

「消除對婦女一切形式歧視公約」第 31 號一般性建議

徐慧怡(國立臺北大學法律學系)

標 題：消除對婦女歧視委員會第 31 號及兒童權利委員會有關有害做法的第 18 號聯合一般性建議/意見

文 件 號：聯合國文件 CEDAW/C/GC/31/CRC/C/GC/18 (2014)

第 31 號一般性建議內容目次

項目	重點
導言：1 段	<ul style="list-style-type: none">• 主要宗旨(1)
一般性建議/意見之目的和適用範圍：2-5 段	<ul style="list-style-type: none">• 目的(2)• 適用範圍(3-4)• 須結合參考的相關一般性建議/意見(5)
一般性建議/意見之理論基礎：6-9 段	<ul style="list-style-type: none">• 有害做法的根基(6-7)• 有害做法的普遍存在性(8)• 其他有害作法(9)
一般性建議/意見之規範性內容：10-14 段	<ul style="list-style-type: none">• 締約國的義務(10-14)
有害做法的認定標準：15-16 段	<ul style="list-style-type: none">• 有害做法的認定標準(15-16)
有害做法的原因、形式與表現：17-30 段	<ul style="list-style-type: none">• 有害做法的原因(17-18)• 切割女性生殖器官(19)• 童婚及強迫婚姻(20-24)• 多配偶制(25-28)• 所謂名譽犯罪(29-30)
解決有害做法問題的整體框架：31-87 段	<ul style="list-style-type: none">• 締約國有建立整體適當措施的義務(31-36)• 資料獲取和監測(37-39)• 立法與執法(40-55)• 針對有害做法之防範(56-81)

	<ul style="list-style-type: none"> • 保護性措施和回應服務(82-87)
一般性建議/意見的傳播及報告:88-89 段	<ul style="list-style-type: none"> • 締約國負有在國內傳播本聯合一般性建議/意見的義務 (88) • 締約國應提交報告的內容(89)
條約的批准、加入和保留:90-91 段	<ul style="list-style-type: none"> • 監測和報告 (90) • 批准或加入條約情況 (91)

壹、背景及概述

1972 年時聯合國大會宣布 1975 年為「國際婦女年」，並責成婦女地位委員會開始《消除對婦女一切形式歧視公約》(Convention on the Elimination of All Forms of Discrimination Against Women, 以下簡稱 CEDAW 或《公約》)的起草準備工作；歷經 7 年後，CEDAW 於 1979 年 12 月 18 日經聯合國大會通過、而於 1981 年 9 月 3 日生效。至 2015 年 9 月為止，CEDAW 共有 189 個締約國，其已成為僅次於兒童權利公約的第二大國際人權公約。

CEDAW 內容包含了序言及 30 條條文。其中，序言說明其立約意旨在於消除對於婦女歧視以落實人權，並注意到對婦女的歧視與國際和平與安全情勢、國際社會、經濟合作、及男女於社會上和家庭中的傳統任務間具有密切關聯。其次，CEDAW 條文可約略分為以下 3 部分：(1)第 1 至第 5 條總論歧視的定義與國家應負的責任；(2)第 6 至第 16 條正面表列女性於生活各個領域中所應實質享有的權利，包括參政、國際參與、國籍、教育、就業、健康、經濟、社會福利、農村婦女、法律及婚姻，以及(3)第 17 至第 30 條規範公約的執行與監督程序，明訂國家報告提交、審查過程及 CEDAW 委員會組成與功能。簡言之，CEDAW 係對於女性在各個生活領域權益的直接宣示與保障；不僅要求締約國政府消除所有妨害女性於公、私領域行使人權的阻礙，更需修訂各該國法律及行政，以確保國內女性得享有完整人權，達到

實質性別平等。

1982 年時，聯合國依據該公約第 17 條規定設置「消除對婦女一切形式歧視委員會 (Committee on the Elimination of All Forms of Discrimination Against Women, 以下簡稱 CEDAW 委員會)」，作為負責監督《公約》執行情況的單位。自 1986 年至今，CEDAW 委員會共建制 32 項「一般性建議」；是以 CEDAW 之執行層面，並不僅限於 1979 年通過的 30 條條文，尚包括 CEDAW 委員會歷年頒布的一般性建議。

因 CEDAW 與《兒童權利公約》中均有「締約國有消除有害做法義務」的規定，並明確指導採取一切適當措施的內容，以及經由適當立法及政策的擬定，以確保其遵守 CEDAW 及《兒童權利公約》中消除有害做法的義務，使締約國能有效消除可能引發侵害婦女和女童行為的歧視，是以 CEDAW 委員會與兒童權利公約委員會有鑒於兩者工作任務有重疊之處，以及彼此對於防止、回應及消除有害做法的共同承諾，2014 年 11 月 4 日兩委員會聯合發布關於「有害作法」的第 31 號一般性建議及第 18 號一般性意見。此外，因兒童權利公約委員會認識到男童亦為暴力、有害做法及偏見的受害者，故為保障其權利，防止其生活中由於歧視遭受性別暴力、偏見及性別不平等的侵害，上述一般性建議及一般性意見亦提及《兒童權利公約》締約國於有消除導致男童權利受影響的有害做法之義務。而因兩項公約皆已將有害做法納入侵犯人權行為之範疇，並具體規定締約國有義務採取行動加以確保、防止和消除這些有害做法，故閱讀本一般性建議時，應當結合 CEDAW 委員會發佈之第 12 號、第 13 號、第 14 號、第 19 號及第 21 號一般性建議，以及兒童權利委員會發布之第 8 號與第 13 號一般性意見。

貳、第 31 號一般性建議之內容重點

所謂「有害做法」指根基於性、性別、年齡及其他理由的歧視。有害做法的形成原因具有許多層面，包括基於性和性別的角色定型觀念、對性別的優劣假定、控制婦女及女童身體與性欲的企圖、社會不平等、男性主導權力結構，以及其他各種社會文化及宗教習俗和價值觀等。整體而言，有害做法通常與各種嚴重的暴力形式相關，或其實際上本身即為一種侵害婦女的暴力形式，進而引起婦女身體及心理上的傷害或痛苦，並損害其對人權以及基本自由的權利行使，使得對婦女及女童的尊嚴、身體、社會心理及道德的完整性、參與、健康、教育、經濟和社會地位亦有不利影響。

在第 31 號一般性建議/第 18 號一般性意見中，認為符合下列標準的做法即應視為有害行為：

- 一、構成對個人尊嚴及完整性的否定，以及對人權及兩大《公約》所載基本自由的侵犯，如童婚及強迫婚姻、因嫁妝引起的暴力；
- 二、構成對婦女或兒童的歧視，進而使其作為個人或群體時受有不利影響而受害，包括身體、心理、經濟及社會上的傷害與暴力，以及對其充分參與社會、發展並實現全部潛能進行限制，如切割女性生殖器官；
- 三、基於性、性別、年齡和其他交叉因素，延續男性主導與婦女和女童不平等的各種社會規範，無論該規範是固有的、傳統的、重新出現的或是新出現的作法，如多配偶制；
- 四、由家庭、社區成員或社會強加於婦女及兒童的任何做法，無論受害者是否有能力提供充分、自由和知情同意，如以下所謂的名譽犯罪。

大多數國家中皆普遍存在有害做法，只是彼此的性質與普遍程度因區域和文化差異而有所不同；但其中最為普遍、記載最多是切割女性生殖器官、童婚及強迫婚姻、多配偶制、所謂名譽犯罪，以及因嫁

妝引起的暴力。故第 31 號一般性建議/第 18 號一般性意見便以上開所提及者為例，分述如下：

一、切割女性生殖器官

切割女性生殖器官(或稱女性割禮、殘割女性生殖器官)，是指部分或全部切除女性外生殖器，或因非醫學或非健康原因採用其他方式損害女性生殖器官。此種做法不僅可能導致劇烈疼痛、感染、休克，於產婦分娩期間，更會產生危及母親與嬰兒的各種併發症等婦科問題、心理後果和死亡結果。根據世界衛生組織和兒童基金會估計，全世界有 1 億至 1.4 億女童和婦女受過某種形式的女性生殖器官切割。目前世界上某些區域或文化中仍存在此做法，並認為此為婚姻的必要條件，而且也是控制婦女性欲的有效方法。

由於上述文化、傳統、經濟等壓力助長女性生殖器殘割等有害習俗存在，故 CEDAW 委員會第 14 號一般性建議，向各締約國建議：「採取適當有效措施以期根除女性割禮習俗」、「於國家衛生政策內載列其消除女性生殖器殘割之適當公共保健策略」、「請聯合國相關組織提供援助、資料和諮詢意見，以支援助和協助進行消除有害傳統習俗的工作」，以及「於向委員會提出之報告中，載列關於 CEDAW 第 10 及第 12 條消除女性生殖器殘割之資料」等 4 項建議。(參照 CEDAW 第 14 號一般性建議)

二、童婚及強迫婚姻、因嫁妝引起的暴力

童婚，亦稱早婚，是指至少一方未滿 18 歲的婚姻。如果婚姻一方或雙方未對婚姻表示充分、自由和知情同意時，可將童婚視為強迫婚姻的形式之一。為尊重兒童做出影響其生活決定的能力和自主權，法律固規定於特殊情況時，得允許未滿 18 歲之成熟、有能力的兒童結婚，惟有些國家地區，兒童於很小便訂婚或成婚，甚至年幼女童基於某些因素被迫嫁給年長自己幾十歲之男性在所多有。依據 2012 年兒童基金會的報告顯示，全世界有將近 4 億 20-49 歲女性於未滿 18

歲時即已結婚或與人結合，是以消除對婦女歧視委員會特別重視女童並未表示充分、自由和知情同意而結婚的情況，例如（1）結婚時年齡尚輕，尚未對成年生活做好身體及心理上之準備，而無法做出有意識的、知情的決定以對婚姻表示同意；（2）女童之監護人根據該地區的習慣法或成文法享有法定同意權，得違背女童婚姻自由權使其成婚；（3）因童婚往往伴隨早孕、頻繁妊娠與生產，使得孕產婦發病率和死亡率高於平均水準之問題產生，甚至年幼母親所生嬰兒的死亡率亦高於年長母親所生嬰兒者（有時候高出兩倍）等情形。

強迫婚姻則是指婚姻一方或雙方未親自充分、自由地表示同意結合。除童婚以外，強迫婚姻還包括其他多種形式，包括交換婚姻或交易婚姻（即抵償交換和抵償婚姻）、奴役婚姻以及脅迫寡婦嫁給亡夫親屬（「至親救贖婚姻」），甚至是由女方家屬同意強姦者與受害者結婚，使其藉此逃避刑事制裁。其次，於移徙情境中，家族成員為確保女童能於家庭宗族內成婚，或者是讓遠房家庭成員或特定他人移徙或生活於特定目的地國、進而取得該國家地區之證件時，亦可能發生強迫婚姻。此外，強迫婚姻更常見於衝突期間為武裝團體所利用，或作為女童逃避衝突後貧窮的一種手段。

