THE EFFECTIVENESS OF KENYAN LAW AND POLICY IN CURBING FGM. MERU DISTRICT

BY

SHIREKULI.K.FAYE

LLB/16073/72/DF

KAMPALA INTERNATIONAL UNIVERSITY
LAW
LIBRARY
DATE:.....
BOX 20000, KAMPALA

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF KAMPALA INTERNATIONAL UNIVERSITY

FEBRUARY, 2012

DECLARATION

"I declare that this research is the work of Faye Shirekuli Kanini alone, except where due acknowledgement is made in the text. It does not include materials for which any other university degree or Diploma has been awarded."

Signed : _____

Date: _____

APPROVAL

"I certify that I have supervised and read this study and that in my opinion, it confirms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Law of Kampala International University."

Name of Supervisor: Emma Sseli

Signature: Sseli

Date : 20/2/2012

ACKNOWLEDGEMENT

This research work would not have been possible without the support of my dear parents and close friends in the fraternity of law, who have contributed immensely during my research through their encouragement. However special thanks are to God for seeing me through these years.

ABBREVIATIONS

ARP	Alternative Rites Passage
BPFA	Beijing Platform for Action
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DHS	Demographic and Health Surveys
FC	Female Circumcision-
FGM	Female Genital Mutilation
KDHS	Kenya Demographic Health Survey
MYWO	Maendeleo Ya Wanawake Organization
NFLS	Nairobi Forward Looking Strategies
NGO	Non Governmental Organization
NMC	Nursing and Midwifery Council
PACWA	Pan Africa Alliance of Christian Women
PATH	Programme for Appropriate Technology in Health
UNICEF	United Nations Children's Fund
UNESCO	United Nations Educational Scientific and Cultural Organization
UNFPA	United Nations Food Programme
WHO	World Health Organization

ABSTRACT

The study was about the effectiveness of Kenyan law and policy in curbing the practice of FGM in Kenyan communities my main focus being in Meru district.

Female genital mutilation is a cultural practice aimed at signifying a girl's entry into womanhood and any form of rejection is viewed as subordinating culture. It is believed to prevent promiscuity in marriages and promote easy child bearing. Those who do not circumcise are believed to be of immoral character and adopting western culture.

The researcher used questionnaire to gather the required data during the study and a series of key interviews particularly on the effect if a law is passed against the cultural practice. The questionnaires were filled up by the respondents of the respective towns in the district who came up with different means of promoting the rite of passage without having to carry out Female Genital Mutilation in women. From the findings, the culture can be eliminated if the communities are made aware of the risks of the practice and better ways of initiating the girl child into a woman.

LIST OF STATUTES

African charter on Human and people's Rights

Convention on the Elimination of Discrimination against women.

Convention on the Rights of the child.

Human Rights Act 2000

International convention on the Elimination of all forms of Racial discrimination

Sexual Offences Act.

The children's Act 2001

The Kenyan Constitution

The Kenyan penal code

Universal Declaration of Human Rights

TABLE OF CONTENTS

DECLARATION i
APPROVAL ii
ACKNOWLEDGEMENT iii
ABBREVIATIONS iv
ABSTRACT v
LIST OF STATUTES vi
TABLE OF CONTENTS vii

CHAPTER ONE 1
1.0 BACKGROUND TO THE STUDY 1
1.1.1 Rationale for FGM 5
1.1.2 Prevalence and type 6
1.1.3 Legal status of FGM in Kenya 7
1.1.4 FGM in relation to culture 8
1.1 STATEMENT OF THE PROBLEM 10
1.2 THE PURPOSE OF THE STUDY 10
1.3 THE RESEARCH OBJECTIVES 11
1.3.1 General Objectives. 11
1.4 RESEARCH QUESTIONS 11
1.5 HYPOTHESIS 12
1.6 SCOPE OF STUDY 12
1.7 SIGNIFICANCE OF THE STUDY 13
1.8 DEFINITION OF CONCEPTS 14
1.9 CHAPTER BREAKDOWN 15

CHAPTER TWO 16
LITERATURE REVIEW 16
2.0 FGM AS A CULTURE AND TRADITION 16
2.1 FGM AND GENDER DISCRIMINATION 19
2.2 FGM AND HEALTH RIGHTS 21
2.3 FGM AND LEGISLATION 24

CHAPTER THREE 29
3.0 METHODOLOGY AND SCOPE OF WORK 29
3.1 RESEARCH DESIGN 30
3.2 SAMPLING SIZE 32
3.3 DATA ANALYSIS 33
3.4 RESEARCH APPROVAL 34
3.5 LIMITATIONS IN THE STUDY 34

