

Female Genital Mutilation (FGM) & Eliciting Testimony in Gender-Related Claims

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AGENDA

1. FGM Overview
2. Analyzing Harm Related to FGM
3. Nexus as it Relates to FGM
4. Interview Considerations
5. Interviewing Techniques
6. Evaluating Credibility
7. Internal Relocation
8. Eliciting Testimony Exercise
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Female Genital Mutilation (FGM)

What are the various types of FGM?

1. “Type 1” - Circumcision

- The clitoral prepuce or tip of the clitoris is cut away. About five percent of the women who undergo FGM undergo circumcision.

2. “Type 2” - Excision

- The clitoris and/or prepuce are partially or totally cut away. In addition, all, or part of, the labia minora are cut away. This is the most commonly practiced type of FGM.

3. “Type 3” - Infibulation

- The clitoris, the prepuce, the labia minora and a part of the labia majora are cut away. The edges of the labia majora are then sewn, pinned, or brought together with an adhesive in order for scar tissue to form.

*Type 4 – “Other Harmful Practices”

All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterisation

Consequences of FGM

What are the short- and long-term consequences of FGM?

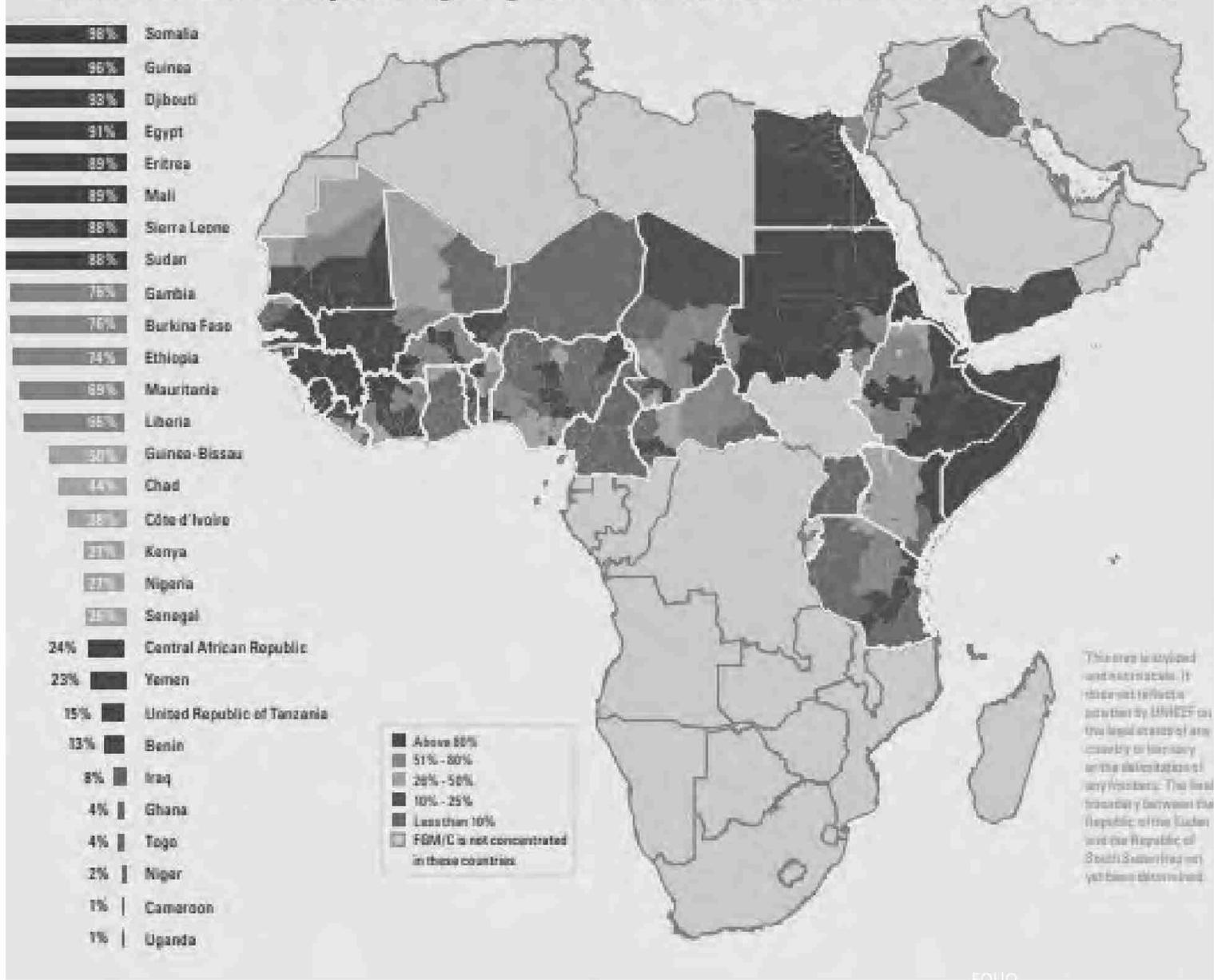
1. Short Term

- Bleeding, post-operative shock, infection, tetanus, damage to other organs and death

2. Long Term

- retention of blood in the abdomen and swelling of the stomach, chronic infections of the bladder and vagina, extremely painful menstruation, child-birth obstruction, risk of HIV infection, psychological problems and sexual dysfunction.

FGM/C is concentrated in a swath of countries from the Atlantic Coast to the Horn of Africa, with wide variations in the percentage of girls and women cut, both within and across countries



FGM Prevalence

Countries Frequently Encountered at ZNY

Egypt

Burkina Faso

Nigeria

Guinea

Sudan

Egypt: FGM Laws & Practice

As of 2020, approximately 87% of girls and women aged 15 to 49 years have undergone FGM.

In 2008, FGM/C became illegal.