於童婚或強迫婚姻中，特別是男方年齡明顯大於女方，以及女童教育程度有限時，不僅女童對於有關自己生活的事務中僅享有有限決策權，更常被迫離開學校，而使得女童輟學率上升、增加其受到家庭暴力以及行動自由權受限的風險增加，導致女童缺乏人身和經濟自主權、企圖逃匿或自焚、自殺以逃避或逃離婚姻。

此外，因支付嫁妝及彩禮的作法因各個社區而異，亦增加婦女和女童遭受暴力或其他有害做法的可能性。換言之，當嫁妝所支付之金額或規模未達到夫家原先所預期之程度時，丈夫或其家庭成員便可能對其採取身體或心理暴力，包括謀殺、縱火和酸腐蝕等。更進一步，有家庭甚至藉由同意女兒的臨時「婚姻」換取資金收益，而產生契約

婚姻之情形。因此，《兒童權利公約關於買賣兒童、兒童賣淫和兒童色情製品問題的任擇議定書》表示依據其第 2 條(a)款規定，此可能構成「買賣兒童」，故締約國對包含嫁妝或彩禮的童婚及強迫婚姻負有明確的消除義務而 CEDAW 委員會於第 29 號一般性建議中再次重申，第 21 號一般性建議第 16 段已指出允許此種付費或首選方式安排婚姻已侵犯婦女自由選擇配偶之權利，不得以任何形式將這類有害做法列為婚姻生效之必要條件，且締約國不得認定此類協議可強制執行。(參照第 29 號一般性建議第 33 段)

三、多配偶制

從歷史上觀之，多配偶制的家庭制度曾作為一種確保家庭擁有更多勞動力的有效途徑，尤其是在特定農業社會中發揮其作用，然研究亦顯示多配偶制往往使家庭更加貧窮，尤其在農村地區。儘管多數締約國已禁止多配偶制，但仍有一些國家合法或非法地實行多配偶制。

多配偶制違反婦女及女童的尊嚴，侵犯其人權與自由，包括於家庭中的男女平等權利和保護，不但造成對妻妾身體上與心理上的傷害及社會福利的損失，更使子女於情感及物質上遭受損害，在其情感及經濟方面帶來嚴重後果，故該等婚姻應予以抑制和禁止，是以 CEDAW 委員會於第 21 號一般性建議中規定各締約國應禁止和抑制一夫多妻婚姻。(參照第 21 號一般性建議第 14 段)

四、所謂名譽犯罪

當家庭成員認為女童和婦女某個可疑或實際行為將會使家庭或社區蒙羞時，如女童和婦女為性暴力受害者、婚前發生性關係、衣著方式不為社區所接受、外出就業、不符合是社會所規範的性別角色、拒絕同意包辦婚姻、未經父母同意即結婚、通姦、或尋求離異，即可能遭受所謂名譽犯罪；而此類犯罪通常包括謀殺，且是由其配偶、親屬或者受害者所在之社區成員加以執行。

因此，所謂名譽犯罪雖非僅係對女童和婦女之犯罪行為，但女童和婦女卻經常成為此種暴力行為的受害對象，且此經常被該國家或社區認定為是一種保護及恢復其文化、傳統、習慣或宗教規範完整性之手段，甚至在某些情況下，因國家公權力或其本身之立法缺失，更允許維護名譽作為犯罪者得無罪或減輕罪行。

五、其他有害行為

除上述者外，尚有許多因與社會建構的性別角色及父權關係制度密切關聯，或反映社會對於某些弱勢婦女及兒童群體的歧視性信念，而被認定為有害做法。這些做法包括但不限於忽視女童（涉及對男童之優先照顧和待遇）、極端飲食限制（強迫進食、飲食禁忌，包括妊娠期間）、貞操測試及相關做法、纏足、疤痕、烙印/部落標記、體罰、扔石塊、暴力入會儀式、寡居做法、巫術、弑嬰和亂倫。甚至有些做法會以增進女童或婦女美貌和其宜婚性為目的（如增肥、隔離、使用唇盤以及使用項圈拉長脖頸），或是基於防止女童早孕或使其避免遭受性騷擾和暴力（如熨胸/“repassage”）而進行相關身體改造等。另外，目前全世界各地有越來越多婦女及兒童被迫符合當地有關身體的社會規範而進行病態瘦身、接受醫療或整形手術，導致婦女及兒童的飲食與健康問題氾濫。

雖然各締約國於打擊有害做法方面已做出許多努力，但受其影響的婦女和女童的總數量仍然龐大，甚至更可能因衝突局勢及社交媒體廣泛使用等技術進步，而有增加的趨勢。例如，來自採取有害做法社區的成員通過移徙或尋求庇護遷移至目的地國後，有些往往仍會繼續固守有害做法，使得支持此類有害措施的社會規範及文化信念，得於其他地區被保留並傳承，甚至為了能在新環境（特別是在性別角色提供婦女和女童更大個人自由的目的地國家）中維持自身文化認同，成員會更加合理化有害做法的正當性，並採取更積極手段來保持及傳承該項有害措施。是以單憑頒佈及執行立法工作並不足以有效打擊有害做法，亦不會使支持有害做法的主流態度和社會規範因此被削弱。締

約國欲改變這些有害做法，必須找出其背後系統性及結構性原因並加以解決，才能使得縱容有害做法的傳統文化態度得以轉變。

參、我國相關法規或措施檢視案例說明

我國早期親屬法固有法制特色深受儒家法律觀的影響，而建立於團體主義與男權主義之上。以男權主義為例，我國結婚的目的為傳宗接代、光宗耀祖，祭祀祖先與傳承香火成為傳統社會宗族生活的核心。因此生男一事於傳統社會極受重視。民國 19 年制定的民法親屬編雖以承襲歐陸近代法律思想為主，而力求獨立人格的確立與男女平等原則，但其仍受傳統思想的影響，使得團體家族主義與重男輕女的思想仍未完全摒除¹。雖因近年來社會變遷與價值觀的發展，立法者對於其規範內容逐漸修正，截至目前為止，其中，民法親屬編歷經 17 次的修改。僅將與前述普遍有害做法相關，並及於其他相關不平等、不利益之相關法規之規定，簡要舉例如下。

一、民法親屬編有關婚姻年齡及婚姻須當事人合意之規定

(一) 婚姻年齡

許多國家對於男女最低結婚年齡做出不同限制，通常係立基於女子的心智發展速度與男性不同，或者是認為女子結婚時的生理及心智發展與其是否得結婚一事並不重要，而對於結婚年齡之限制，主要係為防止早婚之弊害，維護國家民族之衛生健康²。

我國現行民法第 973 條規定，「男未滿十七歲，女未滿十五歲者，不得訂定婚約。」民法第 980 條規定，「男未滿十八歲，女未滿十六歲者，不得結婚。」我國規定男女最低限的結婚年齡，相差 2 歲，主要是考量女子身體發育較男子為較早的緣故。為此種立法意旨，學者間早有不同的見解，有認為表示，人之成熟，不得單憑身體之發育決

¹ 戴炎輝、戴東雄、戴瑀如，親屬法，自版，頁 10-11、14，2012 年 8 月。

² 戴炎輝、戴東雄、戴瑀如，親屬法，自版，頁 83，2012 年 8 月。

定，精神上之成熟亦應列入考量³；亦有認為在當今社會，男女均有接受教育的同等機會，智力上實並不相差，因此男女之的定結婚年齡理應相等，且遵從憲法保障男女平等的精神，宜將男女的法定結婚年齡改為相同⁴。

結婚年齡未達十八歲，是否形成 CEDAW 中有害做法的童婚，我國與多數國家存在迫使女童早婚的情形並不相同，而是男性年齡未達十八歲。然行政院院會於為配合「公民與政治權利國際公約」及「消除對婦女一切形式歧視公約」的規定，於民國 100 年 2 月 24 日通過民法第 973 條及第 980 條修正草案，修正男女最低訂婚及結婚年齡，使得男女未滿十七歲不得訂婚、未滿十八歲不得結婚，藉以充分實行男女平權概念，破除父權思想對於女性成熟年紀比男性之迷思⁵。惟應注意者，此修正草案尚未經立法院修法通過。

（二）婚姻須當事人合意

我國舊制，婚姻的目的乃係為家、為祖先而結婚，婚姻當事人的同居或結合反居於次要地位，簡言之，婚姻以父母(尤其是父)或尊長為當事人(主婚人)，而婿媳本人則為被結合者，僅能唯命是從⁶。是以結婚當事人並沒有結婚自由權，男女當事人對於婚姻方面之意思如何，可不必問⁷。

現行民法僅在民法第 972 條規定「婚約，應由男女當事人自行訂定。」，強調婚約之訂定需有當事人之合意，但在結婚中並未明文規定。惟無論在學說上、法條之解釋學與實務之運作上，無論結婚之意思表示為合同行為或身分契約之一種，結婚以當事人有結婚意思之一致為必要，則為無需爭議之問題。更進一步言，結婚當事人除結婚之意思一致外，尚須有結婚的意思能力。所謂結婚的意思能力，則指當

³ 林菊枝，親屬法與男女平等原則，親屬法專題研究，頁 18。

⁴ 林秀雄，親屬法講義，元照出版有限公司，頁 67-68，2013 年 2 月，3 版。

⁵ 相關資料，參見 <http://www.moj.gov.tw/ct.asp?xItem=223267&ctNode=27518>

⁶ 戴炎輝、戴東雄、戴瑀如，親屬法，自版，頁 53，2012 年 8 月。

⁷ 林秀雄，親屬法講義，元照出版有限公司，頁 61，2013 年 2 月，3 版。

事人能理解結婚的意義及其效果的能力而言。至於幾歲以上始具有結婚的意思能力，民法並無明文規定，依據司法院 31 年院字 2372 號解釋認為，男女滿 7 歲後，有結婚的意思，經其法定代理人主持，舉行婚禮，並具備民法第 982 條之方式者，自應發生婚姻之效力⁸。雖然結婚之形式要件，目前民法已修改為書面登記而非儀式婚之規定，然對於當事人需具結婚之意思，始發生婚姻之效力，仍是廣被接受之解釋。

二、有關一夫一妻制之修正

(一) 民法民國 74 年之修正

民國 74 年修法前舊民法第 985 條規定「有配偶者，不得重婚」舊民法第 992 條規定「結婚違反第九百八十五條之規定者，利害關係人得向法院請求撤銷之。但在前婚姻關係消滅後，不得請求撤銷」重婚可得撤銷之規定，不僅造成一夫多妻或一妻多夫可以成立，更因重婚無撤銷期間之限制，使得配偶之身分安定性失去保障、子女之利益受有不利的影響。故於民國 74 年修法時，一方面將一人同時與兩人以上結婚時，視同重婚之效果(民法第 985 條第 2 項)，同時，亦將重婚修正為無效(舊民法第 988 條第 2 款)，以落實名符其實的一夫一妻原則。