CHAPTER FOUR 35
4.0 FEMALE GENITAL MUTILATION IS A VIOLATION OF HUMAN RIGHTS 35
4.1 HUMAN RIGHTS, LEGAL AND PROFESSIONAL RESPONSIBILITY ISSUES 40
4.1.1 Human rights 40
4.1.2 Professional responsibility 41
4.2 COMPARATIVE ANALYSIS 44
4.2.1 The Kenyan legal framework 44
4.2.2 The UK legal framework 48

CHAPTER FIVE 54
5.0 OBSERVATIONS AND CONCLUSIONS 54
5.1 RECOMMENDATIONS 57
5.2 CONCLUSION 59
REFERENCE 61

APPENDIX A 63
SELECTED INDIVIDUALS FROM MERU AND KISII DISTRICT 63
APPENDIX B 64
CONSENT FORM-FOCUS GROUP DISCUSSIONS 64
APPENDIX C 66
INFORMED CONSENT FORM-INDIVIDUAL INTERVIEW 66
APPENDIX D 68
QUESTIONNAIRE 68

CHAPTER ONE

1.0 BACKGROUND TO THE STUDY

Female Genital Mutilation (FGM) is defined by the World Health Organization as "all procedures partial or total removal of the external female genitalia or other injury on female genital organs for non- medical reasons." Female Genital Mutilation is commonly known as Female Circumcision (FC). It is the cutting of the clitoris in its simplest form." [1]Female circumcision differs from the circumcision of males in several ways as it is aimed at eliminating the physiological pleasure of sexual intercourse, while male circumcision does not involve the removal of the pleasure-sensitive part of the penis. On the contrary, it is known to be harmful to girls and women. As well as severe pain suffered during cutting, the removal of, or damage to, healthy, normal genital tissue interferes with the natural functioning of the body. Immediate and long-term health consequences of FGM include severe bleeding, infections, retention of urine, and later, potential complications during childbirth that can lead to maternal and newborn deaths.

The WHO has classified four broad types of FGM and estimates that approximately 80% of girls and women subjected to FGM undergo type I. All types carry health risks, although these are substantially higher for those who have undergone the more extreme procedure (type III).

The term is used to describe tradition, cultural or religious procedures where

[1] *WHO; Regional Plan of Action for Elimination of FGM in Africa.*

parents or guardians must give consent because of the minor age of the subject rather than with procedures done with self consent. Culture is a long time practice by a group of people or within a particular society which is recognized by law. It is recognized under the Constitution, International Conventions and is inter alia promoted by UNESCO.

FGM as a rite of passage to adulthood is considered to be an integral part of culture by many people and a threat to the practice is viewed as an attack on the identity of an entire community. Consequently, a refusal on the part of the girl or the family will lead to exclusion from the group, making the pressure to conform enormously hard to resist. Supporters argue that the tradition is necessary both to society and to the maturity of the girls.

FGM is undertaken on women's genital organs including their total or partial removal or incision in the interior of the vagina. They can be relatively minor or extremely serious. It does not however refer to procedures used in gender reassignment surgery and the genital modification of the inter-sexual. The practice is mostly carried out by traditional circumcisers who often play other roles in communities such as attending childbirths and healing. Increasingly, FGM is being practiced by medically trained personnel.

TYPES OF FGM

In 2007, the World Health Organization (WHO) "Eliminating FGM: A Interagency Statement." developed four broad categories for FGM operations:-

Type I

Excision (removal) of the clitoral hood with or without removal of part or the entire clitoris, this is also referred to as partial or total removal of the clitoris or clitoridectomy. It is performed to reduce a woman's sexual sensations and, thereby, her interest in sex.

Type II

It's the removal of the clitoris together with part or all of the *labia minora* (small lips). This is also explained as partial or total removal of the clitoris and the *labial minora* with or without excision of the *labial majora*.

Type III (infibulations)

Removal of part or all of the external genitalia (clitoris, *labia minora*, and *labia majora*) and stitching and/or narrowing of the vaginal opening leaving a small hole for urine and menstrual flow, the wound is normally opened during intercourse or childbirth. This is the most extensive form of FGM and accounts for about 10%of all FGM procedures described in Africa. It is also known as pharaonic circumcision.

Women who have been infibulated face a lot of difficulties in delivery of children especially if their infibulations is not done before hand which often results in severe tearing of the infibulated area (toubia.1995). The risk of severe physical or psychological complications is more highly associated with women who have undergone infibulations as opposed to one lesser forms of FGM.