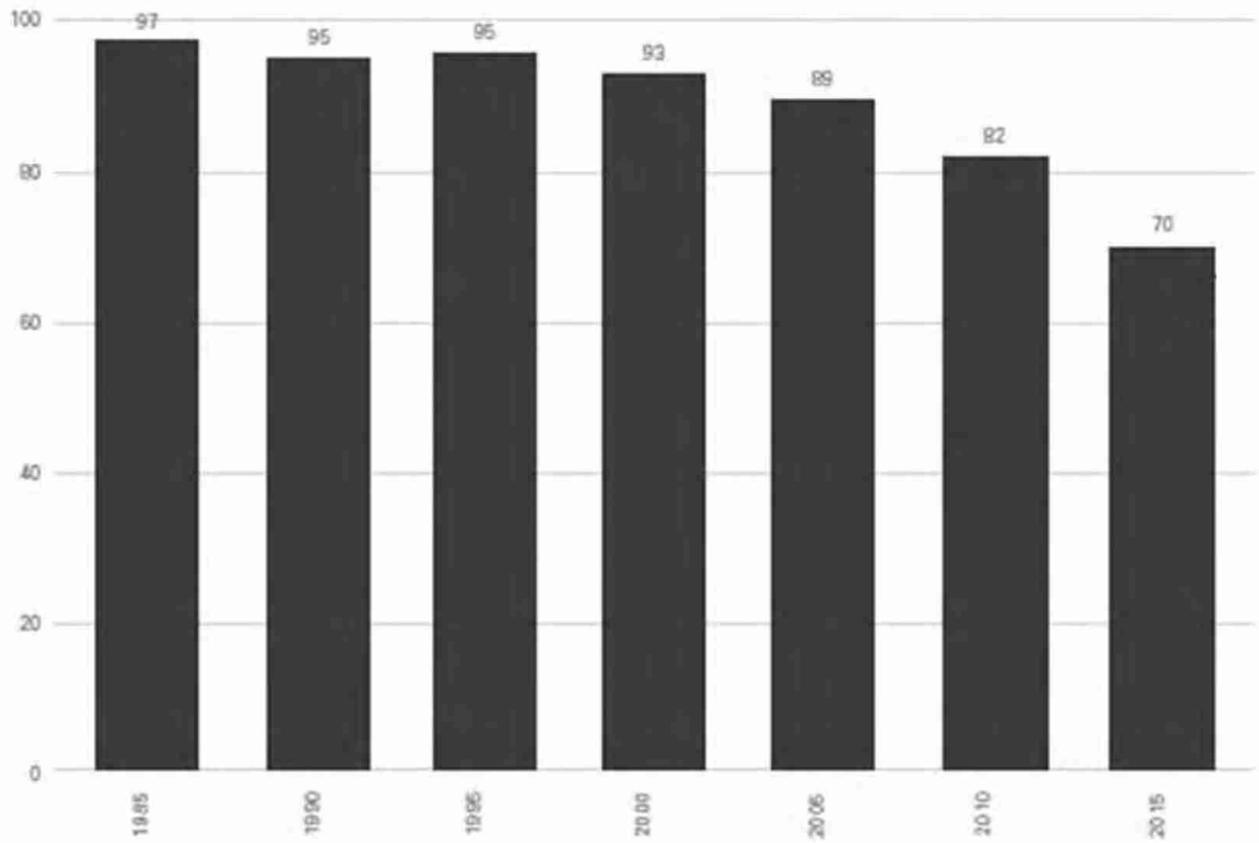
In 2016, an amendment to the law designated FGM/C a felony, as opposed to a misdemeanor as it was previously.

According to international and local observers, the government did not effectively enforce the FGM/C law.

A 2020 UNICEF report stated that Girls under 15 years of age are **four times more likely** than women aged 45 to 49 years to have been cut by a medical professional. The report also indicates that 6 in 10 girls were cut by doctors, and 7 in 10 girls were cut by medical practitioners overall.

Generational trends in reducing FGM

| There is evidence of a decline in the prevalence of FGM, particularly after 2000



► FIG.10 Percentage of adolescent girls aged 15 to 19 years who have undergone FGM

Notes: This trend analysis is based on the prevalence of FGM across age cohorts, as measured in the Health Issues Survey 2015. See technical notes for details.

Egypt: Recent Changes

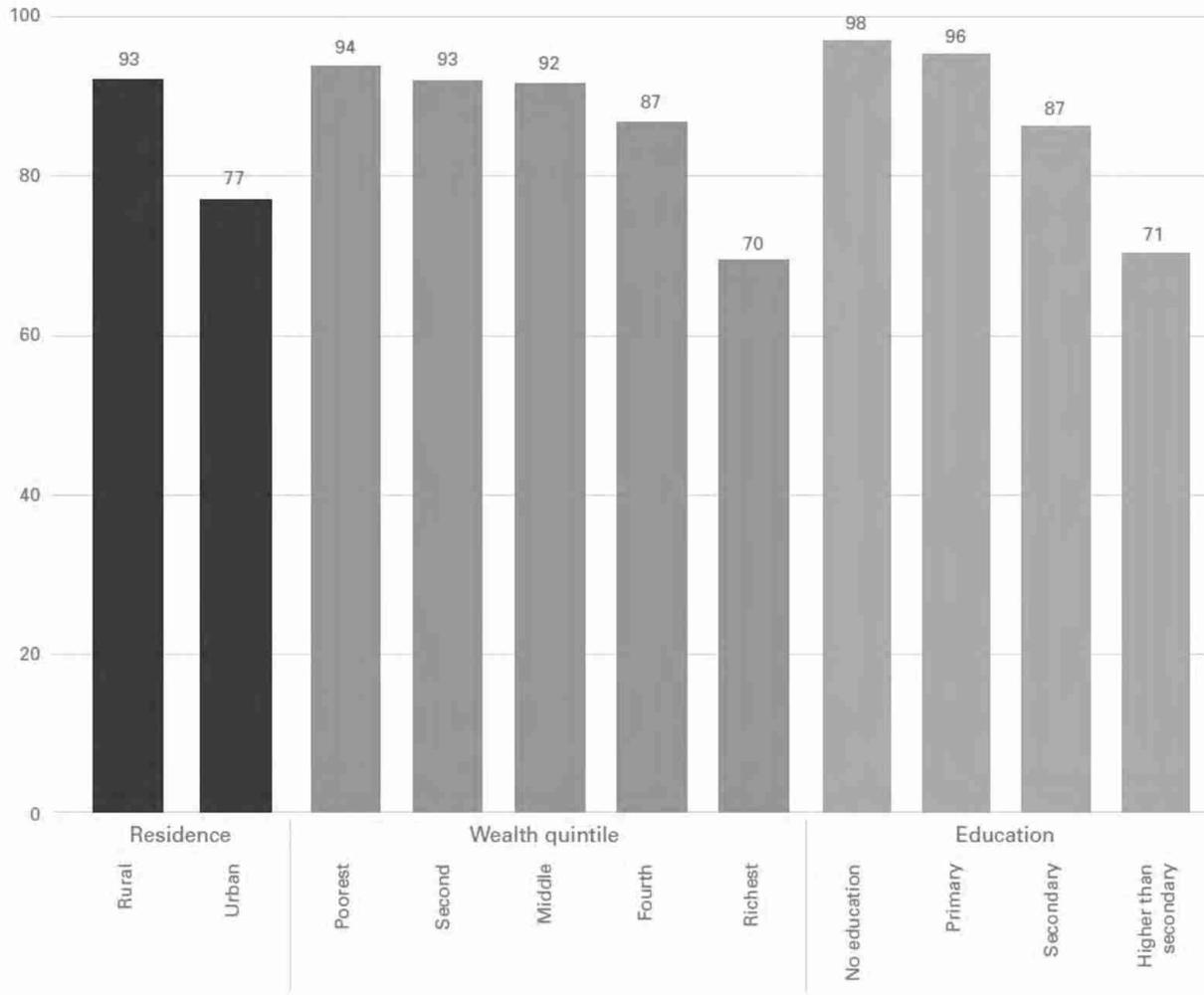
There is **evidence of a decline** in the prevalence of FGM, particularly after 2000 (See UNHCR Graph).