(二) 民法民國 96 年之修正

民國 83 年 8 月 29 日時，司法院大法官釋字第 362 號解釋針對信賴法院就前婚解消之判決，而再婚之重婚一事略謂：「…民法第 988 條第 2 款關於重婚無效之規定，乃所以維持一夫一妻婚姻制度之社會秩序，就一般情形而言，與憲法上無牴觸。惟如前婚姻關係已因確定判決而消滅，第三人本於善意且無過失，信賴該判決而與前婚姻之一方相婚者，雖該判決嗣後又經變更，致後婚姻成為重婚，就與一般重婚情形有異，依信賴保護原則，該後婚之效力，仍應予以維持。…」是

⁸ 司法院 31 年院字 2372 號解釋：「男女滿七歲後有結婚之意思。經其法定代理人主持。舉行婚禮。並具備民法第 982 條之方式者。自應發生婚姻效力。縱未合卺同居。但該配偶之一方。如於婚姻關係存續中。復與他人結婚。仍應成立重婚罪。惟須注意刑法第 18 條第 1 項第 2 項之規定。」

以信賴法院判決之善意後婚之當事人，其後婚即仍受法律保障，亦形成一夫一妻婚姻制度之例外情況。又大法官於民國 91 年 12 月 13 日時作出釋字第 552 號解釋，表示依照釋字第 362 號解釋，「僅重婚相對人善意且無過失，尚不足以維持後婚姻，須雙方當事人善意且無過失時，後婚姻之效力始能維持」其並指出，如因而致前後婚姻同時存在時，為維護一夫一妻之婚姻政策，究應維持前婚姻或後婚姻，即屬立法政策之考量，應由立法機關衡酌信賴保護原則，儘速檢討修正。

立法者為因應釋字 552 號解釋意旨，於民國 96 年 5 月 23 日修正民法第 988 條第 1 項第 2 款之規定、增訂第 3 款，以及增訂民法第 988 條之 1 規定，使得雙方善意的重婚成立時，前婚自後婚發生效力時起，視為消滅。從其立法意旨中可知，此次修正在於貫徹一夫一妻婚姻制度，並審酌婚姻之本質重在夫妻兩人共同生活，前婚姻既無共同生活之事實，且因離婚協議或請求裁判離婚而出現破綻，故維持後婚姻之效力。至此，我國一夫一妻制始告實質確立。

（三）兩岸婚姻問題

關於兩岸婚姻問題，民國 78 年 6 月 23 日時，大法官於司法院大法官釋字第 242 號解釋中表示，「……雖國家遭遇重大變故，在夫妻隔離、相聚無期之情況下所發生之重婚事件，與一般重婚事件就有不同，對於此種有長期實際共同生活事實之後婚姻關係，仍得適用上開民法第 992 條之規定予以撤銷，嚴重影響其家庭生活及人倫關係，反足以妨害社會秩序，就此而言，自與憲法第 22 條保障人民自由及權利之規定有所抵觸。」經此一釋字，使得兩岸重婚與民法第 985 條的重婚情形有別，而使得當事人的婚姻狀態可能產生一夫多妻或一妻多夫之情形。

因兩岸開放探親的時間為民國 76 年 11 月 1 日，故釋字第 242 號解釋隨後落實在民國 81 年 7 月 31 日公布、民國 84 年 9 月 18 日施行的「臺灣地區與大陸地區人民關係條例」的第 64 條規定，依該規定，

夫妻婚後如分隔於台灣地區與大陸地區，不能同居，而一方於民國 74 年 6 月 5 日以前再與他人結婚者，利害關係人不得聲請撤銷該後婚姻；其於民國 74 年 6 月 5 日以後至民國 76 年 11 月 1 日以前再與他人結婚者，該後婚姻視為有效；其於民國 76 年 11 月 2 日後再與他人結婚者，該後婚為無效，是以雖然民法規定為一夫一妻制，但例外除非夫妻雙方都重婚，否則在憲法保障下，此一夫多妻或一妻多夫仍然存在⁹。

三、 民法懲戒權與家庭暴力防治法之規定

(一) 民法之懲戒權

父母對於子女有保護及教養的權利義務，惟難免有子女不守庭訓，此際若不能課以一定懲戒，則保護及教養將難有成效¹⁰；此之懲戒，指父母為矯正其子女不當的行為，而施以肉體上或精神上痛苦的懲罰手段¹¹。過去於家長制及父權觀念下，通常「法不入家門」，惟隨著社會觀念逐漸改變，使得國家公權力得允以適當介入之，民法第 1085 條亦為適例，即民法第 1085 條規定「父母得於必要範圍內懲戒其子女。」

現行法關於懲戒之方法，民法並無明文規定，有學者謂懲戒應為實施保護教養所必要，其程度應按子女之家庭環境、子女之性別、年齡、健康及性格、過失之輕重定之，超出此範圍時，即為親權之濫用¹²，亦即懲戒若逾越必要範圍時，則為虐待。故為防止父母對於未成年子女懲戒過當而受到傷害，民國 87 年 6 月 24 日公布實施家庭暴力防治法，亦包括此一情形在內，期以民事

⁹ 臺灣地區與大陸地區人民關係條例第 64 條：「夫妻因一方在臺灣地區，一方在大陸地區，不能同居，而一方於民國七十四年六月四日以前重婚者，利害關係人不得聲請撤銷；其於七十四年六月五日以後七十六年十一月一日以前重婚者，該後婚視為有效。前項情形，如夫妻雙方均重婚者，於後婚者重婚之日起，原婚姻關係消滅。」

¹⁰ 戴炎輝、戴東雄、戴瑀如，親屬法，自版，頁 465，2012 年 8 月。

¹¹ 林秀雄，親屬法講義，元照出版有限公司，頁 325，2013 年 2 月，3 版。

¹² 民法第 1090 條：「父母之一方濫用其對於子女之權利時，法院得依他方、未成年子女、主管機關、社會福利機構或其他利害關係人之請求或依職權，為子女之利益，宣告停止其權利之全部或一部。」林秀雄，親屬法講義，元照出版有限公司，頁 326，2013 年 2 月，3 版。

保護令禁止父母對於未成年子女過度懲戒，致成家庭暴力¹³。

（二）家庭暴力防治法之相關規定

民國 85 年 6 月 24 日制定之家庭暴力防治法，全文共計 54 條，期間歷經 4 次修正。其中，針對已經承受有害做法或潛在於高風險情況之婦女，於各直轄市、縣(市)設立家庭暴力防治中心，為其提供一切必要之保護性服務，如設置方便記憶、免費撥打之 24 小時全國通用求助熱線、具備適當之受害者安全和保障措施，包括暴力受害者之臨時及長期收容所、提供社會心理協助，以治療受害者之心理創傷，並以受害者之最大利益為原則，進行密切跟進和監測，以確保其得安全返回和重新融入社會、得到一定程度保護，並於短期和長期內享有其應有之權利¹⁴。

此外，家庭暴力防治法第 4 章之章名為父母子女，對於家庭暴力發生時之父母離婚後子女親權及會面交往，亦設有特別規定。其中，通常保護令得定相對人對未成年子女會面交往之時間、地點及方式，必要時並得禁止會面交往權¹⁵；推定由加害人行使或負擔權利義務不

¹³ 戴炎輝、戴東雄、戴瑀如，親屬法，自版，頁 465，2012 年 8 月。

¹⁴ 家庭暴力防治法第 8 條之規定，「直轄市、縣(市)主管機關應整合所屬警政、教育、衛生、社政、民政、戶政、勞工、新聞等機關、單位業務及人力，設立家庭暴力防治中心，並協調司法、移民相關機關，辦理下列事項：

一、提供二十四小時電話專線服務。

二、提供被害人二十四小時緊急救援、協助診療、驗傷、採證及緊急安置。

三、提供或轉介被害人經濟扶助、法律服務、就學服務、住宅輔導，並以階段性、支持性及多元性提供職業訓練與就業服務。

四、提供被害人及其未成年子女短、中、長期庇護安置。

五、提供或轉介被害人、經評估有需要之目睹家庭暴力兒童及少年或家庭成員身心治療、諮商、社會與心理評估及處置。

六、轉介加害人處遇及追蹤輔導。

七、追蹤及管理轉介服務案件。

八、推廣家庭暴力防治教育、訓練及宣導。

九、辦理危險評估，並召開跨機構網絡會議。

十、其他家庭暴力防治有關之事項。

前項中心得與性侵害防治中心合併設立，並應配置社會工作、警察、衛生及其他相關專業人員；其組織，由直轄市、縣(市)主管機關定之。」

¹⁵ 家庭暴力防治法第 14 條第 6 款：「法院於審理終結後，認有家庭暴力之事實且有必要者，應依聲請或依職權核發包括下列一款或數款之通常保護令：…六、定暫時對未成年子女權利義務之行使或負擔，由當事人之一方或雙方共同任之、行使或負擔之內容及方法；必要時，並得命交付子女。」第 14 條第 7 款：「法院於審理終結後，認有家庭暴力之事實且有必要者，應依聲請或依職權核發包括下列一款或數款之通常保護令：…七、定相對人對未成年子女會面交往

利於子女¹⁶等是。此外，法院依法為未成年子女決定會面交往之裁判後，發生家庭暴力時，法院得依被害人、未成年子女、主管機關、社會福利機構或其他利害關係人之請求，為子女最佳利益改定之¹⁷。此乃為現行民法第 1055 條之例外規定，依民法有關於變更子女親權與會面交往權之規定，須限定夫妻間之協議有不利於子女、親權人未盡保護教養義務、親權人對子女有不利情事、會面交往有妨害子女利益等情形時，法院始得依聲請或依職權為子女之利益改定親權人，然因家庭暴力對於子女之影響極大，因此該發生家庭暴力事件，亦得作為請求法院改定子女親權與會面交往之原因。

家庭暴力防治法最近一次修法，民國 104 年 2 月 4 日，共計修正 33 條條文，此次修正重點則包括將「目睹家暴兒童及少年」納入保障範圍、將「非同居親密暴力被害人」亦納入保障範圍、延長通常保護令效期，並取消延長次數的限制¹⁸、訂定被害人隱私權保護措施與明訂各單位之權責等。

肆、小結

綜上所述，對於 CEDAW31 號一般性建議之內容，尤其是有害做法，我國過去社會觀念雖亦以父權、夫權至上，相關民法規定亦以其為制訂之依據，然因社會觀念改變，民法經歷多次之修正，原則上已無違反之相關男女平等之規定，父權至上的觀念也已被「子女最佳利益」原則所取代。是以目前我國稍有爭議之部分，如結婚年齡較低是否形成童婚之部分，修正草案已將其列入；多配偶制在民法中亦以修正落實真正的一夫一妻制，至於兩岸關係條例中的例外規定，乃因國家特殊狀況下，在一定的時間內重婚始有適用，並非一般常態性之規定，且在民國 76 年 11 月 1 日後將不在出現重婚之情形。最後，我國