Type IV (unclassified)

It may not involve tissue removal. WHO defines it "all other harmful procedures to the female genitalia for non-medical purposes. It includes:-

- Pricking, piercing, stretching, or incision of the clitoris and/or labia;
- Cauterization by burning the clitoris and surrounding tissues;
- Incisions to the vaginal wall;
- Scraping (angurya cuts) or cutting (gishiri cuts) of the vagina and surrounding tissues
- Introduction of corrosive substances or herbs into the vagina

Type I and Type II operations account for 85 percent of all FGM. Type III (infibulations) is common in Djibouti, Somalia, and Sudan and in parts of Egypt, Ethiopia, Kenya, Mali, Mauritania, Niger, Nigeria, and Senegal.[2]

In some communities such as the Gabbra, Borana from the North Eastern parts of

[2] *WHO(2007) Eliminating FGM:A interagency Statement.*

Kenya, the rite involves the complete removal of the external genitalia and subsequent stitching leaving a tiny opening for urine and menstrual flow for non medical reasons.

1.1.1 Rationale for FGM

The reasons why some communities circumcise their women are deeply rooted in the traditional culture, driven by a complex combination of psychosexual and social reasons, specific to each context and passed down the generations.[3]

Although religion, aesthetics and social culture have been identified as features which contribute to the practice[4], FGM remains primarily a cultural rather than a religious practice, occurring across different religious groups. FGM is not sanctioned by any religious texts. Although in some communities, religious interpretations have been used to justify the practice. Hygiene and aesthetics are frequently quoted as factors supporting FGM, often underpinned by beliefs that female genitalia are ugly, have a bad odour and can be made more beautiful by FGM. FGM is also seen as an essential step in marking the transition of a girl into a mature woman, able to carry out the roles assigned to a woman, including marriage and childbearing. FGM is also considered as helping curb sexual drive and respecting cultural/traditional heritage.

Female Genital Mutilation is practiced throughout the world with the practice being concentrated most heavily in Africa signifying a girl's entry into womanhood. It is

---

[3] *Muteshi J and Sass J (2005) Female Genital Mutilation in Africa: An analysis of current abandonment approaches. PATH*

[4] *Mohamud A Ali N and Yinger N (1999) FGM programmes to date: What works and what doesn't work. Geneva: WHO/PATH*

estimated that 100 to 140 million girls and women worldwide are currently living with the consequences of FGM, WHO (1997): "Regional Plan of Action for Elimination of FGM in Africa." In Africa, about three million girls are at risk of FGM annually. Even in countries like Djibouti, Egypt, Eritrea, Ethiopia, Guinea, Mali, Sierra Leone, Somalia and Sudan, which have legislation against it 85% of women still undergo mutilation. In Kenya FGM is practiced in all communities except among the Luhya, Turkana, Teso, and Luo.[5]

1.1.2 Prevalence and type

According to the Kenya Demographic and Health Surveys[6] (KDHS), the overall prevalence of FGM is decreasing in Kenya. In 2008/9 on average 27% of female respondents had undergone FGM, a decline from 32% in 2003 and 38% in 1998. The proportion of women circumcised is higher among older women, with 15% of women aged 15-19 being circumcised, as opposed to 49% of those aged 45-49, further indicating that the prevalence of FGM is decreasing.

The 2008/2009 KDHS found regional variations in prevalence of FGM - 98% of women in North Eastern Province had been circumcised, compared to only 1% of women in Western Province. In Nyanza Province (which includes Kuria and Kisii districts), 34% of the women were circumcised, compared to 14% in Nairobi, and 10%in Coast Province. Ethnicity is one of the strongest factors influencing the practice

---

[5] *Ibid*
[6] *WHO Kenya Demographic and Health Survey 2008/2009 http://apps.who.int/medicinedocs/en/m/abstract/Js17116e/*

of FGM in Kenya - prevalence rates remain highest among the Somali(97%), Kisii (96%), Kuria (96%) and Masai (93%) ethnic groups and relatively low among the Kikuyu[7], Kamba and Turkana, whilst among the Luo and Luhya less than 1% of the women undergo FGM.

There are also differences in the prevalence of FGM between rural and urban areas, with on average 31% of women in the rural areas reporting that they were circumcised, compared to just 17% in urban areas. Education is also a significant factor, with 54% of women without any formal education being circumcised, as opposed to 19% of women who attended secondary school.

In 2008/9, the majority of the women who reported having been circumcised said that they had some flesh removed, which usually includes removal of the clitoris. Thirteen percent had the most invasive form, in which the labia are removed and sewn closed (type III). Only 2% percent said they were nicked with no flesh removed (type IV).

