code were revised respectively to ensure that they are compatible with this constitutional provision.³

Family Law Framework

Article 34 of the Constitution, on ‘Marital, Personal and Family Rights’ stipulates the following provisions:

- 1. Men and women, without any distinction as to race, nation, nationality or religion, who have attained marriageable age as defined by law, have the right to marry and found a family. They have equal rights while entering into, during marriage and at the time of divorce. Laws shall be enacted to ensure the protection of rights and interests of children at the time of divorce.*
- 2. Marriage shall be entered into only with the free and full consent of the intending spouses.*
- 3. The family is the natural and fundamental unit of society and is entitled to protection by society and the State.*
- 4. In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.*
- 5. This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.*

The Constitution thus provides a strong basis for equality in marriage and family and prohibits any laws, policies and practices that discriminate against women. However, it also allows for religious and customary laws to apply in instances of disputes, albeit with consent of both parties involved. Article 78(5) allows for the House of Peoples’ Representatives and State Councils to establish or give official recognition to religious and customary courts.

¹ Article 47 of Constitution of Ethiopia <https://www.wipo.int/edocs/lexdocs/laws/en/et/et007en.pdf>

² Ethiopia Government portal – Regional States <http://www.ethiopia.gov.et/regional-states1>

² Ethiopia Government portal – Regional States <http://www.ethiopia.gov.et/regional-states1>

³ Child Rights Protection in Ethiopia: Critical Analysis of the Statutory Rape Provisions of the Criminal Code and Their Application <https://www.scirp.org/journal/PaperInformation.aspx?paperID=81182>

All states, except for the Somali regional state and the Afar regional state enacted their own family codes applicable within their own jurisdictions. The federal government also has its own Revised Family Code 2000 to rectify the inequality between men and women in the political, social and economic realm. The Code has territorial applicability of administrations that are directly under the federal government.

1. EARLY & FORCED MARRIAGE

With regard to civil, religious or customary marriages, the Ethiopian Civil Code and Article 7 of the revised Ethiopian Family Code⁴ set minimum age of marriage at 18 years for males and females. However, two regional states with predominantly Muslim populations – Afar and Somali do not have regional family laws with this federal provision and therefore includes an exception under customary practices which condones early marriage below 18 years of age.⁵

Although Article 34(2) of the Ethiopian Constitution and Article 6 of the revised Family Code explicitly states that ‘marriage shall be entered into only with the free and full consent of the intending spouses’,⁶ the high prevalence rate of child marriage indicates that consent is not always obtained.

Data:

- According to national surveys, the incidence of child marriage in Ethiopia has substantially decreased from 25 years ago, however the country continues to have one of the highest rates of child marriage in the world;⁷
- As per the 2011 Demographic and Health Survey (DHS), out of every five girls, two are married before the age of 18 years across the country;
- For women aged 25-49 the median age of first marriage for women is 16.5, while for men it is 23.2 and it is likely that the younger the bride the greater the age disparity between husband and wife;⁸
- The DHS survey also indicates that 80% of married girls have not received any form of education and 81% are illiterate. Only 3% of married girls are in school;⁹
- While the prevalence of child marriage varies throughout the country, data shows highest prevalence in Amhara Region (44.8%), followed by Tigray (34.1%), Benishangul Gumuz (31.9%) and Addis Ababa (32.3%).¹⁰

Researchers who have previously studied the issue of child marriage have found strong linkages between child marriage and prevailing cultural, traditional and religious norms

⁴ Article 7 of the revised Family Code of Ethiopia
[http://hrlibrary.umn.edu/research/family%20code%20\(English\).pdf](http://hrlibrary.umn.edu/research/family%20code%20(English).pdf)

⁵ UNICEF Ethiopia - Girls' Club Rescues Girls from Child Marriage in Rural Ethiopia
<https://unicefethiopia.org/tag/endchildmarriage/>

⁶ Constitution of Ethiopia https://www.constituteproject.org/constitution/Ethiopia_1994.pdf?lang=en

⁷ Basic Profile of Child Marriage in Ethiopia
<http://documents.worldbank.org/curated/en/726751467831767984/pdf/105922-BRI-ADD-SERIES-PUBLIC-HNP-Brief-Ethiopia-Profile-CM.pdf>

⁸ Despite Challenges, Ending Early Marriage in Ethiopia Is Possible
<https://www.prb.org/child-marriage-ethiopia/>

⁹ Population Council – Child marriage briefing – Ethiopia
<https://www.popcouncil.org/uploads/pdfs/briefingsheets/ETHIOPIA.pdf>

¹⁰ Girls Not Brides, Country Fact Sheet – Ethiopia (2015) <https://www.girlsnotbrides.org/wp-content/uploads/2015/06/Fact-sheet-Ethiopia-national-strategy-May-2015.pdf>

particularly among Ethiopia Muslims.¹¹ Muslim women aged 15 – 17 were more likely to be given in marriage before 15 years of age, in comparison to other religious groups.¹²

UNICEF reports that the Government of Ethiopia has taken various “strategic and programmatic measures to eliminate child marriage” including endorsing a National Strategy and Action Plan on Harmful Traditional Practices against Women and Children and establishment of a National Alliance to End Child Marriage. In July 2014, at the London Girls Summit, the government had also committed to ending child marriage by 2025.¹³ Further commitments made by the Ethiopian government at the summit including incorporating relevant indicators into the National Plan and National Data collection.