之時間、地點及方式；必要時，並得禁止會面交往。」

¹⁶ 家庭暴力防治法第 43 條：「法院依法為未成年子女酌定或改定權利義務之行使或負擔之人時，對已發生家庭暴力者，推定由加害人行使或負擔權利義務不利於該子女。」

¹⁷ 家庭暴力防治法第 44 條：「法院依法為未成年子女酌定或改定權利義務之行使或負擔之人或會面交往之裁判後，發生家庭暴力者，法院得依被害人、未成年子女、直轄市、縣（市）主管機關、社會福利機構或其他利害關係人之請求，為子女之最佳利益改定之。」

家庭暴力防治法，除對已經承受有害做法之婦女提供保護機制外，對於潛在於高風險情況之婦女或兒童，甚至家庭暴力之目睹兒，均納入保障的範圍，為目前我國法制積極消除婦女歧視落實人權之立法展現。

伍、第 31 號一般性建議重要內容提示

段落	聯合國官方中文版	聯合國官方英文版
1	<p>《消除對婦女一切形式歧視公約》（《消除對婦女歧視公約》）和《兒童權利公約》包含具有法律約束力的與消除有害做法一般相關以及具體相關的義務。在執行各自監測任務的過程中，消除對婦女歧視委員會和兒童權利委員會一再提請注意這些危及婦女兒童，主要是女童的做法。鑒於工作任務的重疊以及對防止、回應和消除有害做法的共同承諾，無論其在何地以何種形式出現，消除對婦女歧視委員會和兒童權利公約委員會決定編制本聯合一般性建議/意見。</p>	<p>The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child contain legally binding obligations that relate both in general and specifically to the elimination of harmful practices. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have consistently drawn attention to those practices affecting women and children, primarily girls, in the execution of their monitoring mandates. It is by virtue of that overlapping mandate and the shared commitment to prevent, respond to and eliminate harmful practices, wherever and in whichever form they occur, that the Committees</p>

		decided to develop the present joint general recommendation/general comment.
5	<p>閱讀本一般性建議/意見時，應當結合兩個委員會分別發佈的相關一般性建議/意見，特別是消除對婦女歧視委員會關於暴力侵害婦女行為的第19(1992)號一般性建議和兒童權利委員會關於保護兒童不受體罰以及其他殘酷或有辱人格的懲罰形式的第8(2006)號以及關於兒童免受一切形式暴力的權利的第13(2011)號一般性意見。消除對婦女歧視委員會關於女性割禮的第14(1990)號一般性建議通過本一般性建議/意見更新。</p>	<p>The present joint general recommendation/general comment should be read in conjunction with the relevant general recommendations and general comments issued by the Committees, in particular general recommendation No. 19 on violence against women, of the Committee on the Elimination of Discrimination against Women, and general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and general comment No. 13 on the right of the child to freedom from all forms of violence, of the Committee on the Rights of the Child. The content of general recommendation No. 14 on female circumcision, of the Committee on the Elimination of Discrimination against Women, is updated by the present joint general recommendation/general comment.</p>

6	<p>消除對婦女歧視委員會和兒童權利委員會一再指出，有害做法植根於在定型角色的基礎上使人們認為婦女和女童次於男性和男童的社會態度。委員會還強調了暴力問題的性別範疇，指出各種基於性和性別的態度與陳規定型觀念、權力不均、不平等和歧視使廣泛存在的各種往往涉及暴力或強迫的做法持續不斷。同時有必要憶及，委員會對這些做法也常常被用作在家庭、社區、學校、其他教育場所和機構，以及更廣泛的社會上對婦女和兒童的「保護」或控制形式從而為基於性別的暴力開脫的情況表示關切。此外，委員會還提請各締約國注意，基於性和性別的歧視與其他危害婦女和女童的因素之間存在交叉，特別是屬於或被認為屬於弱勢群體並因而面臨更大風險成為有害做法受害者的婦女和女童。</p>	<p>The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child consistently note that harmful practices are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles. They also highlight the gender dimension of violence and indicate that sex- and gender-based attitudes and stereotypes, power imbalances, inequalities and discrimination perpetuate the widespread existence of practices that often involve violence or coercion. It is also important to recall that the Committees are concerned that the practices are also used to justify gender-based violence as a form of “protection” or control of women and children in the home or community, at school or in other educational settings and institutions and in wider society. Moreover, the Committees draw States parties’ attention to the fact that sex- and</p>

		<p>gender-based discrimination intersects with other factors that affect women and girls, in particular those who belong to, or are perceived as belonging to, disadvantaged groups, and who are therefore at a higher risk of becoming victims of harmful practices.</p>
7	<p>因此，有害做法的根基是基於性、性別、年齡和其他理由的歧視，常常借助各種社會文化及宗教習俗和價值觀，以及涉及某些弱勢婦女和兒童群體的錯誤觀念實現合理化。總體而言，有害做法通常和各種嚴重的暴力形式相關或其本身就是暴力侵害婦女和兒童的形式。這些做法的性質和普遍程度因區域和文化的不同而不同，但是，其中最為普遍、記載最多的是切割女性生殖器官、童婚及強迫婚姻、多配偶制、所謂名譽犯罪，以及因嫁妝引起的暴力。鑒於這些做法多次在兩大委員會上提出，且在一些情況下通過立法和方案途徑明顯有所減少，因此，本一般性建議/意見將以其為例進行闡述。</p>	<p>Harmful practices are therefore grounded in discrimination based on sex, gender and age, among other things, and have often been justified by invoking sociocultural and religious customs and values, in addition to misconceptions relating to some disadvantaged groups of women and children. Overall, harmful practices are often associated with serious forms of violence or are themselves a form of violence against women and children. While the nature and prevalence of the practices vary by region and culture, the most prevalent and well documented are female genital mutilation, child and/or forced marriage, polygamy,</p>

		crimes committed in the name of so-called honour and dowry-related violence. Given that those practices are frequently raised before both Committees, and in some cases have been demonstrably reduced through legislative and programmatic approaches, they are used herein as key illustrative examples.
8	有害做法在世界大多數國家的社區中普遍存在；在此前未記述有此類做法的區域和國家，也發現了一些此類做法，主要是由於移徙；而因為衝突局勢等因素，這類做法在一些國家消失後再度出現。	Harmful practices are endemic to a wide variety of communities in most countries. Some are also found in regions or countries in which they had not been previously documented, primarily owing to migration, whereas in other countries where such practices had disappeared they are now re-emerging as a result of such factors as conflict situations.
9	許多其他做法也被認定為有害做法，它們與社會構建的性別角色和父權關係制度聯繫密切而又使其得到強化，有時反映了對於某些弱勢婦女和兒童群體，包括身心障礙者和白化病人的不利觀念或歧視性信念。這些做法包括但不限於：忽視女童（涉及對男童	Many other practices having been identified as harmful practices are all strongly connected to and reinforce socially constructed gender roles and systems of patriarchal power relations and sometimes reflect negative

的優先照顧和待遇)、極端飲食限制(強迫進食、飲食禁忌,包括妊娠期間)、貞操測試及相關做法、纏足、疤痕、烙印/部落標記、體罰、扔石塊、暴力入會儀式、寡居做法、巫術、弑嬰和亂倫。有害做法還包括以女童和婦女美貌和宜婚性為目的(如增肥、隔離、使用唇盤以及使用項圈拉長脖頸)或試圖防止女童早孕或使其免受性騷擾和暴力(如熨胸/“repassage”)而進行的身體改造。此外,世界各地越來越多的婦女和兒童為了符合關於身體的社會規範,而非出於醫療或健康的目的接受醫療或整形手術,很多人迫於壓力為時尚而瘦身,因而導致飲食和健康問題氾濫。

perceptions of or discriminatory beliefs regarding certain disadvantaged groups of women and children, including individuals with disabilities or albinism. The practices include, but are not limited to, neglect of girls (linked to the preferential care and treatment of boys), extreme dietary restrictions, including during pregnancy (force-feeding, food taboos), virginity testing and related practices, binding, scarring, branding/infliction of tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, accusations of witchcraft, infanticide and incest. They also include body modifications that are performed for the purpose of beauty or marriageability of girls and women (such as fattening, isolation, the use of lip discs and neck elongation with neck rings) or in an attempt to protect girls from early pregnancy or from being subjected to sexual harassment and violence (such as breast ironing). In addition, many women and children

		<p>increasingly undergo medical treatment and/or plastic surgery to comply with social norms of the body, rather than for medical or health reasons, and many are also pressured to be fashionably thin, which has resulted in an epidemic of eating and health disorders.</p>
<p>11</p>	<p>《消除對婦女歧視公約》和《兒童權利公約》締約國有責任遵守其尊重、保護和實現婦女兒童權利的義務。兩個《公約》的締約國還負有盡職義務，應防止損害婦女兒童認識、享受和行使其權利的行為，並確保私營行動者不對婦女和女童進行歧視，包括與《消除對婦女歧視公約》相關的基於性別的暴力，或與《兒童權利公約》相關的對兒童的任何形式的暴力)。</p>	<p>States parties to the Conventions have a duty to comply with their obligations to respect, protect and fulfil the rights of women and children. They also have a due-diligence obligation to prevent acts that impair the recognition, enjoyment or exercise of rights by women and children and ensure that private actors do not engage in discrimination against women and girls, including gender-based violence, in relation to the Convention on the Elimination of All Forms of Discrimination against Women, or any form of violence against children, in relation to the Convention on the Rights of the Child.</p>

<p>15</p>	<p>有害做法指的是植根於以性、性別、年齡和其他原因為基礎的歧視以及多種和/或相互交叉形式的歧視的持續性做法和行為，通常涉及暴力並引起身體和/或心理上的傷害或痛苦。這些做法給受害者帶來的傷害超過當時產生的身體和精神上的後果，且常常具有損害對人權以及婦女兒童基本自由的認識、享受和行使的目的或後果。對其尊嚴、身體、社會心理及道德的完整性和發展、參與、健康、教育、經濟和社會地位也有不利影響。因此，這些做法在消除對婦女歧視委員會和兒童權利委員會的工作中都得到了反映。</p>	<p>Harmful practices are persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that such practices cause to the victims surpasses the immediate physical and mental consequences and often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status. The practices are therefore reflected in the work of both Committees.</p>
<p>16</p>	<p>在本一般性建議/意見中，符合下列標準的做法應視為有害： a.構成對個人尊嚴及完整性的否定以</p>	<p>For the purposes of the present joint general recommendation/general comment, practices should meet the</p>

<p>及對人權及兩大《公約》所載基本自由的侵犯；</p> <p>b.構成對婦女或兒童的歧視並導致其作為個人或群體受到不利影響因而有害，包括身體、心理、經濟和社會傷害和/或暴力以及對其充分參與社會或發展並實現全部潛能的限制；</p> <p>c.基於性、性別、年齡和其他交叉因素延續男性主導和婦女兒童不平等的各種社會規範所規定或固守的傳統的、重新出現或新出現的做法；</p> <p>d.由家庭、社區成員或整個社會強加給婦女和兒童的做法，無論受害者是否或是否有能力提供充分、自由和知情同意。</p>	<p>following criteria to be regarded as harmful:</p> <p>(a) They constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions;</p> <p>(b) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;</p> <p>(c) They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age and other intersecting factors;</p> <p>(d) They are imposed on women and children by family</p>
--	---