1.1.3 Legal status of FGM in Kenya

In 1999, the Ministry of Health issued a National Plan of Action for the Elimination of FGM (1999-2019), which set out broad goals, strategies, targets and indicators[8] This plan was to be implemented in collaboration with partners. In 2001, Kenya adopted the Children's Act which made FGM illegal for girls under the age of 18. The potential

---

[7] *Ibid*

[8] *Abusharuf R M (2007) Female Circumcision: multicultural perspectives. Penn Press*

penalties under Kenyan law for anyone subjecting a child to FGM is twelve months imprisonment and/or a fine of up to fifty thousand shillings (about US $600), although this is currently under review. However, there are few reported cases of successful legal action against the perpetrators of FGM and there have been widespread criticisms that the law is not effectively protective, is poorly implemented, and has failed to curb FGM. There is no specific law in Kenya against FGM for women over 18 years of age. The Kenyan government has introduced a range of initiatives through the National Plan of Action to try and encourage the abandonment of FGM, for example, a government-led commission to coordinate activities for the elimination of the practice has been set up, bringing together partners involved in the fight against FGM on national and regional levels, to share expertise, raise resources and collaborate on initiatives. The commission has had mixed success in establishing networks at regional level, for example, Kuria has a thriving network which coordinates anti-FGM action, whereas in Kisii attempts to establish a strong network have been largely unsuccessful to date.

1.1.4 FGM in relation to culture

According to the principle of culture relativism, whether culture is negative or not depends on where one comes from. Culture relativists claim that substantive human rights standards vary among different cultures and western ideas of human rights should not be imposed upon third world societies. However the Universalists believe that

human rights have become international customary law, hence jus cogens.[9] It reflects deep –rooted inequality between the sexes and constitutes an extreme form of discrimination against women, when carried out on minors it is a violation of the rights of children.

The practice of FGM also violates a person's right to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment and the right to life when the procedure of FGM results in the death of the victim.

FGM constitutes a violation of a number of recognized Human Rights protected under International Conventions and Charters such as Convention on Children' Rights (CRC) and the Convention on Elimination of all forms of Discrimination Against Women (CEDAW). These conventions explicitly recognize traditional practices such as FGM as violations of human rights including rights to non discrimination, the right to life, the right to health and the right to the child special protection. They have been domesticated into local laws such as the Children's Act 2001 and the Sexual Offences Act 2006. The dire consequences of FGM include high maternal and infant mortality rate, irreversible lifelong health risks at the time of menstruation ,consummation of marriage and during childbirth as well as immediate and long term physical, sexual and psychological complications amongst others.

---

[9] *Serunjoji Nasser. Research dissertation on Human Rights & Cultural Female Genital Mutilation. A case study of Kapchorwa: 2006*

1.1 STATEMENT OF THE PROBLEM

In Kenya, female circumcision is illegal since the ratification of the Children's Act in 2001, yet it sill continues in ethnic groups of Kenya such as the Meru and Kisii soaring at a high rate of 96 percent. The practice is widely believed to increase a girl's chances of marriage, prevent promiscuity, and promote easy childbirth. Women who do not circumcise their daughters run the risk of being seen as irresponsible, immoral and imitators of Western culture. Women have continued to suffer physical, psychological and social torture as a result and these problems have manifested themselves through difficult births, loss of blood, painful sex, dropping out of schools and more. It is for this reason that this study aims to look at whether the legislation will help curb out the practice.

1.2 THE PURPOSE OF THE STUDY

The purpose of the study is to examine whether passing of legislation will have an effect of doing away with the cultural practice of FGM among men and women at family and community levels in Kisii and Meru, other Alternative Rites of Passage (ARP) approaches for the abandonment of FGM in these districts. It also seeks to critically analyze the change of cultural practices that are in violation of human rights and gender discrimination on women in these districts.

KAMPALA INTERNATIONAL UNIVERSITY
LAW
LIBRARY
DATE:.....
BOX 20000, KAMPALA

1.3 THE RESEARCH OBJECTIVES

1.3.1 General Objectives.

The general objective of the study is to critically analyze whether passing of the legislation against FGM will have an effect of doing away with the cultural practice, the focus being on FGM on women and girls as part of Meru's culture vis-à-vis the protection of women's dignity.

1.3.2 Specific Objectives.

- To explore the magnitude of the FGM and highlight concepts of culture, tradition and women's rights in Kenya.
- To investigate the reaction of communities after passing legislation against FGM.
- To sensitize the community on the dangers of the practice through production of a lobby document and engage the local society in coming up with homegrown solutions to deal with the challenge.
- To examine the effect of FGM on the rights of women and children.
- To gauge the attitudes of communities from Meru and Kisii towards its eradication.

1.4 RESEARCH QUESTIONS

- Will the law if promulgated by parliament have an effect in banning FGM and be abided by the people?

- Will the law violate the people's cultural right which has been done for many years?
- Will the law have a positive or negative impact on the rights of women and children?
- Will the alternative rites of passage approaches have an impact on the communities?

1.5 HYPOTHESIS

- Passing of the legislation against FGM will have a positive impact on the communities that still practice it.
- By offering an alternative cultural practice as opposed to FGM will reduce the practice to a minimum.

1.6 SCOPE OF STUDY

The geographical scope research rests in Meru communities basically in Tharaka district located at the Central part of Kenya. This location was basically chosen due to the cardinal reason that it is where FGM is currently prevalent. It shall concentrate on Meru's and other tribes such as the Kisii tribe, other resources will be the Human rights organizations and NGO's who promote culture.