The latest research conducted by the National Population Council shows that the number of girls ages 13-17 subjected to the procedure dropped to 72 percent in 2018.

In January 2021, amendments to the FGM law were approved by Egypt’s cabinet, include hiking the maximum sentence from the current seven years and banning doctors and other medical staff involved in FGM from practicing their profession for up to five years.

This legislation must still be approved by parliament and the president.

The prevalence of FGM is high across many population groups in Egypt, but the practice is somewhat more common in **rural areas**, in **less wealthy households** and among girls and women with **less education**



► FIG.2 Percentage of girls and women aged 15 to 49 years who have undergone FGM, by residence, wealth quintile and education

Egypt: Civil Society

FGM occurs as a cultural practice and is in some cases upheld by beliefs associated with religion. However, both Muslim and Christian women can be subjected to it.

Just over half of Egyptians think FGM should continue, and a similar number believe practice is required by religion.

In July 2019, Dar al-Iftaa, responsible for issuing Islamic fatwas, said that female circumcision in its current form in Egypt is prohibited and not permissible under Islamic law.

Burkina Faso: FGM Laws & Practice

FGM Prevalence: 75.8%

In November 1996, the government passed a law prohibiting and sanctioning the practice of female genital mutilation.

In 2018, the Parliament adopted a new bill, further criminalizing the constitutive acts of violence against women and girls and providing for penalties for performing FGM.

Burkina Faso has a law enforcement monitoring system criminalizing FGM and the government funds and operates a toll-free number to receive anonymous reports of the practice, and funds.

Data shows that criminal penalties for practicing FGM in increasing and more practitioners are agreeing to cease practicing excision.

Cross-border FGM remains a challenge, and the law does not currently address the issue.

Burkina Faso: Civil Society

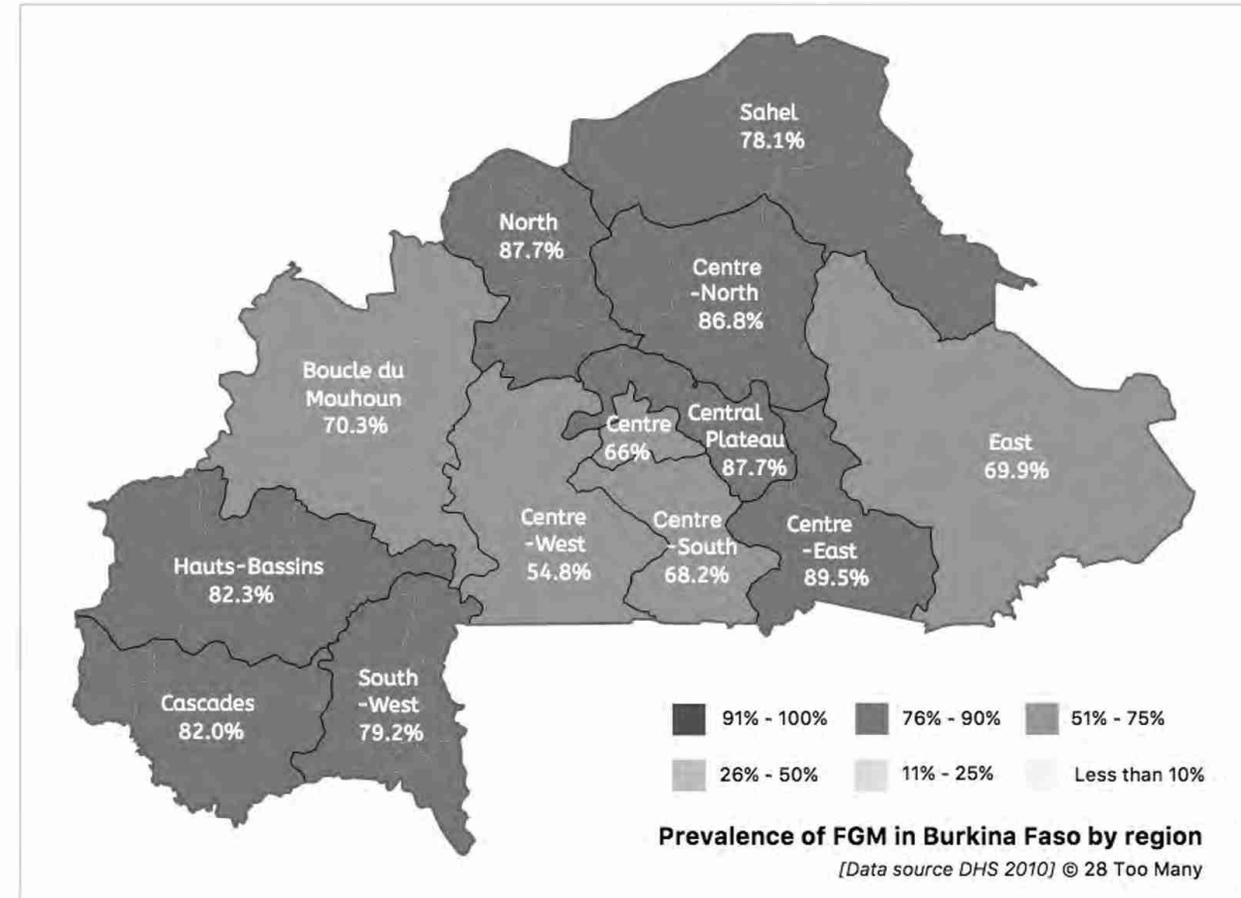
Even though FGM is banned, tradition and custom hold such sway that the practice continues to take place secretly.

FGM is practiced across all regions, ethnic groups and religions in Burkina Faso.

The regional pattern of FGM prevalence broadly corresponds with the distribution of ethnic groups:

- Sénoufo (87.2%) and Lobi (83.2%) in the south-west, Fulani (83.9%) towards the north-east, Mossi (78.4%) across the central band and Bissa (83.1%) mainly in Centre-East.
- The lowest prevalence is recorded among the Gourounsi, who live largely in Centre-West (60.3%) and the Touareg/Bella in the far north-east (22.2%).

It is most common in rural areas, where insecurity often prevents civil society groups from reaching communities.



Nigeria: FGM Laws & Practice

In 2018, 18.4% of women aged 15-49 years had undergone FGM.

The Violence Against Persons (Prohibition) Act, 2015, which came into force on 25 May 2015, is the first federal law attempting to prohibit FGM across the whole country.

The VAPP Act, as a federal law, is only effective in the Federal Capital Territory of Abuja, and, as such, the remaining states must pass mirroring legislation to prohibit FGM across the country.

13 states have enacted state laws dealing with child abuse, child protection issues, violence against women and girls and criminalizing the practice of FGM. In some northern areas of the country, the Sharia Penal Code are in place to protect children against various forms of physical and psychological violence.

The US Department of State indicated that in 2019 there were no reports that the federal government took legal action to stop the practice.

Guinea: FGM Laws & Practice

As of 2018, 94.5% of women and girls ages 15 to 49 had undergone FGM.