		<p>members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.</p>
<p>17</p>	<p>有害做法的原因是多層面的，包括基於性和性別的角色定型觀念、對性別的優劣假定、控制婦女和女童身體和性欲的企圖、社會不平等以及男性主導權力結構的普遍流行。改變這些做法的努力必須解決傳統的、重新出現或新出現的有害做法背後的系統性和結構性原因，增強女童和婦女，以及男童和男子的能力，以促進縱容有害做法的傳統文化態度的轉變，充當這種轉變的推動力，並建設社區支援這些進程的能力。</p>	<p>The causes of harmful practices are multidimensional and include stereotyped sex- and gender-based roles, the presumed superiority or inferiority of either of the sexes, attempts to exert control over the bodies and sexuality of women and girls, social inequalities and the prevalence of male-dominated power structures. Efforts to change the practices must address those underlying systemic and structural causes of traditional, re-emerging and emerging harmful practices, empower girls and women and boys and men to contribute to the transformation of traditional cultural attitudes that condone harmful practices, act as agents of such change and strengthen the capacity of communities to support such processes.</p>

<p>18</p>	<p>雖然在打擊有害做法方面做出了努力，但受其影響的婦女和女童的總體數量仍然很大，而且可能還在增加，原因包括衝突局勢以及社交媒體廣泛使用等技術進步。通過審查締約國報告，委員會注意到，一些來自採取有害措施的社區的成員通過移徙或尋求庇護遷移至目的地國後往往繼續固守有害做法。支援這些有害做法的社會規範和文化信念會保留下來，有時社區為了在新環境中保持文化認同還會對其加以強調，特別是在性別角色為婦女和女童提供更大個人自由的目的地國家。</p>	<p>The efforts to combat harmful practices notwithstanding, the overall number of women and girls affected remains extremely high and may be increasing, including, for example, in conflict situations and as a result of technological developments such as the widespread use of social media. Through the examination of State parties' reports, the Committees have noted that there is often continued adherence to harmful practices by members of practising communities who have moved to destination countries through migration or to seek asylum. Social norms and cultural beliefs supporting such harmful practices persist and are at times emphasized by a community in an attempt to preserve its cultural identity in a new environment, in particular in destination countries where gender roles provide women and girls with greater personal freedom.</p>
<p>19</p>	<p>切割女性生殖器官，或稱女性割禮、殘割女性生殖器官，是指部分或全部切除女性外生殖器或因非醫學或非健</p>	<p>Female genital mutilation, female circumcision or female genital cutting is the practice of partially or</p>

康原因採用其他方式損害女性生殖器官，本一般性建議/意見稱之為切割女性生殖器官。世界各區域和一些文化中都存在切割女性生殖器官的做法，這是婚姻的必要條件並被認為是控制婦女和女童性欲的有效方法。這種做法可能導致各種即時和長期的健康後果，包括劇烈疼痛、休克、感染以及在分娩期間危及母嬰的各種併發症、產科癩等長期的婦科問題以及心理後果和死亡。世界衛生組織和兒童基金會估計，全世界有1億至1.4億女童和婦女受過某一種形式的女性生殖器官切割。

wholly removing the external female genitalia or otherwise injuring the female genital organs for non-medical or non-health reasons. In the context of the present joint general recommendation/general comment, it is referred to as female genital mutilation. Female genital mutilation is performed in every region and, within some cultures, is a requirement for marriage and believed to be an effective method of controlling the sexuality of women and girls. It may have various immediate and/or long-term health consequences, including severe pain, shock, infections and complications during childbirth (affecting both the mother and the child), long-term gynaecological problems such as fistula, psychological effects and death. The World Health Organization and the United Nations Children's Fund estimate that between 100 million and 140 million girls and women worldwide have been subjected to a type of female genital mutilation.

<p>20</p>	<p>童婚，也稱早婚，是指至少一方未滿 18 歲的婚姻。雖然有時其配偶也不滿 18 歲，但絕大多數童婚，包括正式和非正式婚姻，都涉及女童。如果婚姻一方或雙方均未表示充分、自由和知情同意，則可將童婚視為強迫婚姻的一種形式。為尊重兒童在做出影響其生活的決定方面不斷發展的能力和自主權，在特殊情況下可以允許未滿 18 歲的成熟的、有能力的兒童結婚，條件是其必須年滿 16 歲而且由法官依據法律規定的合法例外理由以及成熟和未受文化和傳統影像的證據做出決定。</p>	<p>Child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age. The overwhelming majority of child marriages, both formal and informal, involve girls, although at times their spouses are also under 18 years of age. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent. As a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition.</p>
<p>21</p>	<p>在有些情況下，兒童很小即訂婚或成婚，而年幼的女童在許多情況下會被</p>	<p>In some contexts, children are betrothed or married very young</p>

	<p>迫嫁給年長幾十歲的男性。2012年，兒童基金會報告稱，全世界有近4億20-49歲的女性未滿18歲時就已結婚或與人結合。因此，消除對婦女歧視委員會和兒童權利委員會特別重視女童並未表示充分、自由和知情同意而結婚的情況，比如結婚時年齡太小，對成年生活尚未做好身體和心理上的準備，或無法做出有意識的、知情的決定因而不足以對婚姻表示同意。其他例證還包括，監護人根據習慣法或成文法享有法定的准許女童結婚的權利，因而違背女童婚姻自由權使其成婚的情況，等等。</p>	<p>and, in many cases, young girls are forced to marry a man who may be decades older. In 2012, the United Nations Children's Fund reported that almost 400 million women between 20 and 49 years of age around the world had been married or had entered into a union before reaching 18 years of age. The Committees have therefore been paying particular attention to cases in which girls have been married against their full, free and informed consent, such as when they have been married too young to be physically and psychologically ready for adult life or to make conscious and informed decisions and thus not ready to consent to marriage. Other examples include cases in which guardians have the legal authority to consent to marriage of girls in accordance with customary or statutory law and in which girls are thus married contrary to the right to freely enter into marriage.</p>
22	<p>童婚往往伴隨早孕、頻繁妊娠和生產，導致孕產婦發病率和死亡率高於</p>	<p>Child marriage is often accompanied by early and frequent</p>

	<p>平均水準。在世界範圍內，與妊娠相關的死亡是 15-19 歲女童（已婚或未婚）死亡的主要原因。年幼母親所生的嬰兒死亡率也高於年長母親所生的嬰兒（有時候高出兩倍）。在童婚或強迫婚姻中，特別是在男方年齡明顯大於女方以及女童教育程度有限時，女童在有關自己生活的事務中往往決策權有限。童婚還造成輟學率的上升，尤其是女童，被迫離開學校，受到家庭暴力以及享受行動自由權受限的風險增加。強迫婚姻通常導致女童缺乏人身和經濟自主權、企圖逃匿或自焚、自殺以逃避或逃離婚姻。</p>	<p>pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates. Pregnancy-related deaths are the leading cause of mortality for girls between 15 and 19 years of age, whether married or unmarried, around the world. Infant mortality among the children of very young mothers is higher (sometimes as much as two times higher) than among those of older mothers. In cases of child and/or forced marriage, in particular where the husband is significantly older than the wife, and where girls have limited education, the girls generally have limited decision-making power in relation to their own lives. Child marriage also contributes to higher rates of school dropout, especially among girls, forced exclusion from school and an increased risk of domestic violence, in addition to limiting the enjoyment of the right to freedom of movement.</p>
<p>23</p>	<p>強迫婚姻是指婚姻一方或雙方未親自充分、自由地表示同意結合。除前文</p>	<p>Forced marriages are marriages in which one and/or both parties have</p>

所述童婚以外，強迫婚姻還可能體現為其他多種形式，包括交換婚姻或交易婚姻（即抵償交換和抵償婚姻）、奴役婚姻以及脅迫寡婦嫁給亡夫親屬（「至親救贖婚姻」）。有些情況下，通常經過女方家屬同意，允許強姦者通過與受害者結婚來逃避刑事制裁，從而構成強迫婚姻。在移徙情境中，為確保女童在家庭宗族內成婚或者為遠房家庭成員或他人提供移徙至或生活在特定目的地國的證件，也可能發生強迫婚姻。強迫婚姻還越來越多地在衝突期間為武裝團體所利用，或作為女童逃避衝突後貧窮的一種手段。強迫婚姻還包括不准婚姻一方終止或擺脫婚姻的情況。

not personally expressed their full and free consent to the union. They may be manifested in various forms, including child marriage, as indicated above, exchange or trade-off marriages (i.e. baad and baadal), servile marriages and levirate marriages (coercing a widow to marry a relative of her deceased husband). In some contexts, a forced marriage may occur when a rapist is permitted to escape criminal sanctions by marrying the victim, usually with the consent of her family. Forced marriages may occur in the context of migration in order to ensure that a girl marries within the family's community of origin or to provide extended family members or others with documents to migrate to and/or live in a particular destination country. Forced marriages are also increasingly being used by armed groups during conflict or may be a means for a girl to escape post-conflict poverty. Forced marriage may also be defined as a marriage in which one of the parties is not

		<p>permitted to end or leave it. Forced marriages often result in girls lacking personal and economic autonomy and attempting to flee or commit self-immolation or suicide to avoid or escape the marriage.</p>
<p>24</p>	<p>支付嫁妝和彩禮的情況在不同社區有所不同，可能會增加婦女和女童遭受暴力或其他有害做法的可能性。如果嫁妝的支付或規模未達到預期，丈夫或其家庭成員可能採取身體或心理暴力，包括謀殺、縱火和酸腐蝕等。有時候，家庭會同意用女兒的臨時「婚姻」換取資金收益，也稱契約婚姻，是人口販運的一種形式。《兒童權利公約關於買賣兒童、兒童賣淫和兒童色情製品問題的任擇議定書》締約國對包含嫁妝或彩禮的童婚及強迫婚姻負有明確的義務，因為根據《議定書》第2條(a)款，這可能構成「買賣兒童」。消除對婦女歧視委員會一再強調，允許這種付費或首選方式安排婚姻侵犯了擇偶自由，並在委員會第29(2013)號一般性建議中提出，不得將這類做法定為婚姻有效的必要條件，締約國不得認定這類協議可執行。</p>	<p>The payment of dowries and bride prices, which varies among practising communities, may increase the vulnerability of women and girls to violence and to other harmful practices. The husband or his family members may engage in acts of physical or psychological violence, including murder, burning and acid attacks, for failure to fulfil expectations regarding the payment of a dowry or its size. In some cases, families will agree to the temporary “marriage” of their daughter in exchange for financial gains, also referred to as a contractual marriage, which is a form of trafficking in human beings. States parties to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography have explicit obligations with regard to child</p>