The above commitments were once again highlighted in the Ethiopian State Party Report (2017)

The Ministry established a “National Alliance to End Child Marriage and FGM” consisting of all concerned stakeholders in order to implement the strategic interventions set out in the National Strategy. A national platform for the prevention of all forms of HTPs has also been recently launched. This platform consists of federal ministries; regional counterparts; United Nations agencies and international organizations. There are similar institutional mechanisms at the regional level with the Somali Regional State taking the lead in establishing one.

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According to national activists, information about the status of the implementation of these commitments is not widely publicized or publicly known. Furthermore, it is unclear whether gaps in eradication of child marriage are from poor implementation or limitations in the policies and laws designed by the government.

RECOMMENDATIONS

We recommend the CEDAW Committee urge the State Party to:

- Implement widespread national awareness campaigns of the negative impacts of child marriage and about the law criminalizing child marriage;
- Implement stricter penalties for individuals involved in permitting, performing or promoting child marriage and stringently enforce the law; Implement mandatory reporting mechanisms for schools and community centers and make support services available and accessible for girls who are vulnerable to and affected by child marriage;
- Provide quality education and economic empowerment mechanisms to girls so alternatives are sought instead of marriage;
- Enforce policy to support girls to stay in school and to develop essential knowledge and leadership skills eg: through science and IT programmes;
- Recognize the socio-cultural and religious reasons and attitudes, which contribute to child marriage and design and implement effective to change mindset and practices.

¹¹ Ezra M (2003) [Factors associated with marriage and family formation processes in southern Ethiopia](#). *Journal of Comparative Family Studies* 34(4): 509-530.

¹² Erulkar A (2013) [Early Marriage, Marital Relations and Intimate Partner Violence in Ethiopia](#). *International Perspectives on Sexual and Reproductive Health, Ethiopia*.

¹³ New multi-country initiative will protect millions of girls from child marriage – UNICEF/UNFPA <https://unicefethiopia.org/tag/iwd2016/>

MUSAWAH JUSTIFICATION FOR REFORM

Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.'

NEW HISTORICAL EVIDENCE NOW AVAILABLE

- Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. The marriage was supposedly consummated when Aishah was nine years old.
- However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage (*source: <http://www.sistersinislam.org.my/news.php?item.997.41>*).
- The question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices.

QUR'AN STATES CONDITION OF PERSON FIT FOR MARRIAGE

- While the Qur'an does not provide any specification for the age of marriage, Surah an-Nisa' 4:6 requires that orphans should be of sound judgment before they marry.
- This indicates that a person must have sufficient judgment and maturity to marry.
- Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, forces adulthood on children under 18, even onto those who start menstruating at the age of nine.
- The onset of puberty is no indication of sufficient maturity for marriage.

MINIMUM AGE OF MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

MINIMUM AGE OF MARRIAGE 18 WITH NO EXCEPTIONS

EGYPT

The minimum age for marriage is 18 for both females and males. The registration of the marriage of a person below 18 is prohibited and penalised.

KENYA

The minimum age for marriage is 18 for both females and males regardless of religion. Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits an offence and will be liable to a penalty (imprisonment, fine or both).

PAKISTAN (Sindh Province):

The minimum age for marriage is 18 for both females and males. The law criminalises and penalises the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnised or negligently fail to prevent it from being solemnised.

2. FEMALE GENITAL MUTILATION/CIRCUMCISION (FGM/C)

ARTICLES 1,2, 5,12,14

CRITICAL INFORMATION

Article 565 of the Criminal Code (2004) made Female Genital Mutilation/Circumcision (FGM/C) a criminal offence to perform or procure. The penalty includes imprisonment not less than three months and a fine not less than 500 Birr (\$17).¹⁴ However it remains a widespread practice in the country. According to some reports, over 23.8 million women and girls have been affected. This figure places Ethiopia as the second highest country in Africa to practise FGM/C.¹⁵

¹⁴ Article 565 of Criminal Code of Ethiopia <https://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>

¹⁵ Country Profile: FGM in Ethiopia (October 2013), 28 Too Many [https://www.28toomany.org/static/media/uploads/Law%20Reports/ethiopia_law_report_\(july_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/ethiopia_law_report_(july_2018).pdf)