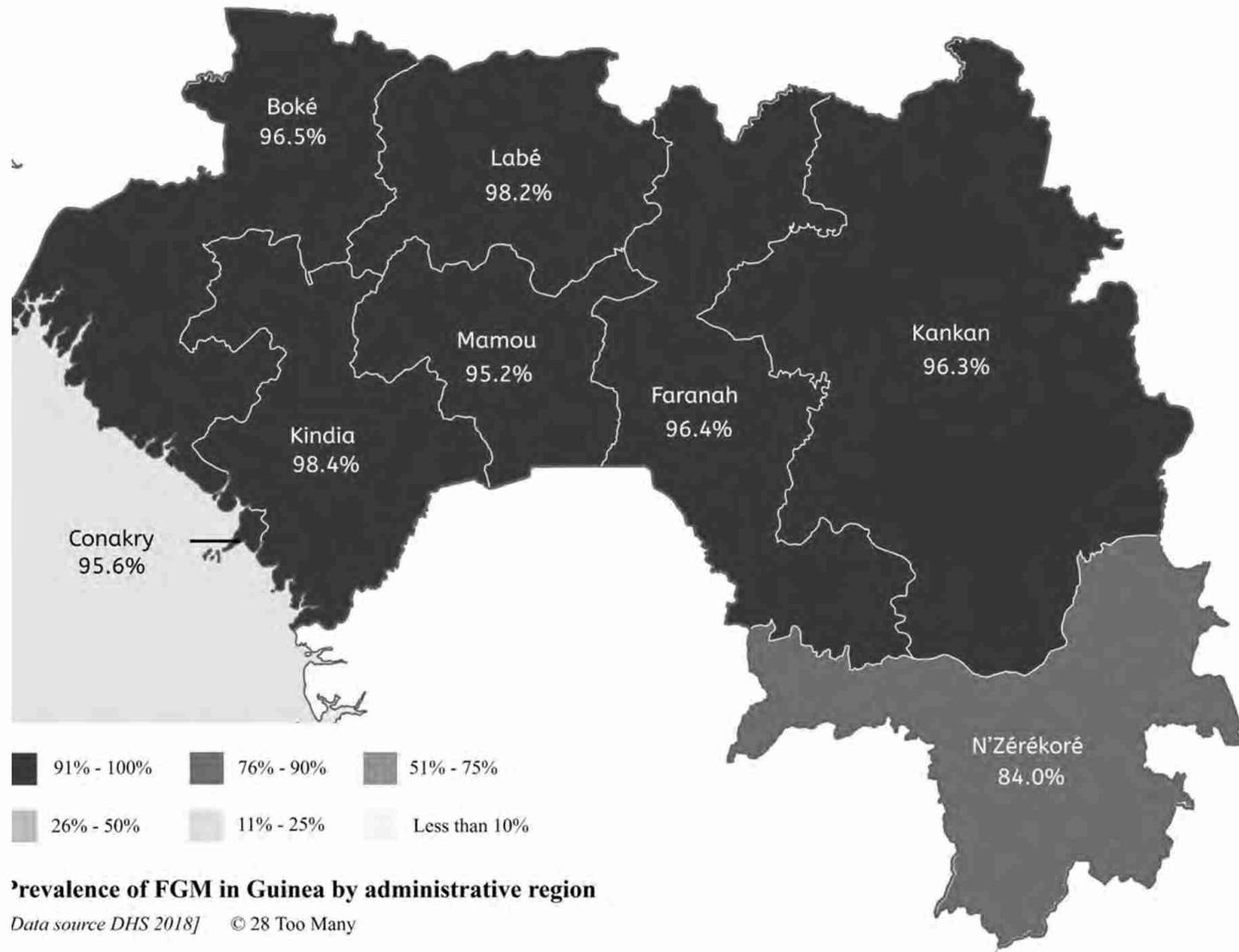
The Guinean Government originally passed anti-FGM legislation in 1965.

Articles 258–261 of the Criminal Code 2016 prohibit FGM whether performed by traditional or modern methods.

In addition, the Children's Code of 2008 criminalized violence against children and explicitly addressed FGM.

Few cases have reportedly reached court to date, and sentences are lenient.

Guinea: Civil Society



Prevalence of FGM in Guinea by administrative region

Data source DHS 2018 | © 28 Too Many

FGM is practiced throughout the country and among all religious and ethnic group.

Overall, 65.4% of women and 59.6% of men aged 15–49 who have heard of FGM believe that the practice should be continued.

Support for the continuation of FGM is highest in rural areas and among those with lower levels of education.

55.8% of women and 64.3% of men believe that FGM is a requirement of their religion.

Sudan: FGM Laws & Practice

Most recent numbers from 2014 indicate the prevalence of FGM in women aged 15-49 is around 87%.

The Bashir government launched a national campaign in 2008 to eradicate FGM/C by 2018; since 2008, five states passed laws prohibiting FGM/C: South Kordofan, Gedaref, Red Sea, South Darfur, and West Darfur.

However, these laws were weak in implementation and enforcement.

On April 22, 2020, Sudan approved an amendment to Article 141 of the Criminal Act to criminalize carrying out female genital mutilation (FGM), making it punishable by three years in jail.

Prior to 2020, there was not a national law prohibiting FGM/C.