1.7 SIGNIFICANCE OF THE STUDY

The study is important because the current state of Female Genital Mutilation in Kenya is such that the practice is done secretively even though the government has strongly come out against the act. This research will look at the existing government initiatives to curb the act and what can be done to improve these initiatives. It is hoped that this study will sensitize the local communities about the disadvantages of female circumcision such as the lack of education. The study shall also outline the dangers of infection and uncontrolled bleeding or other medical problems related with child birth which will be of beneficial use for the communities. With the government having passed laws against the practice is not enough, by introducing culturally-sensitive education and public awareness-raising activities at the grass-root levels, the practice will decline. The study shall also generating data that confirm its harmful consequences, a key role which can be played by National and International Organizations who can advocate against the practice.

For instance the African Union's *Solemn Declaration on Gender Equality in Africa*, and its Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa constitute a major contribution to the promotion of gender equality and the elimination of female genital mutilation. In 1997, the World Health Organization (WHO) issued a joint statement with the United Children's Fund (UNICEF) and United Nations Population Fund (UNFPA) against FGM. At the international level the set conventions such Convention Elimination of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC), THE

Nairobi Forward Looking Strategies (NFLS), the Beijing Platform for Action (BPFA) and Millennium Development Goals, (MDGs) are elaborate and clear that FGM needs to be eradicated since it constitutes gender based violence and a violation of women and girls human rights. It is in this context that the proposed study is trying to come up with a case for reform.

1.8 DEFINITION OF CONCEPTS

- Clitoridectomy- the removal of all or part of the clitoris
- Excision- removal of the pleasure sensitive clitoris
- Infibulations-surgical closing of the female vulva over the vagina
- Female Genital Mutilation- a more radical form of female circumcision that typically involves at least partial or full removal of the clitoris.
- UNFPA - United Nations Population Fund
- WHO- World Health Organization
- UNICEF-United Children's Fund
- CEDAW- Convention Elimination of Discrimination against Women
- CRC- Convention on the Rights of the Child
- NFLS- The Nairobi Forward Looking Strategies
- BPFA- The Beijing Platform for Action
- MDG's- Millennium Development Goals

1.9 CHAPTER BREAKDOWN

Chapter 1 will look at the background of the study, the purpose of the study, significance, the hypothesis and questions there under.

Chapter 2 will tackle the literature review bit under the sub-topics of FGM as a factor of culture and different authors analyzing it.

Chapter 3 shows the methodology and different approaches used during the research.

Chapter 4 shows how FGM is violating the Human rights protected by various international conventions and treaties. It also addresses on the Kenyan situation on the laws which aim to eradicate the barbaric act. It looks at the current Constitution and the Statutes.

Chapter5 will deal with conclusion and recommendations for the Kenyan situation.

CHAPTER TWO

LITERATURE REVIEW

2.0 FGM AS A CULTURE AND TRADITION

Culture is a way of life of a particular society or group of people including patterns of thought, beliefs, behavior, customs, traditions, rituals, dress, and language. [10] FGM is a culture identity practice. The fact that the procedure helps to define who the group is, it is obvious in cultures that carry out this procedure as an initiation into womanhood believe without it will lead to the demise of their culture and one is shunned by the community. In most cultures, traditional beliefs, norms and social institutions legitimize and, therefore, perpetuate violence against women. The subordination of women to men in most societies results from the generational gender stereotypes entrenched in these societies.

Kenyatta (1938) is in support of FGM as a cultural practice. Writing about the Kikuyu he emphasizes that circumcision for both males and females was regarded as a very essential institution which had enormous educational, social, moral and religious implications. As far as Kenyatta was concerned abolition of the institution would be tantamount to abolishing the tribal law and morality since trimming of the genitalia organs of both sexes symbolized the unification of the whole tribal organization. Hence the practice was deeply rooted in culture.[11]

---

[10] *Webster's new world encyclopedia 1992*
[11] *Kenyatta (1938)* ***Initiation of boys and girls*** *in "Facing Mt.Kenya*

Gachiri (2000) shows that even though FGM has declined in Kikuyu land, there are pockets of the population that still practice it. She reckons that there is a high dropout rate among girls in primary schools who after FGM consider themselves mature and engage in sexual activities. Though the circumcision is done under the banner of culture it is not accompanied by the teachings that took place during the rite. She recommends that the rite be abolished and be replaced with an alternative rite of passage and provides evidence that FGM is still being practiced in Central province despite the concerted efforts by religious groups and civil society groups to eradicate the practice. Her study will corroborate the findings of the proposed study[12]. FGM is often deeply entrenched in the culture, wrapped in a complex shroud of assumptions, taboos, and beliefs that impact a woman's social status and personal identity.