		<p>and/or forced marriages that include dowry payments or bride prices because they could constitute a sale of children as defined in article 2 (a) of the Protocol. The Committee on the Elimination of Discrimination against Women has repeatedly stressed that allowing marriage to be arranged by such payment or preferment violates the right to freely choose a spouse and has in its general recommendation No. 29 outlined that such practice should not be required for a marriage to be valid and that such agreements should not be recognized by a State party as enforceable.</p>
--	--	--

25	<p>多配偶制違反了婦女和女童的尊嚴，侵犯了她們的人權和自由，包括在家庭中的平等和保護。不同的法律和社會環境下，多配偶制各不相同。其主要影響有：對妻妾健康的傷害，包括身體、精神和社會福利方面；妻妾可能蒙受物質損害和剝奪；對子女的情感和物質損害，通常對其福利帶來嚴重後果。</p>	<p>Polygamy is contrary to the dignity of women and girls and infringes on their human rights and freedoms, including equality and protection within the family. Polygamy varies across, and within, legal and social contexts and its impact includes harm to the health of wives, understood as physical, mental and social well-being, the material harm and deprivation that wives are liable to suffer and emotional and material harm to children, often with serious consequences for their welfare.</p>
26	<p>儘管很多締約國都選擇了禁止多配偶制，仍有一些國家合法或非法地實行多配偶制。縱觀歷史，多配偶的家庭制度曾經作為一種確保單個家庭有更多勞動力的途徑而在特定農業社會中發揮了作用，但研究表明，多配偶制往往使家庭更加貧窮，特別是在農村地區。</p>	<p>While many States parties have chosen to ban polygamy, it continues to be practised in some countries, whether legally or illegally. Although throughout history polygamous family systems have been functional in some agricultural societies as a way of ensuring larger labour forces for individual families, studies have shown that polygamy actually often results in increased poverty in the family, especially in rural areas.</p>
28	<p>多配偶制違反《消除對婦女歧視公</p>	<p>States parties to the Convention on</p>

	<p>約》，因此締約國有明確的義務應不鼓勵並禁止這種做法。消除對婦女歧視委員會還指出，多配偶制對婦女及其子女的經濟福利有嚴重影響。</p>	<p>the Elimination of All Forms of Discrimination against Women have explicit obligations to discourage and prohibit polygamy because it is contrary to the Convention. The Committee on the Elimination of Discrimination against Women also contends that polygamy has significant ramifications for the economic well-being of women and their children.</p>
<p>29</p>	<p>所謂名譽犯罪行為雖不僅僅是對女童和婦女犯罪，但她們更多地成為實施這種暴力的行為的對象，因為家庭成員認為某個可疑的、主觀認定的或實際的行為會使家庭或社區蒙受恥辱。這些行為包括婚前發生性關係、拒絕同意包辦婚姻、未經父母同意結婚、通姦、尋求離異、衣著方式不為社區所接受、外出就業或不符合陳規定型觀念中的性別角色等。女童和婦女成為性暴力受害者後也可能遭受所謂名譽犯罪。</p>	<p>Crimes committed in the name of so-called honour are acts of violence that are disproportionately, although not exclusively, committed against girls and women because family members consider that some suspected, perceived or actual behaviour will bring dishonour to the family or community. Such forms of behaviour include entering into sexual relations before marriage, refusing to agree to an arranged marriage, entering into a marriage without parental consent, committing adultery, seeking divorce, dressing in a way that is viewed as unacceptable to the community, working outside the</p>

		<p>home or generally failing to conform to stereotyped gender roles. Crimes in the name of so-called honour may also be committed against girls and women because they have been victims of sexual violence.</p>
<p>30</p>	<p>此類犯罪包括謀殺，通常由配偶、女性或男性親屬或者受害者的所在社區成員實施。所謂名譽犯罪並未被視為針對婦女的犯罪行為，而常常被社區裁定為據稱為犯罪行為之後的一種保護及恢復其文化、傳統、習慣或宗教規範完整性的手段。有些情況下，國家的立法或其實際應用，或立法的缺失允許將維護名譽作為犯罪者無罪或減輕罪行的情形提出，導致減輕制裁或無罪。此外，對案件知情的個人不願提供確鑿證據也可能阻礙案件的起訴。</p>	<p>Such crimes include murder and are frequently committed by a spouse, female or male relative or a member of the victim's community. Rather than being viewed as criminal acts against women, crimes committed in the name of so-called honour are often sanctioned by the community as a means of preserving and/or restoring the integrity of its cultural, traditional, customary or religious norms following alleged transgressions. In some contexts, national legislation or its practical application, or the absence thereof, allows for the defence of honour to be presented as an exculpatory or a mitigating circumstance for perpetrators of such crimes, resulting in reduced sanctions or impunity. In addition, prosecution of cases may be impeded by</p>

		unwillingness on the part of individuals with knowledge of the case to provide corroborating evidence.
31	<p>《消除對婦女歧視公約》和《兒童權利公約》均具體提及了消除各種有害做法。《消除對婦女歧視公約》締約國有義務規劃並通過適當的立法、政策和措施，並確保其實施能夠有效回應消除可能引發有害做法和暴力侵害婦女行為的歧視的障礙、阻礙和阻力（第2、3條）。然而，締約國必須能夠論證其所採取的措施具有直接相關性和適當性，首先保證婦女人權不受侵犯，並且論證這些措施能否達到預期的效果和結果。而且，締約國尋求此類針對性政策的義務是即時的，締約國不得以任何理由為任何延遲開脫，包括文化和宗教理由。《消除對婦女歧視公約》締約國還有義務採取一切適當措施，包括暫行特別措施（第4條第1款），以「改變男女的社會和文化行為模式，以消除基於性別而分尊卑觀念或基於男女定型任務的偏見、習俗和其他一切方法」（第5條a款）確保「童年訂婚和童婚應不具法律效力」（第16條2款）。</p>	<p>Both Conventions contain specific references to the elimination of harmful practices. States parties to the Convention on the Elimination of All Forms of Discrimination against Women are obliged to plan and adopt appropriate legislation, policies and measures and ensure that their implementation responds effectively to specific obstacles, barriers and resistance to the elimination of discrimination that give rise to harmful practices and violence against women (arts. 2 and 3). States parties must, however, be able to demonstrate the direct relevance and appropriateness of the measures that have been taken, ensuring first and foremost that the human rights of women are not violated, and demonstrate whether such measures will achieve the desired effect and result. Furthermore, the obligation of States parties to pursue such</p>

		<p>targeted policies is of an immediate nature and States parties cannot justify any delay on any grounds, including cultural and religious grounds. States parties are also obliged to take all appropriate measures, including temporary special measures (art. 4 (1)) 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 that are based on the idea of the inferiority or the superiority of either sexes or on stereotyped roles for men and women (art. 5 (a)) and to ensure that the betrothal and the marriage of a child will have no legal effect (art. 16 (2)).</p>
<p>41</p>	<p>但是，單憑頒佈立法不足以有效打擊有害做法。因此，根據盡職要求，立法必須輔以一套全面措施，以便利其實施、執行、跟進、監測和已達成成果評價。</p>	<p>The enactment of legislation alone is, however, insufficient to combat harmful practices effectively. In accordance with the requirements of due diligence, legislation must therefore be supplemented with a comprehensive set of measures to facilitate its implementation, enforcement and follow-up and</p>

		monitoring and evaluation of the results achieved.
45	<p>相關利益攸關方充分、廣泛地參與起草反對有害做法的立法，可以確保與有害做法相關的主要關切得到準確的認定和解決。與實行這些做法的社區、其他相關的利益攸關方，以及民間社會成員接觸並徵求他們的意見，對這一過程意義重大。但是，應該注意確保頒佈和執行立法的工作不因支持有害做法的主流態度和社會規範而削弱。</p>	<p>The full and inclusive participation of relevant stakeholders in the drafting of legislation against harmful practices can ensure that the primary concerns relating to the practices are accurately identified and addressed. Engaging with and soliciting input from practising communities, other relevant stakeholders and members of civil society is central to this process. Care should be taken, however, to ensure that prevailing attitudes and social norms that support harmful practices do not weaken efforts to enact and enforce legislation.</p>
49	<p>為婦女兒童提供服務的個人，特別是醫務人員和教師，在識別實際或潛在的有害做法受害者方面有著特殊的地位。然而，他們往往受到保密規則的限制，這可能與他們報告實際發生或可能發生有害做法情況的義務相悖。必須通過明確的法規強制他們報告這類事件，從而克服這種情況。</p>	<p>Individuals providing services for women and children, especially medical personnel and teachers, are uniquely placed to identify actual or potential victims of harmful practices. They are, however, often bound by rules of confidentiality that may conflict with their obligation to report the actual occurrence of a harmful practice or</p>

		<p>the potential for it to occur. This must be overcome with specific regulations that make it mandatory for them to report such incidents.</p>
<p>55</p>	<p>委員會建議《公約》締約國通過或修正立法，以有效解決和消除有害做法。在此過程中，締約國應確保：</p> <p>(a)立法的起草過程具有全面的包容性和參與性。為此，締約國應開展針對性的宣導和提高認識活動，採取社會動員措施為立法的起草、批准、傳播和實施形成廣泛的公眾認識和支援；</p> <p>(b)立法完全符合《消除對婦女歧視公約》和《兒童權利公約》所列相關義務以及其他禁止有害做法的國際人權標準，並優先於允許、縱容或規定任何有害做法的習慣法、傳統法或宗教法，尤其是在實行多元法律體系的國家；</p> <p>(c)一切縱容、允許或導致有害做法的立法應毫不拖延地廢除，包括傳統法、習慣法或宗教法以及將「捍衛榮譽」認可為所謂榮譽犯罪的辯護或減罪因素的任何立法；</p> <p>(d)立法具有一致性和全面性，就防範、保護、支持和追蹤(follow-up)服務，以及受害者援助提供詳細的指導，包括身心康復和重返社會，並以充分的民事和/或行政立法規定作為補</p>	<p>The Committees recommend that the States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating harmful practices. In doing so, they should ensure:</p> <p>(a) That the process of drafting legislation is fully inclusive and participatory. For that purpose, they should conduct targeted advocacy and awareness-raising and use social mobilization measures to generate broad public knowledge of and support for the drafting, adoption, dissemination and implementation of the legislation;</p> <p>(b) That the legislation is in full compliance with the relevant obligations outlined in the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child and other international human rights standards that prohibit harmful practices and</p>