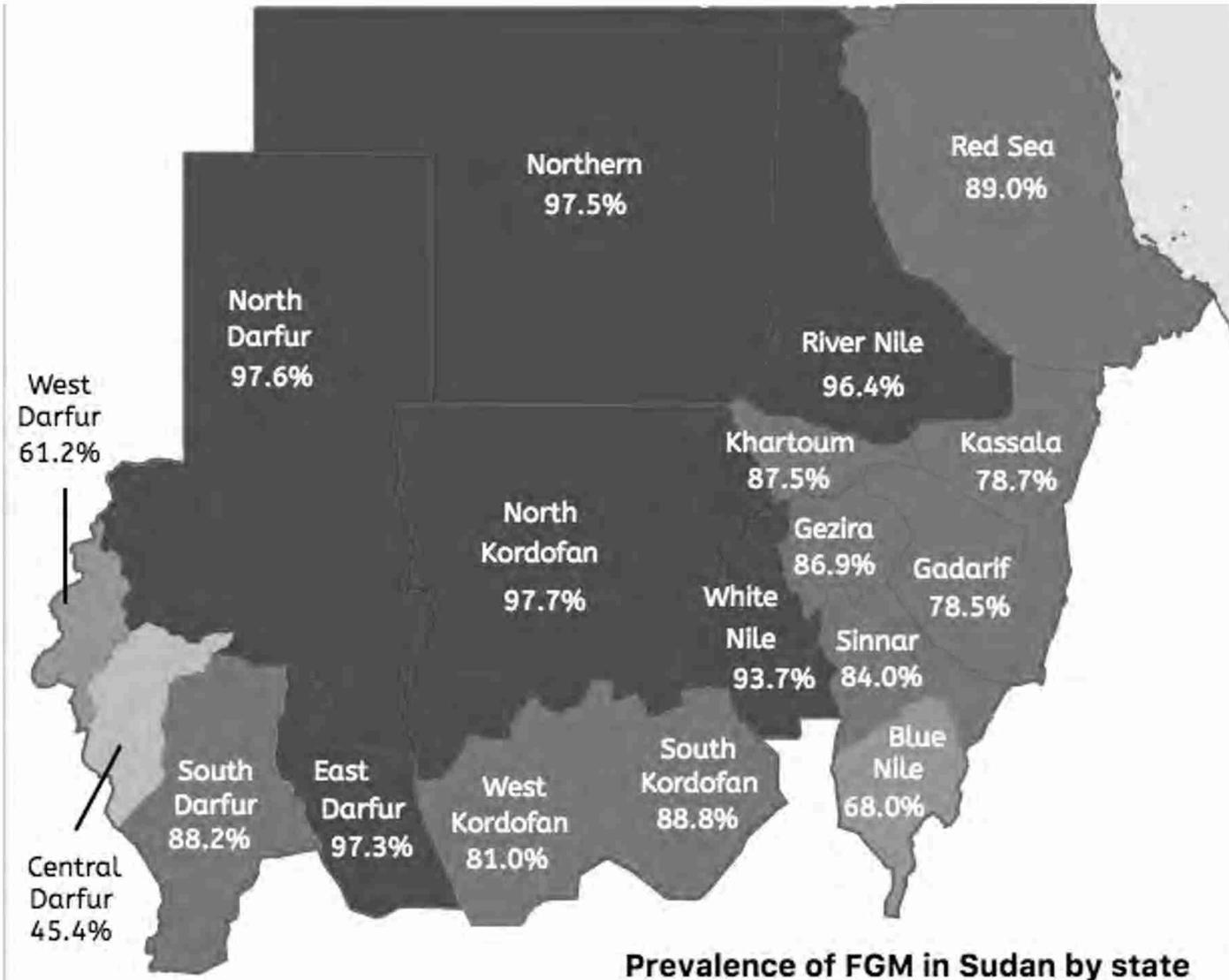
Sudan: Civil Society

Prevalence varies geographically and depends on the local ethnic group.

The states in Sudan with the highest FGM prevalence are in the north-west: North Kordofan (97.7% of women aged 15-49), North Darfur (97.6%) and Northern (97.5%). The state with the lowest prevalence is Central Darfur, in the south-west, at 45.4%.

FGM is least prevalent among women aged 14-59 with 'no education', at 76.8%.

52.8% of women aged 15-49 who have heard of FGM believe it should be discontinued.



Prevalence of FGM in Sudan by state

Analyzing Harm Related to FGM

Is FGM Harm Serious Enough to Rise to the Level of Persecution? Yes

<i>The U.S Court of Appeals, Second Circuit</i>	<i>FGM involves the infliction of “grave harm constituting persecution</i>
Matter of A-T- (AG 2008)	Can involve repeating or enduring harm
Mohammed v. Gonzales (9th Cir. 2005)	The fact that a practice is widespread is not relevant to determining whether the alleged acts constitute persecution
Matter of S-A-K- and H-A-H (BIA 2008)	An applicant cannot establish eligibility for asylum based solely on a fear that his or her child would be subject to FGM

How Do We Analyze Nexus in Cases involving FGM?

“Females of X nationality or ethnicity who are subject to gender-related cultural traditions.”

Nexus Considerations for FGM/C Claims

In Asylum context it is also common to see case where applicant is afraid FGM/C will be performed on their child/children.

In this case, officer must still focus on the principal applicant, to determine if they would face persecution by opposing the procedure.

Generally, we would analyze this as a political opinion or religion nexus.

WFF Considerations for FGM/C Claims

Even if a woman has been subjected to FGM in the past, it is a form of harm that is capable of repetition.

Consider other forms of harm that fall under the PSG (gender-related cultural traditions).

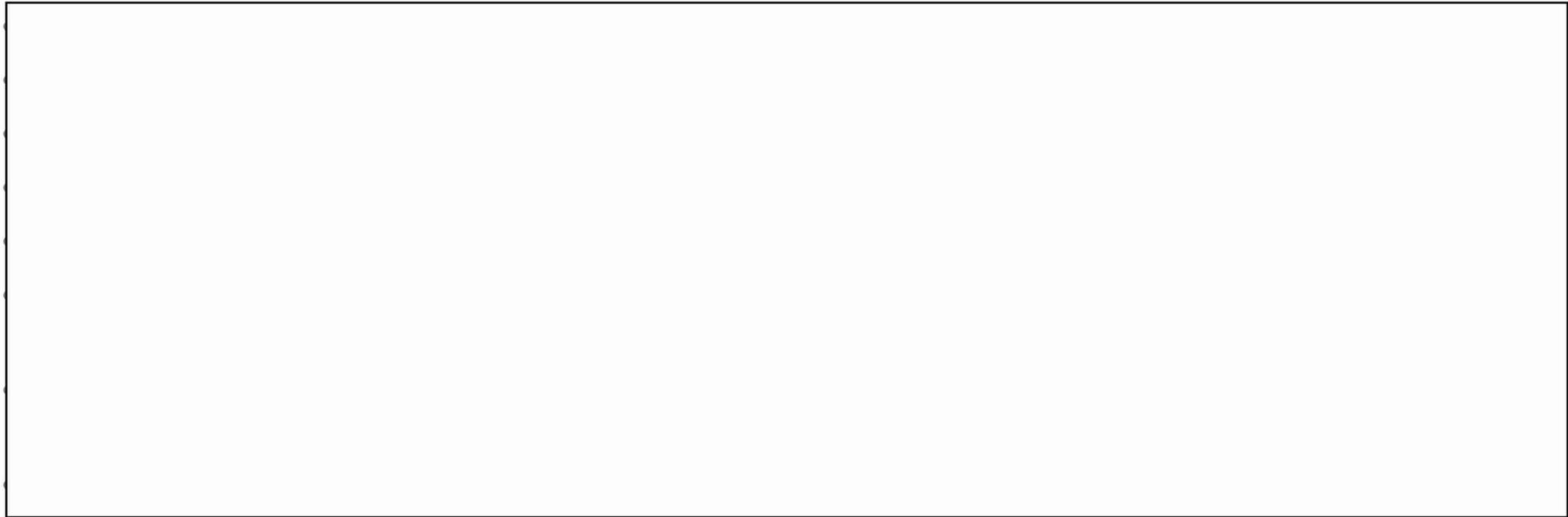
Applicants with Past FGM/C, might not have a WFF. Adjudicators would then determine whether there are discretionary factors that would warrant a grant of asylum in the absence of well-founded fear based on:

- the severity of the persecution the applicant suffered (Matter of Chen), **OR**
- a reasonable possibility the applicant may suffer other serious harm.

This is why it is so important to get testimony about details of procedure and lasting effects it has on applicant, such as lasting pain, ongoing medical treatment, trouble giving birth, psychological effects, among others.