Wangila (2003) writes, "Abandoning this practice was and is still equated with Europeanization and deculturation which has led most Kenyans who claim to be patriotic to embrace this practice.[13] Wangila recalls reading several news reports similar to the following published by Daily Nation, a Kenyan newspaper, "A 13-year-old girl who was admitted to hospital after being circumcised died yesterday. The girl was taken to Tenwek mission hospital last week when she bled profusely after the operation. She was said to have been diabetic and was one of the six girls who underwent the rite secretly at Kamundugi village in Singiroi Division, Bomet District."

Most communities uphold, the practice and normalize various forms of abuse

---

[12] *Gachiri (2000)Female Circumcision with Reference to the Agikuyu of Kenya. Pauline Publishers, Africa, Kolbe Press, Limuru*

[13] *Mary Wangila(2003) EXCERPTS FROM Female Circumcision: The Interplay of Religion, Culture and Gender In Kenya*

against women that include female genital mutilation, early or forced marriage as well as virginity testing all in the name of attaching value to female chastity and that is why Peter Kali, District Officer in the Gatunga area of Kenya said, "You cannot change Culture overnight," it is a practice which, if threatened, endangers the cohesion of an entire community, says Rukia Subow, vice chair of Maendeleo Ya Wanawake Organization--or MYWO--a leading Kenyan women's rights group based in Nairobi. "FGM is considered most significant rite of passage to adulthood, enhancing tribal cohesion, providing girls with important recognition from peers." The traditional ceremonies take place between November and December.

Female circumcision is considered an integral part of the Kisii peoples' way of life and culture. As one participant pointed out, Kisii community circumcises girls because that is the way it has always been, and because it is considered an essential part of their heritage and culture: "*We were born and found our people practicing it; so we just follow the culture we found in place*" (participant, FGD, mothers of circumcised girls, Kisii).

There are no discussions as to whether or not the girl should be cut – this is like the law of the land, it's almost impossible to avoid getting circumcised" (participant, FGD, married men, Nyamira).

2.1 FGM AND GENDER DISCRIMINATION

FGM has implications for the human rights of women as directly reflected in several international instruments, including the *United Nations Convention on the Elimination of All Forms of Discrimination against Women.* The *United Nations Declaration on the Elimination of Violence Against Women* defines "violence against women" as encompassing, *inter alia*, "Female Genital Mutilation and other traditional practices harmful to women".[14] In Europe, legislation prohibiting the practice of FGM exists in Sweden, France and Great Britain where the procedure carries a penalty of imprisonment.

The legal obligation to eliminate all forms of discrimination against women is described as a "fundamental tenet of International Human Rights law".[15] Sex is a prohibited ground of discrimination under the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social, and Cultural Rights*, and three Regional Human Rights Conventions: the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, the *American Convention on Human Rights* and the *African Charter on Human and People's Rights.* The most comprehensive instrument, the *Convention on the Elimination of All Forms of Discrimination against Women,*[16] constitutes an

---

[14] *Declaration of the United Nations General Assembly on the Elimination of Violence Against Women, Plenary Session A/Res./48/104, December 20, 1993.*

[15] *Cook, Introduction: The Way Forward, in Cook, ed., supra,*

[16] Ratified by Canada on December 10, 1981; date of entry into force in Canada, was January 10, 1992.

International "bill of rights" for women, and sets out an agenda for nations to take action to end discrimination based on sex.

Article 5 of the *Universal Declaration of Human Rights* provides that no one shall be subjected to torture, cruelty, inhuman or degrading treatment. However, many signatory countries continue to violate that article through tolerance of the practice of FGM.
Renée Bridel, of the Fédération Internationale des Femmes de Carrières Juridiques, noted: *One cannot but consider Member States which tolerate these practices as infringing their obligations as assumed under the terms of the Charter* [of the UN].[17]

Section 5 of *Children Act 2001*: provides for non-discrimination stating that no child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection.
Equity Bill Published 2002 aims at eliminating all forms of social and economic discrimination and promotes equity of access and opportunity for all persons. It also outlaws all forms of sexual harassment in the private and public sectors.
Female Genital Mutilation has been recognized as discrimination based on sex because it is rooted in gender inequalities and power imbalances between men and women and

[17] See E. Dorkenoo, *Female Genital Mutilation: Proposals for Change* (1992) *Minority Rights Group Report* at 16, Renée Bridel, *L'enfant Mutilé*, presented on behalf of the *F.I.F.C.J.* to the U.N., Geneva,1978.

inhibits women's full and equal enjoyment of their human rights. It is a form of violence against girls and women, with physical and psychological consequences. Female Genital mutilation deprives girls and women from making an independent decision about an intervention that has a lasting effect on their bodies and infringes on their autonomy and control over their lives. The right to participate in cultural life and freedom of religion are protected by International law.