<p>充；</p> <p>(e)立法充分地，包括通過為通過暫行特別措施提供基礎，解決有害做法的根本原因，包括基於性、性別、年齡和其他交叉因素的歧視和對受害者人權和需求的關注並充分考慮兒童和婦女的最大利益；</p> <p>(f)把男女的法定最低結婚年齡確定為18周歲，無論父母是否同意。如果在特殊情況下允許在未滿18周歲時結婚，那麼絕對最低年齡不小於16周歲，獲得許可的理由應通過法律嚴格規定，且必須在一方或雙方兒童親自出庭表示充分、自由和知情同意，得到法院許可方可允許結婚；</p> <p>(g)確立婚姻登記的法律要求，通過提高認識、教育和提供充分的基礎設施使所有人都能在轄區內進行登記，來實現有效的執行；</p> <p>(h)為所有兒童建立全國性強制、可得和免費的出生登記制度，以有效防止包括童婚在內的有害做法；</p> <p>(i)國家人權機構負責審議個人投訴和請願並展開調查，包括以保密、性別敏感和兒童友好的方式由他人代表或由婦女和兒童直接提交的個人投訴和請願；</p> <p>(j)法律強制規定，為兒童和婦女工作、與兒童和婦女一起工作的專業人</p>	<p>that it takes precedence over customary, traditional or religious laws that allow, condone or prescribe any harmful practice, especially in countries with plural legal systems;</p> <p>(c) That they repeal without further delay all legislation that condones, allows or leads to harmful practices, including traditional, customary or religious laws and any legislation that accepts the defence of honour as a defence or mitigating factor in the commission of crimes in the name of so called honour;</p> <p>(d) That the legislation is consistent and comprehensive and provides detailed guidance on prevention, protection, support and follow-up services and assistance for victims, including towards their physical and psychological recovery and social reintegration, and is complemented by adequate civil and/or administrative legislative provisions;</p> <p>(e) That the legislation adequately addresses, including by providing the basis for the adoption</p>
---	--

員和機構如果有合理理由認為已經發生或有可能發生有害做法，應對實際事件或此類事件的風險予以報告。強制報告責任必須確保隱私保護和報告人的保密；

(k)所有起草和修正刑法的舉措都必須結合對有害做法受害者和面臨承受有害做法風險的人員的保護措施和服務；

(l)立法確立對實施有害做法的管轄範圍適用於締約國國民和長期居民，即使行為的實施地點在其不承擔刑事責任的其他國家；

(m)涉及移徙和庇護的立法和政策將承受有害做法或因為有害做法而遭受迫害的風險認定為給予庇護的理由。應根據案件具體情況考慮為可能陪伴女童或婦女的一位親屬提供保護；

(n)立法包括對法律進行定期評價和監測的規定，包括實施、執行和跟進；

(o)承受有害做法的婦女和兒童能夠獲得平等的司法救助，包括通過克服提起訴訟的法律和實際障礙，如提起訴訟的時效等，以及對實施者和援助、縱容這類做法的人員問責；

(p)立法包括強限制或保護命令，以保護面臨有害做法風險的人員並為其提供安全以及保護受害者免受報復的措施；

of temporary special measures, the root causes of harmful practices, including discrimination on the basis of sex, gender, age and other intersecting factors, focuses on the human rights and needs of the victims and fully takes into account the best interests of children and women;

(f) That a minimum legal age of marriage for girls and boys, with or without parental consent, is established at 18 years. When a marriage at an earlier age is allowed in exceptional circumstances, the absolute minimum age must not be below 16 years, the grounds for obtaining permission must be legitimate and strictly defined by law and the marriage must be permitted only by a court of law upon the full, free and informed consent of the child or both children, who must appear in person before the court;

(g) That a legal requirement of marriage registration is established and effective implementation is provided through awareness-

(q)在實踐中，違反兩個公約或其中之一的行為的受害者可以平等地獲得法律救濟和適當的賠償。

raising, education and the existence of adequate infrastructure to make registration accessible to all persons within their jurisdiction;

(h) That a national system of compulsory, accessible and free birth registration is established in order to effectively prevent harmful practices, including child marriage;

(i) That national human rights institutions are mandated to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by women and children, in a confidential, gender-sensitive and child-friendly manner;

(j) That it is made mandatory by law for professionals and institutions working for and with children and women to report actual incidents or the risk of such incidents if they have reasonable grounds to believe that a harmful practice has occurred or may occur. Mandatory reporting responsibilities should ensure the protection of the privacy and

		<p>confidentiality of those who report;</p> <p>(k) That all initiatives to draft and amend criminal laws must be coupled with protection measures and services for victims and those who are at risk of being subjected to harmful practices;</p> <p>(l) That legislation establishes jurisdiction over offences of harmful practices that applies to nationals of the State party and habitual residents even when they are committed in a State in which they are not criminalized;</p> <p>(m) That legislation and policies relating to immigration and asylum recognize the risk of being subjected to harmful practices or being persecuted as a result of such practices as a ground for granting asylum. Consideration should also be given, on a case-by-case basis, to providing protection to a relative who may be accompanying the girl or woman;</p> <p>(n) That the legislation includes provisions on regular evaluation and monitoring, including in relation to</p>
--	--	--

		<p>implementation, enforcement and follow-up;</p> <p>(o) That women and children subjected to harmful practices have equal access to justice, including by addressing legal and practical barriers to initiating legal proceedings, such as the limitation period, and that the perpetrators and those who aid or condone such practices are held accountable;</p> <p>(p) That the legislation includes mandatory restraining or protection orders to safeguard those at risk of harmful practices and provides for their safety and measures to protect victims from retribution;</p> <p>(q) That victims of violations have equal access to legal remedies and appropriate reparations in practice.</p>
57	<p>社會規範是一個社區中可能有利並強化其認同和凝聚力的或不利並潛在導致危害的某些做法的推動因素和社會決定性因素，同時也是期望社區成員遵守的社會行為準則。這就形成並維持了一種集體的社會義務感和預期，調節著社區成員的行為，即使他們本</p>	<p>A social norm is a contributing factor to and social determinant of certain practices in a community that may be positive and strengthen its identity and cohesion or may be negative and potentially lead to harm. It is also a social rule of</p>

人並不認同這一做法。例如，在以切割女性生殖器官為社會規範的地方，父母傾向于同意對自己的女兒實施生殖器官切割，因為他們看到其他父母同意對女兒實施生殖器官切割，於是認為他人會期待自己採取同樣做法。這一規範或做法通常由社區網路中已經經歷過這一程式的其他婦女實施，她們會施加更大的壓力讓年輕婦女順從這一做法，否則會面臨排斥、回避和侮辱。這種邊緣化可能包括失去重要的經濟和社會支援以及社會流動。相反，如果個人順應了這種社會規範，他們就有望得到包容和讚揚等回報。改變支援有害做法並使其合理化的社會規範，要求對這種預期提出質疑並予以修正。

behaviour that members of a community are expected to observe. This creates and sustains a collective sense of social obligation and expectation that conditions the behaviour of individual community members, even if they are not personally in agreement with the practice. For example, where female genital mutilation is the social norm, parents are motivated to agree to its being performed on their daughters because they see other parents doing so and believe that others expect them to do the same. The norm or practice is often perpetuated by other women in community networks who have already undergone the procedure and exert additional pressure on younger women to conform to the practice or risk ostracism, being shunned and stigmatization. Such marginalization may include the loss of important economic and social support and social mobility. Conversely, if individuals conform to the social norm, they expect to be rewarded, for example through

		inclusion and praise. Changing social norms that underlie and justify harmful practices requires that such expectations be challenged and modified.
61	<p>締約國有義務質疑和改變限制婦女和女童充分行使其人權和自由的父權意識形態和結構。許多女童和婦女都經歷過社會排斥和貧窮，這使她們更有可能遭受剝削、有害做法和其他形式的基於性別的暴力。要戰勝這樣的社會排斥和貧窮，她們需要具備必要的技能和能力，以主張自己的權利，包括對自己的生活做出自主、知情的決定和選擇。在這一背景下，教育是增強婦女和女童、主張自身權利的能力的重要手段。</p>	<p>States parties have an obligation to challenge and change patriarchal ideologies and structures that constrain women and girls from fully exercising their human rights and freedoms. For girls and women to overcome the social exclusion and poverty that many experience, which increase their vulnerability to exploitation, harmful practices and other forms of gender-based violence, they need to be equipped with the skills and competencies necessary to assert their rights, including to make autonomous and informed decisions and choices about their own lives. In this context, education is an important tool for empowering women and girls to claim their rights.</p>
62	<p>女童和婦女受教育程度低和有害做法的普遍程度之間存在明顯的相關性。 《公約》締約國有義務確保享受高品</p>	<p>There is a clear correlation between the low educational attainment of girls and women and the prevalence</p>

	<p>質教育的普遍權利，創造有利環境使女童和婦女成為變革的動因（《兒童權利公約》第 28-29 條，《消除對婦女歧視公約》第 10 條）。這就要求普及免費義務小學入學和按時就讀，勸阻輟學，消除現有的性別不均等，以及支持最邊緣女童獲得教育，包括生活在偏遠農村社區的女童。在履行這些義務時，應考慮使學校及其周邊安全、對女童友好而且有利於女童的最優表現。</p>	<p>of harmful practices. States parties to the Conventions have obligations to ensure the universal right to high-quality education and to create an enabling environment that allows girls and women to become agents of change (Convention on the Rights of the Child, arts. 28-29; Convention on the Elimination of All Forms of Discrimination against Women, art. 10). This entails providing universal, free and compulsory primary school enrolment and ensuring regular attendance, discouraging dropping out, eliminating existing gender disparities and supporting access for the most marginalized girls, including those living in remote and rural communities. In implementing the obligations, consideration should be given to making schools and their surroundings safe, friendly to girls and conducive to their optimal performance.</p>
<p>63</p>	<p>完成初等和中等教育，有利於防止童婚和少女懷孕，降低母嬰死亡率和發病率，使婦女和女童為更好地主張自己免於暴力的權利做好準備，並增加</p>	<p>The completion of primary and secondary education provides girls with short-term and long-term benefits by contributing to the</p>

	<p>她們有效參與生活各個領域的機會，從而為女童帶來短期和長期的好處。委員會一貫鼓勵締約國採取措施提高中等教育的入學率和續讀率，包括通過確保學生完成小學學業、取消初等和中等教育學費、促進公平享受中等教育（包括技術職業教育）機會和考慮中等教育義務化。少女在妊娠期間或妊娠結束後有權繼續其學業，可通過不歧視的返校政策保障這一權利。</p>	<p>prevention of child marriage and adolescent pregnancy and lower rates of infant and maternal mortality and morbidity, preparing women and girls to better claim their right to freedom from violence and increasing their opportunities for effective participation in all spheres of life. The Committees have consistently encouraged States parties to take measures to boost enrolment and retention in secondary education, including by ensuring that pupils complete primary school, abolishing school fees for both primary and secondary education, promoting equitable access to secondary education, including technical-vocational educational opportunities and giving consideration to making secondary education compulsory. The right of adolescent girls to continue their studies, during and after pregnancy, can be guaranteed through non-discriminatory return policies.</p>
<p>69</p>	<p>委員會建議《公約》締約國： (a)以女童友好的方式普及免費義務初</p>	<p>The Committees recommend that the States parties to the</p>