Discretionary Grants: Severity of Past Persecution

When evaluating when to exercise discretion to grant asylum based on past persecution alone, the factors you should consider include:



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Severity of Past
Persecution
Case Law:
*Matter of S-A-K-
and H-A-H-*

In *Matter of S-A-K- and H-A-H-*, the BIA held that discretion should be exercised to grant asylum to a mother and daughter who had been involuntarily subjected to FGM based on the severity of the persecution they suffered.

Some of the factors the Board considered in finding that the persecution was severe were: the applicant's daughter was subjected to FGM at an early age and was not anesthetized for the procedure; the mother nearly died from an infection she developed after the procedure; both mother and daughter had to have their vaginal opening reopened later on in their lives, in the case of the mother about five times; mother and daughter continued to experience medical problems related to the procedure (e.g., the mother experienced great pain and the daughter had difficulty urinating and cannot menstruate); and the mother was beaten because she opposed having her daughters subjected to FGM.

Matter of S-A-K- and H-A-H-, 24 I&N Dec. 464 (BIA 2008).

Discretionary Grants: Other Serious Harm

A grant in the absence of a well-founded fear may be justified where there is a reasonable possibility that an applicant who suffered past persecution may face other serious harm upon return.

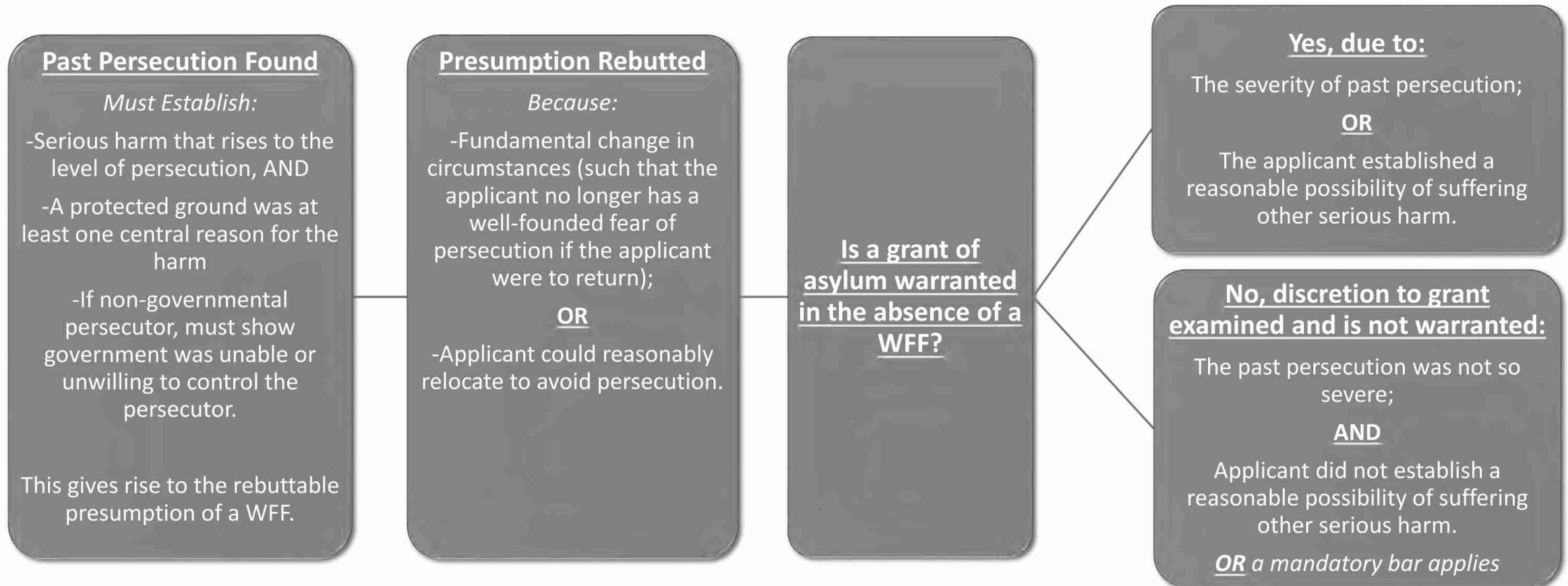
- **The feared harm must be serious enough to rise to the level of persecution; AND**
- **There must be a reasonable possibility the applicant would suffer this harm. There is no nexus requirement.**

Consider current conditions that could severely affect the applicant, such as:

- civil strife
- extreme economic deprivation,
- potential for new physical or psychological harm that the applicant might suffer.

Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as "other serious harm."

Discretionary Grants: Written Legal Analysis



Other Examples of Gender-Based Harm

- oSexual Violence
- oForced and Early Marriage
- oForced Abortion
- oDomestic Violence
- oHuman Trafficking
- oHonor Crimes
- oSexual Slavery

Reporting, Law Enforcement, and Access to State Protection

Considerations to Accessing State Protection

- oStigma
- oLack of Protection or Government Resources
- oGender Discrimination in Legal Systems
- oCriminalization of Female Victims of Violence

Ability To Relocate

What are some factors that might affect a female applicant's ability to safely relocate within her country?

- Groups operating countrywide that the government is unable or unwilling to control
- Ability to Travel
- Economic Circumstances
- Social Circumstances

Interviewing Considerations

What are some factors that may inhibit an applicant's ability to fully present a gender related claim?

○Pre-Interview Considerations

○Considerations Related to Gender and Culture

○Cultural norms may exacerbate reluctance to relate sensitive information.

○Presence of relatives may inhibit testimony

○Interpreters may inhibit testimony

○Cultural norms may limit an applicant's knowledge of other family members' activities

Effective Interviewing Techniques

What are some ways you have established rapport and put an applicant at ease in a case involving FGM or a gender-based claim?

- Emphasize confidentiality
- Begin with easy topics
- Pause if the applicant becomes upset
- Acknowledge how difficult it may be for the applicant
- Ask open-ended questions