The practice is most prevalent in Afar and Somali regions with majority Muslim populations. The 2016 Ethiopian Demographic Health Survey (EDHS) data on FGM among the age group of 15-49 showed a prevalence of 98% of women and girls affected in Afar and 99% in Somali respectively. Data also shows that more rural women (68%) than urban women (54%) are likely to have undergone the practice.¹⁶

According to women activists FGM/C has been normalized as a customary practice, condoned and often promoted by religious and community leaders. EDHS data¹⁷ also indicates that:

- 89% of Muslim women and girls aged 15 – 49 have undergone FGM/C;
- Most girls and women (64%) have undergone FGM during the first four years of their lives, while 22% have experienced it between 5 – 9 years of age;
- In 98% of cases FGM was carried out by a traditional practitioner.

The Ethiopian State Party Report to the CEDAW Committee stated that in 2013, the Government adopted a National Strategy on Harmful Traditional Practices (HTPs) and an accompanying action plan on Female Genital Mutilation (FGM), child marriage and abduction in 2013. The report also indicates other initiatives undertaken by government to reduce the practice, such as through the Interfaith Council.

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In September 2018, there were reports in international media that two sisters aged 10 and 11, bled to death in a rural town in the Somali region. According to national activists, the prevalent perception of the practice is that it will decrease sexual urges of women. Awareness about the provisions of the law, as well as implementation of the law remains weak across the country. Reporting of the practice also remains low, as there is risk of social ostracisation and harassment for any individual bringing a case to light. While stating FGM/C as a criminal offence, the provisions of the Criminal Code fail to clearly define the practice in its various forms.¹⁸

¹⁶ UNICEF commits to speed up its efforts to end the violent practice of Female Genital Mutilation/Cutting (FGM/C) <https://unicefethiopia.org/tag/fgm/>

¹⁷ Ethiopia – Statistical Profile on FGM/C https://data.unicef.org/wp-content/uploads/country_profiles/Ethiopia/FGMC_ETH.pdf

¹⁸ Thomas Reuters Foundation (2018), Ethiopia: The Law and FGM [https://www.28toomany.org/static/media/uploads/Law%20Reports/ethiopia_law_report_\(july_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/ethiopia_law_report_(july_2018).pdf)

We recommend the CEDAW Committee urge the State Party to:

- Amend the Criminal Code to:
 - Provide a clear definition of all types of FGM/C practiced in Ethiopia
 - Include penalty for failing to report FGM/C
- Conduct widespread awareness raising campaigns on the negative impacts of FGM/C, debunking myths and misconceptions about the practice particularly from a cultural/religious standpoint and on the criminality of the practice. Such campaigns must target and cater to communities with low literacy rates and those with high prevalence. Campaigns must also target debunking religious arguments and myths;
- Set up mandatory reporting on FGM/C cases for health care workers and hospitals, as well as adequate help/hotlines to report the practice particularly among communities in which girls and women are most vulnerable to the practice;
- Identify the socio-cultural components and work with behavioral change models that are tested, proven to work in other similar settings and situations;
- Contextualize and localize the approaches of intervention and work with fully engaging the community influence makers, elders, religious leaders as role models and change agents in the interventions.

MUSAWAH JUSTIFICATION FOR REFORMS

Female Genital Mutilation/Circumcision (FGM/C) harms women and girls' health and well-being for the rest of their lives. There is consensus among Islamic institutions, health practitioners, advocacy groups, and international human rights mechanisms that female genital mutilation, cutting and circumcision, causes long-lasting harm to girls and women, and is therefore an un-Islamic practice.

**NO EVIDENCE IN
SUPPORT OF
OF FGM/C
IN THE
QU'RAN &
ISLAMIC
TRADITION**

- FGM is a cultural, not religious, practice that predates Islam and Christianity, and in the centuries since it has been proven to be harmful to women and girls.
- There is no text in the Qur'an or the Sunnah that requires female circumcision; in fact, Prophet Muhammad did not circumcise his own daughters.
- Based on those facts, institutions of religious scholars including Dar al-Ifta in Egypt have issued strong fatwas condemning FGM, including female circumcision, as harmful to girls and women, and thus forbidding it as an un-Islamic practice.

ANNEX I: MUSAWAH VISION FOR THE FAMILY

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws and informal community practices within Muslim contexts are based on definitions and interpretations by classical jurists, and are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do these family laws and practices fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life.

Musawah advocates for its four-pronged [Framework for Action](#) in developing such a Muslim family law, which incorporates: (1) diversity of Islamic jurisprudence and legal concepts (2) national laws and constitutional guarantees of equality, (3) contemporary lived realities, and (3) international human rights standards.

Musawah believes that Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies.

Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances.

Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

Furthermore, it is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam and Muslim communities, to:

- Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes equality and justice and the possibility and necessity for reform of Muslim family laws today.
- Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.