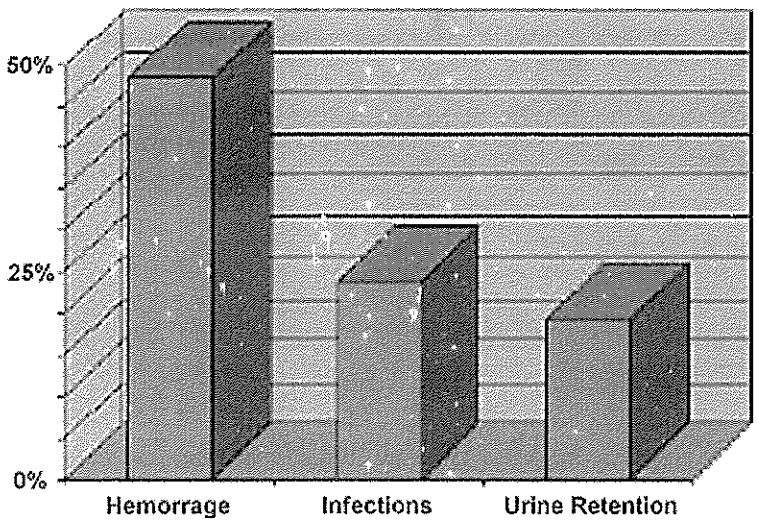
2.2 FGM AND HEALTH RIGHTS

The physical and psychological health complications resulting from Genital Mutilation of women have been extensively documented. The partial or complete loss of sexual function constitutes violation of a woman's right to physical integrity and mental health. The health consequences of FGM can range from serious to deadly. "Short-term complications include severe pain, shock, hemorrhage, urine retention, ulceration of the genital region and injury to adjacent tissue," according to the **UN release**. "Hemorrhage and infection can cause death. Long-term complications include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse), sexual dysfunction, urinary tract infection, infertility, and childbirth complications."

A 1991 survey of 1,222 women in four Kenyan districts indicated that 48.5% of the women experienced hemorrhage, 23.9% infection, and 19.4% urine retention at the time

of the FGM operation.[18] According to a survey of 55 health providers in the Nyamira District of Kenya, almost half encountered women with chronic FGM-related complications (see chart below) while over half treated recent FGM-related complications.

Immediate FGM-Related Complications in Four Kenyan Districts

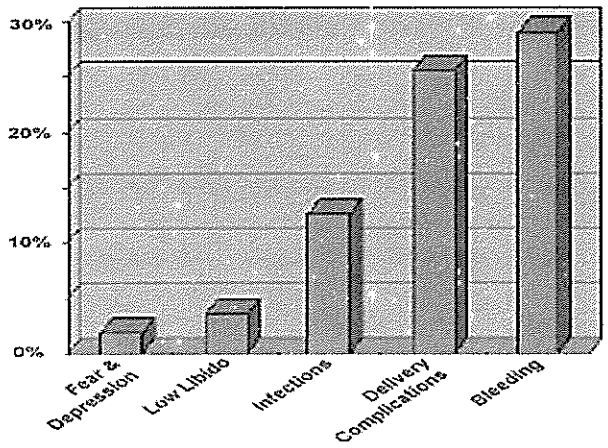


FGM destroys much or all of the vulval nerve endings, delaying arousal, or impairing orgasm. Lacerations, loss of skin elasticity, or development of neuroma (a tumor or mass growing from a nerve) can lead to painful intercourse. In a 1993 Sudanese study, 5.5 percent of women interviewed experienced painful intercourse while 9.3 percent of

[18] *Maendeleo Ya Wanawake Organization and the Program for Appropriate Technology in Health. (1993). "Quantitative Research Report on Female Circumcision in Four Districts in Kenya". Nairobi: Maendeleo Ya Wanawake Organization*

them reported having difficult or impossible penetration.[19] In 1981, 1,545 Sudanese women who had undergone the operation were interviewed. Fifty percent of them said that they did not enjoy sex at all and only accepted it as a duty.[20] "Studies by the World Health Organization in 2006 on FGM confirm that women who have been subjected to the practice are significantly more likely to experience difficulties during child birth that can even lead to death," said Linah Chebii Kilimo.

Chronic FGM-Related Complications Encountered by Health Providers in Kenya



Health Rights are guaranteed by the *International Covenant on Economic, Social and Cultural Rights* (Art. 12), the *Convention on the Rights of the Child* (Art. 2.4) and the *African Charter on Human and People's Rights* (Art. 16). The equal right to health care is further guaranteed by the *Convention on the Elimination of All Forms of*

---

[19] Rushwan, H. (1996). "Female Genital Mutilation: Overview and Framework for the Integration of Activities into UNFPA Three Core Program Areas". Unpublished working paper for UNFPA technical consultation on female genital mutilation; pp. 10

[20] Hosken, F. (1993). The Hosken Report: Genital and Sexual Mutilation of Females, fourth edition. Lexington, MA: Women's International Network; pp. 39-40.