Factors When Evaluating Credibility

○ **Credibility Considerations**

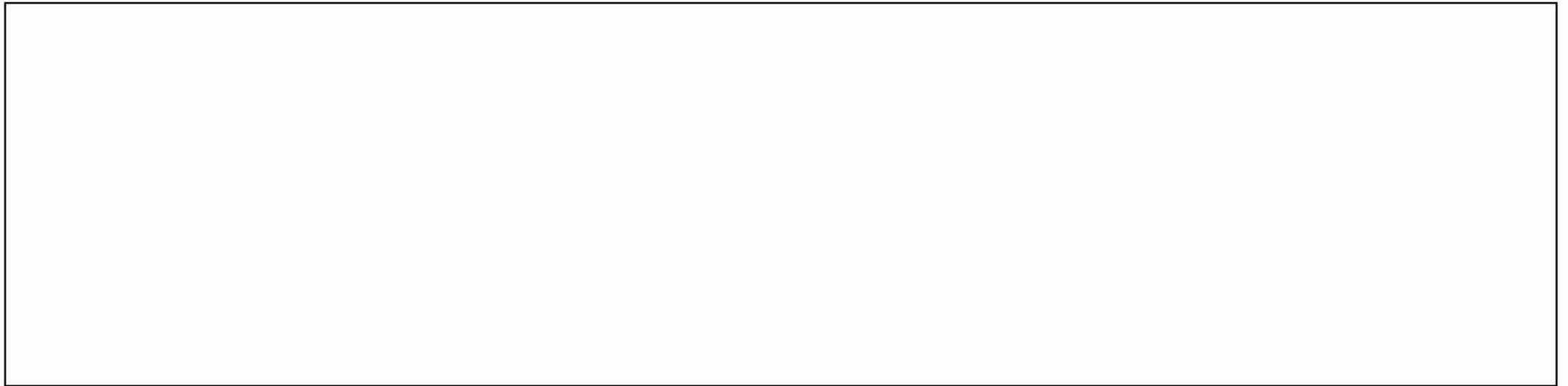
- Applicant may be able to provide sufficient detail about certain parts of the claim to establish credibility, without providing minute detail on particularly sensitive topics.
- Elicit testimony about before and after (instead of act itself)

○ **Credibility Factors**

- Detail
 - Social Constraints May Limit Access to Information
 - Effects of Trauma
 - Gender Roles
 - Education Level
- Consistency

Factors When Evaluating Credibility

In any asylum interview it is important to elicit detailed testimony.