<p>等教育，包括在偏遠地區和農村地區。在為懷孕女童和少女母親提供完成中等教育的經濟激勵，以及制定不歧視的返校政策的同時，考慮使中等教育成為強制教育；</p> <p>(b)在能夠培養其自尊、使其瞭解自身權利並發展溝通、談判和解決問題能力的安全、有利的環境中為女童和婦女提供教育和經濟機會；</p> <p>(c)將人權資訊納入教育課程，包括婦女和兒童的權利、性別平等和自我意識，並致力於消除性別陳規定型觀念和培育不歧視的環境；</p> <p>(d)確保學校提供適齡的性健康和生殖健康和權利資訊，包括性別關係和負責任的性行為、預防愛滋病毒、營養、免受暴力和有害做法的保護等；</p> <p>(e)確保從正規學校輟學或從未入學、不識字的女童可獲得非正規教育方案；監測這些方案的品質；</p> <p>(f)動員成年男性和男童創造有利環境，支持對婦女和女童賦權。</p>	<p>Conventions:</p> <p>(a) Provide universal, free and compulsory primary education that is girl friendly, including in remote and rural areas, consider making secondary education mandatory while also providing economic incentives for pregnant girls and adolescent mothers to complete secondary school and establish non-discriminatory return policies;</p> <p>(b) Provide girls and women with educational and economic opportunities in a safe and enabling environment where they can develop their self-esteem, awareness of their rights and communication, negotiation and problem-solving skills;</p> <p>(c) Include in the educational curriculum information on human rights, including those of women and children, gender equality and self-awareness and contribute to eliminating gender stereotypes and fostering an environment of non-discrimination;</p> <p>(d) Ensure that schools provide age-appropriate information on</p>
--	---

		<p>sexual and reproductive health and rights, including in relation to gender relations and responsible sexual behaviour, HIV prevention, nutrition and protection from violence and harmful practices;</p> <p>(e) Ensure access to non-formal education programmes for girls who have dropped out of regular schooling, or who have never enrolled and are illiterate, and monitor the quality of those programmes;</p> <p>(f) Engage men and boys in creating an enabling environment that supports the empowerment of women and girls.</p>
82	<p>作為有害做法受害者的婦女和兒童需要即時的支持服務，包括醫療、心理和法律服務，緊急醫療服務可能是其中最為迫切和明顯的需要，因為本一般性建議/意見所涵蓋的有害做法有一些涉及承受極度的身體暴力，為了處理嚴重傷害或防止死亡，有必要實施醫療介入。對切割女性生殖器官或其他有害做法的受害者還可能需要實施醫學治療或外科手術，以解決身體上短期和長期的不利影響。必須將對婦女或女童妊娠和分娩的管理納入助產</p>	<p>Women and children who are victims of harmful practices are in need of immediate support services, including medical, psychological and legal services. Emergency medical services may be the most urgent and obvious, given that some of the harmful practices covered herein involve the infliction of extreme physical violence and medical intervention may be necessary to treat severe harm or</p>

	<p>士、醫師和其他熟練接生人員的崗前和在職培訓。</p>	<p>prevent death. Victims of female genital mutilation or other harmful practices may also require medical treatment or surgical interventions to address the short-term and long-term physical consequences. The management of pregnancy and childbirth in women or girls who have undergone female genital mutilation must be included in pre-service and in-service training for midwives, doctors and other skilled birth attendants.</p>
<p>83</p>	<p>國家保護體系，或在其缺失時的傳統結構應負責做到兒童友好、對性別問題敏感和資源充足，為面臨高暴力風險的婦女和女童提供一切必要的保護性服務，包括為避免承受切割女性生殖器官、強迫婚姻或所謂名譽犯罪而逃匿的女童。必須考慮設置方便記憶、免費撥打的 24 小時全國通用求助熱線。必須具備適當的受害者安全和保障措施，包括專門的臨時收容所，以及暴力受害者收容所內的專門服務。由於有害做法實施者通常是受害者的配偶、親屬或受害者所在社區成員，如果有理由相信受害者不安全，保護性服務應嘗試把受害者遷移安置在其直接所屬的社區以外。必須</p>	<p>National protection systems or, in their absence, traditional structures should be mandated to be child friendly and gender sensitive and adequately resourced to provide all necessary protection services to women and girls who face a high risk of being subjected to violence, including girls running away to avoid being subjected to female genital mutilation, forced marriage or crimes committed in the name of so-called honour. Consideration should be given to the establishment of an easy-to-remember, free, around-the-clock helpline that is</p>

	<p>避免無人監督的來訪，特別是在問題可能屬於所謂名譽的情況下。還必須提供社會心理支助，以治療受害者受到的直接和長期的心理創傷，其中可能包括創傷後壓力綜合症、焦慮或抑鬱。</p>	<p>available and known nationwide. Appropriate safety and security measures for victims must be available, including specifically designed temporary shelters or specialized services within shelters for victims of violence. Given that perpetrators of harmful practices are often the spouse of the victim, a family member or a member of the victim's community, protective services should seek to relocate victims outside their immediate community if there is reason to believe that they may be unsafe. Unsupervised visits must be avoided, especially when the issue may be considered one of so-called honour. Psychosocial support must also be available to treat the immediate and long-term psychological trauma of victims, which may include post-traumatic stress disorder, anxiety and depression.</p>
<p>84</p>	<p>如果已受到或拒絕接受某一做法的婦女或女童離開家庭或社區尋求庇護，她決定返回必須得到國家保護機制充分的支持。在協助其做出這一自由而</p>	<p>When a woman or a girl who was subjected to or refused to undergo a practice leaves her family or community to seek refuge, her</p>

	<p>知情的選擇時，這些機制要以她的最大利益為原則，確保其安全返回和重新融入，包括避免重新成為受害者。對這類情形必須進行密切跟進和監測，以確保受害者得到保護並在短期和長期內享有其權利。</p>	<p>decision to return must be supported by adequate national protection mechanisms. In assisting her in making this free and informed choice, the mechanisms are required to ensure her safe return and reintegration based on the principle of her best interest, including avoiding revictimization. Such situations require close follow-up and monitoring to ensure that victims are protected and enjoy their rights in the short term and the long term.</p>
--	--	--

【與本條相關之一般性建議/意見】CEDAW 一般性建議第 12 號(對婦女的暴力行為)、第 14 號(女性生殖器殘割)、第 19 號(對婦女的暴力行為)、第 21 號(婚姻和家庭關係中的平等)；兒童權利委員會之一般性意見第 8 號(體罰)、第 13 號(兒童免遭一切形式暴力侵害的權利)。

【前文引用之一般性建議】

一般性建議 14

※聯合國官方中文版

有鑑於女性生殖器殘割和對婦女健康有害的其他傳統習俗仍然繼續存在，全國婦女組織、非政府組織以及現存的特別機構，諸如：世界衛生組織、聯合國兒童基金會與人權委員會及其防止歧視及保護少數小組委員會，特別認識女性生殖器殘割的傳統習俗對婦幼健康造成嚴重後果，仍在處理這個問題。

根據「傳統習俗對婦幼影響之特別調查報告」以及傳統習俗特別工作小組的研究，婦女正針對有害於婦幼健康的習俗展開重要的辨識和對抗，該等由婦女和利益團體採取的行動需要各締約國政府的支持和鼓勵。由於文化、傳統、經濟等壓力助長女性生殖器殘割等有害習俗存在，向各締約國建議：

1.各締約國採取適當有效措施以期根除女性割禮習俗。該等措施應包括：

- (1) 由大學、醫學或護理協會、全國婦女組織或其他機構，蒐集和傳播關於傳統習俗的基本數據；
- (2) 支持國家和地方的婦女組織努力消除女性生殖器殘割和其他對婦女有害的習俗；
- (3) 鼓勵政治家、專業人員，各等級宗教和社區領導人，包括大眾傳媒和藝術領域在內進行合作，以影響對消除女性生殖器殘割的態度；
- (4) 依據以女性生殖器殘割所引起問題的研究結果，舉辦的適當的教

育、培訓方案及研討會；

2.於國家衛生政策內載列其消除女性生殖器殘割的適當公共保健策略。可包含衛生人員(包括傳統助產人員)負有特別責任解釋女性生殖器殘割的有害效果；

3.請聯合國相關組織提供援助、資料和諮詢意見，以支緩和協助進行消除有害傳統習俗的工作；

4.在向委員會提出的報告中，載列關於《消除對婦女一切形式歧視公約》第 10 和 12 條消除女性生殖器殘割的資料。

※聯合國官方英文版

Concerned about the continuation of the practice of female circumcision and other traditional practices harmful to the health of women,

Noting with satisfaction that Governments, where such practices exist, national women's organizations, non-governmental organizations, and bodies of the United Nations system, such as the World Health Organization and the United Nations Children's Fund, as well as the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, remain seized of the issue having particularly recognized that such traditional practices as female circumcision have serious health and other consequences for women and children,

Taking note with interest the study of the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children,⁴ and of the study of the Special Working Group on Traditional Practices,⁵

Recognizing that women are taking important action themselves to identify and to combat practices that are prejudicial to the health and well-being of women and children,

Convinced that the important action that is being taken by women and by all interested groups needs to be supported and encourage by Governments, Noting with grave concern that there are continuing cultural, traditional

and economic pressures which help to perpetuate harmful practices, such as female circumcision,

Recommends that States parties:

(a) Take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include:

(i) The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices;

(ii) The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women;

(iii) The encouragement of politicians, professionals, religious and community leaders at all levels, including the media and the arts, to cooperate in influencing attitudes towards the eradication of female circumcision;

(iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision;

(b) Include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel, including traditional birth attendants, to explain the harmful effects of female circumcision;

(c) Invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices;

(d) Include in their reports to the Committee under articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.

一般性建議 21/14

※聯合國官方中文版

締約國報告亦表明，在部分國家有一夫多妻的習俗。一夫多妻婚姻與男女平等的權利相牴觸，導致婦女和其受撫養人在情感、經濟方面的嚴重後果，該等婚姻應予以抑制和禁止。委員會特別注意到部分締約國的憲法保障平等權利，卻根據屬人法或習慣法而允許一夫多妻的婚姻，此違反了婦女的憲法權利，亦違背《公約》第 5 條(a)項的規定。

※聯合國官方英文版

States parties' reports also disclose that polygamy is practised in a number of countries. Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.

一般性建議 29/33

※聯合國官方中文版

委員會在第 21 號一般性建議第 16 段中指出，一些締約國允許“為錢財或地位提升而安排的婚姻”。這侵犯婦女自由選擇配偶的權利。

“錢財或地位提升”系指新郎或新郎家向新娘或新娘家支付現金、貨物或牲畜的交易，或是由新娘或新娘家向新郎或新郎家提供類似支付。不得以任何形式將這種做法列為婚姻生效的要件，並且締約國不應確認這種協議可強制執行。

參考資料來源

➤ 婦 女 聯 合 網 ，

http://www.iwomenweb.org.tw/Content_List.aspx?n=11744AB71FE

3775C

- 衛生福利部家庭及衛生署網站，
<http://www.sfaa.gov.tw/SFAA/Pages/List.aspx?nodeid=30>
- CEDAW 資訊網，<http://www.cedaw.org.tw/tw/en-global/home>