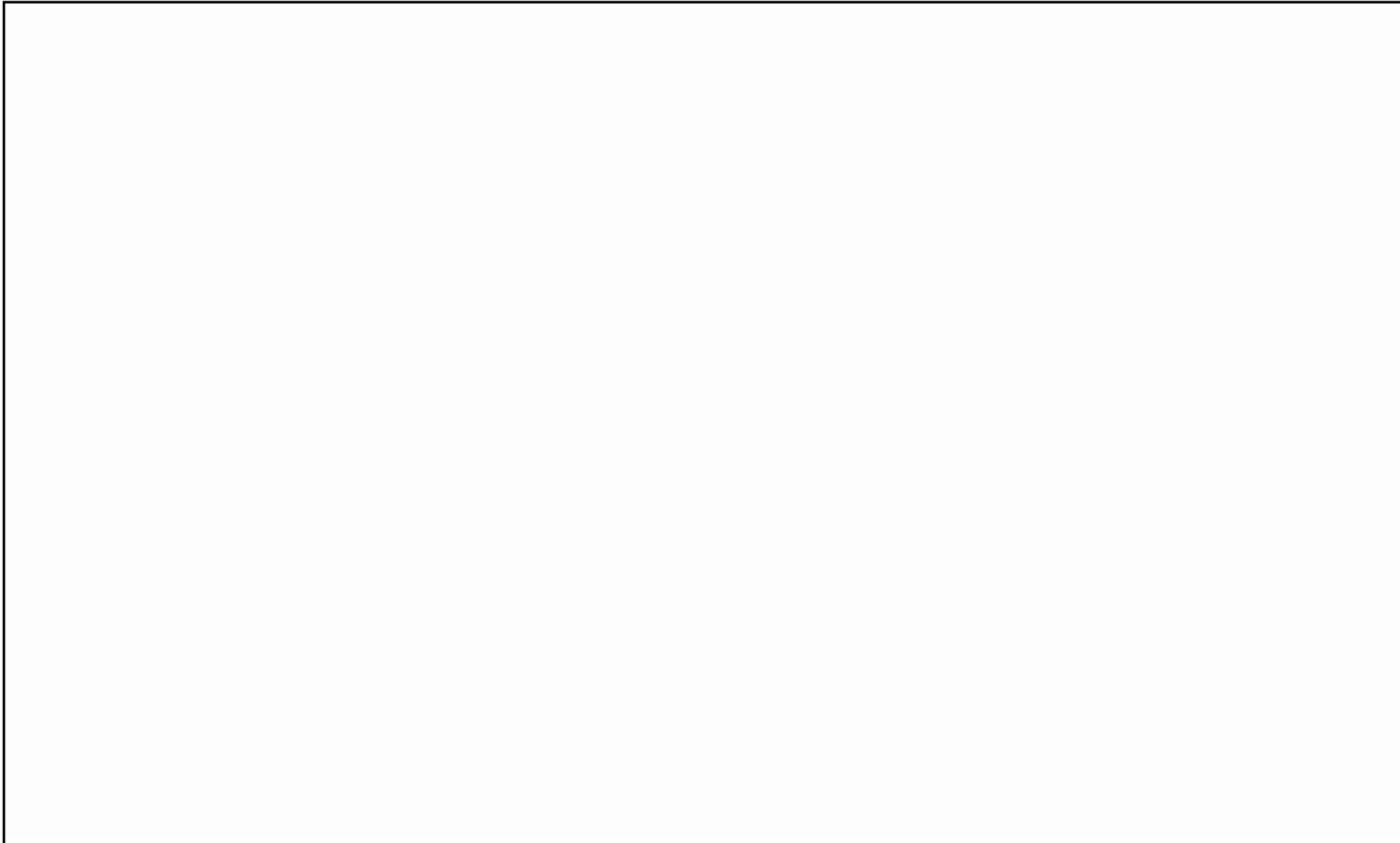


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Small Group Exercise

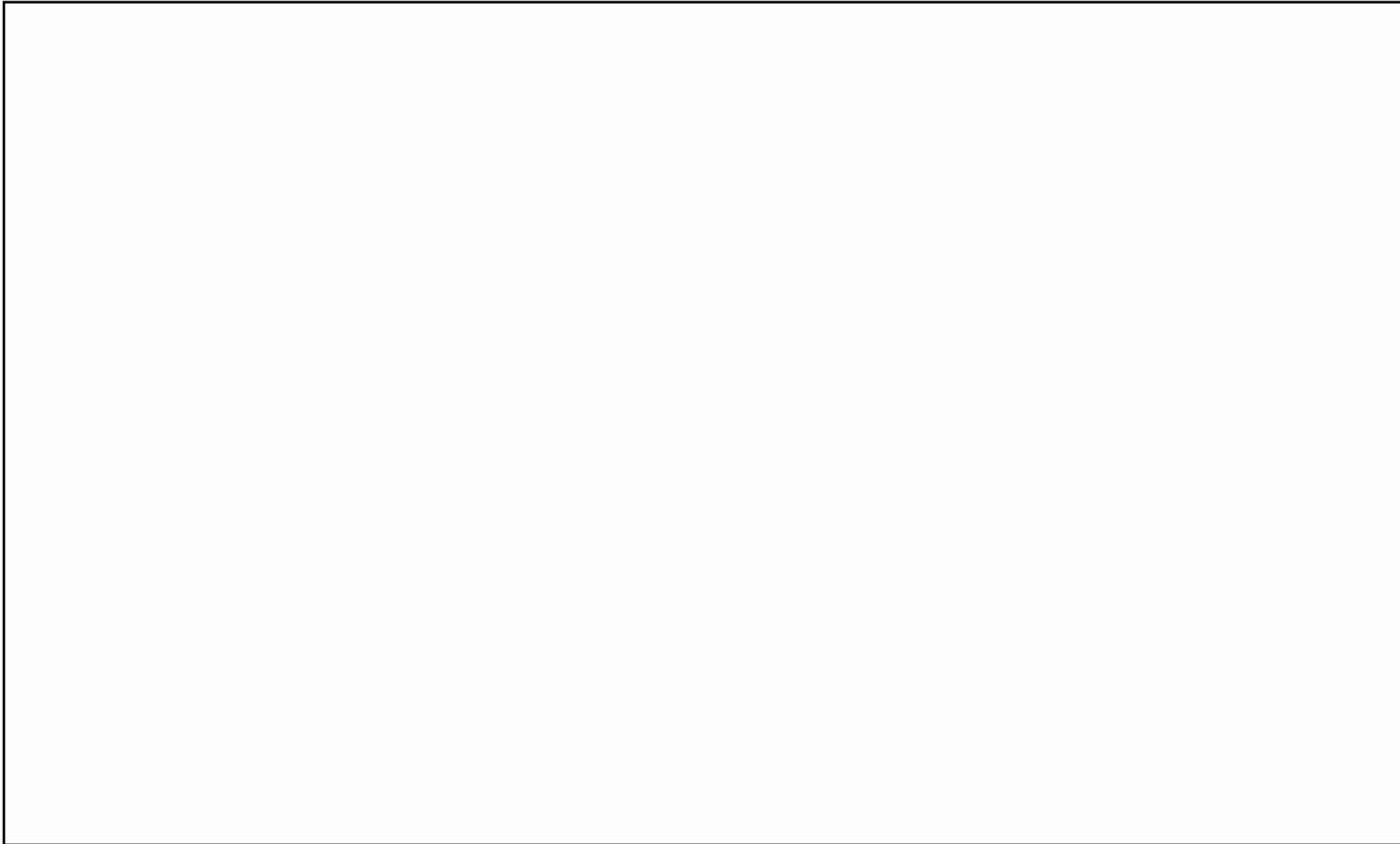
- Take a few minutes to read through your assigned scenario.
 - Group 1 (led by SAO [redacted] Scenario 1 (b)(6)
 - Group 2 (led by SAO [redacted]): Scenario 2
 - Group 3 (led by TO [redacted]): Scenario 3
- Start to think about which elements of the claim you would focus on during the interview, and questions that you would want to ask this applicant to establish each of those elements of the claim.
- Remember to consider the eliciting testimony points as well as COI that was covered in today's presentation
- SAOs/TOs will then lead a discussion about key elements.
- We will reconvene to discuss your individual case, please assign someone to summarize and present the key points from your discussion.

Group 1



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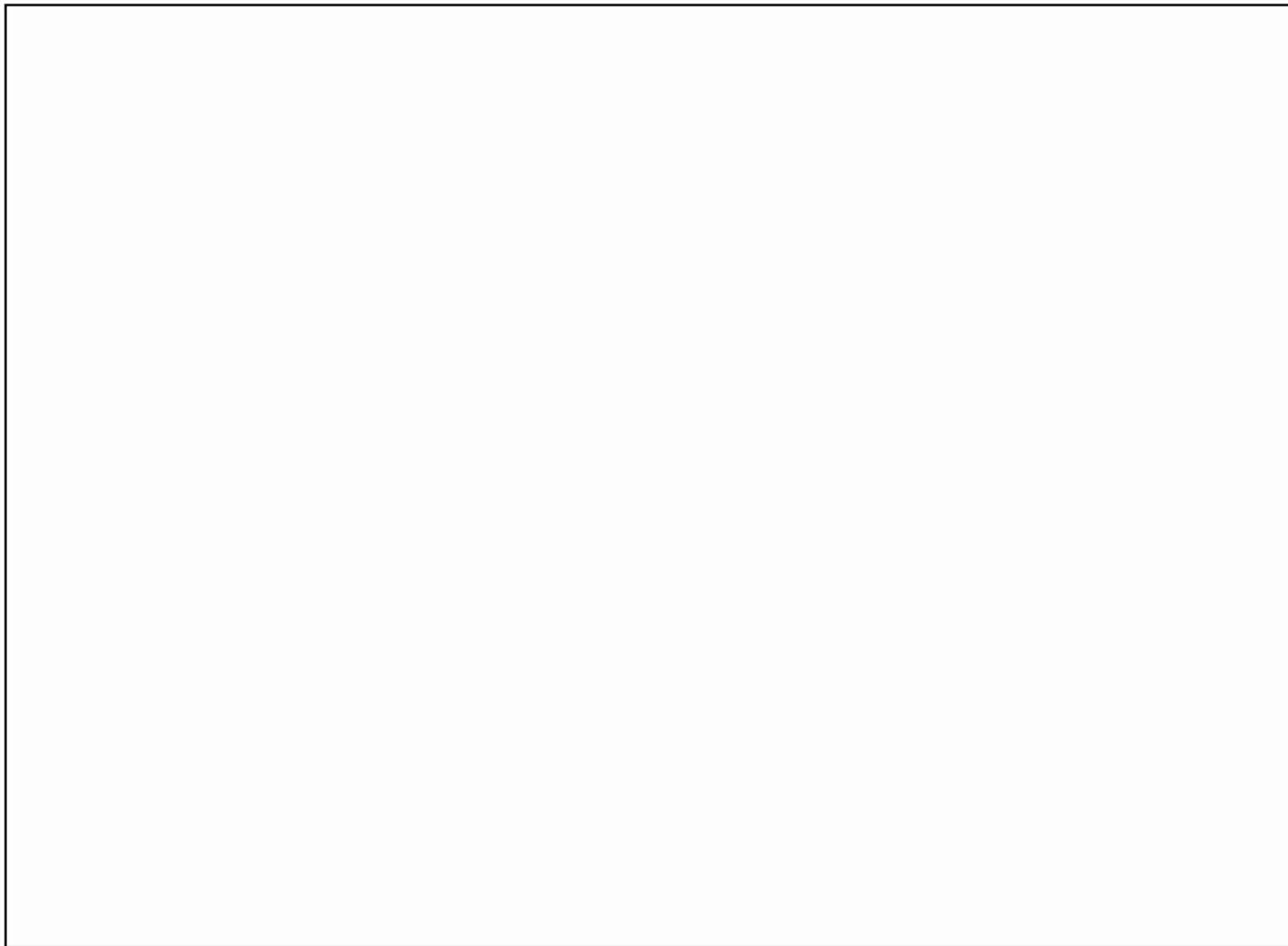
Group 2



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Group 3

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Resources

[RAIO Lesson Plan - Gender Related Claims](#)

[RAIO Research Unit Country Pages](#)

[World Health Organization](#)

[UNICEF Data](#)

[28 Too Many](#)

[Department of State Country Reports on Human Rights Practices](#)