Discrimination against Women[21] As it interferes with healthy genital tissue in the absence of medical necessity and can lead to severe consequences for a woman's physical and mental health, Female Genital Mutilation is a violation of a person's right to the highest attainable standard of health.

Legal instruments for the protection of children's rights specifically call for the abolition of traditional practices prejudicial to their health and lives. The Convention on the Rights of the Child makes explicit reference to harmful traditional practices and the Committee on the Rights of the Child, as well as other United Nations Human Rights Treaty Monitoring Bodies, have frequently raised Female Genital Mutilation as a violation of human rights, calling upon State Parties to take all effective and appropriate measures to abolish the practice.

However, International law stipulates that freedom to manifest one's religion or beliefs might be subject to limitations necessary to protect the fundamental rights and freedoms of others.

Therefore, social and cultural claims cannot be evoked to justify Female Genital Mutilation.

2.3 FGM AND LEGISLATION

Whether or not traditional FGC practitioners would abandon the practice if the law were strongly enforced is not clear. There is strong sentiment that FGC is a cultural

[21] *(Art.12).Convention of Elimination of all forms of Discrimination against Women.*

practice that cannot be governed by civil legislation. Thus, while prosecuting FGC practitioners may reduce their activity, it is unlikely to reduce community support for the practice. Given the experience from other areas in Kenya, it may lead to increased demand for FGC from others, such as medical staff.

The criminalization of FGM practice only caused it to go underground, necessitating a different approach to its eradication. Kenya has attempted to legislate against FGM through a parliamentary motion that failed in November 1996 however in 2001 through ratifying the Children's Act, FGM is illegal in Kenya and through the efforts of the Members of the Kenyan Women Parliamentary Association a bill specifically addressing FGM is currently in parliament and within the year the bill may be passed into law. The Sexual Offences Act, the Children's Act, the National Commission on Gender and Development Act, the Affirmative Action Bill and the Domestic Violence Bill are some of legal measures currently in place aimed at curbing the vice. Alternative rites of passage have also been organized for girls and traditional circumcisers educated on alternative means of earning income."But we've noted a trend whereby parents are taking their daughters to be circumcised secretly in hospitals, thus frustrating our efforts," said Ms Murugi. At a Monday's launch at a city hotel was attended by, among others, representatives of the United Nations Population Fund.

Most FGM eradication activities in Kenya have been shouldered by various non-governmental organizations (NGOs): Maendeleo Ya Wanawake Organization, PATH (

Program For Appropriate Technology in Health), International Federation of Women Lawyers (FIDA),CARE Kenya, UNICEF etc.

Although Kenya passed a law prohibiting FGM in 2001, Kenyan authorities have been slow to implement the law. According to **Ken Wafula** from Center for Human Rights and Democracy, "There is a need to train chiefs and their assistants and equip them with relevant legal knowledge and materials like the Children Act, which they don't have."

December is commonly known to be the season when a large number of genital mutilations of girls occur in Kenya. The year 2007 experienced significantly higher numbers in FGM than usual for a number of reasons: the focus on elections by the media and other institutions, reluctance of male political leaders to speak out against FGM and the negligence of Kenyan authorities to enforce the law.

Elaborating on the political situation and isolation faced by activists in Marakwet, Hellen Toroitich from Marakwet Girls and Women Project says, "The provincial administration is not saying anything about FGM and we have been left alone. The male political aspirants are not in a position to help for fear of losing votes."

Marakwet East MP Linah Jebii Kilimo said there was need to entrench FGM in the constitution to criminalizes it and make it a human rights issue. "The Children's Act protects only up to the age of 18 then what happens after that?" the MP posed. "We have had cases where women are circumcised when they are giving birth and there are some communities where if you die before being circumcised, they will cut you when

you are dead. It's as though it's a crime not to be cut," she said. "The government has not done much because you don't find government officers talking about it," she added.

Murugi said her ministry was putting up a spirited campaign in the affected areas to sensitize people on the effects of the practice. She also accused the police of frustrating the war against FGM/C 'because they do not respond in time to arrest offenders'.

"We have had situations where the police are called to rescue a girl undergoing the act and they say it is a domestic matter that do not need their attention. This is one of the frustrations my officers undergo at the ministry," she said, citing a recent incident in Narok. She added: "And that is why we need the law to be amended to make this act a serious criminal offence."

Section 14 of the Children's ACT outlaws FGM/C, stating that; 'no person shall subject a child to female circumcision, early marriage or other cultural rites, customs, or traditional practices that are likely to negatively affect children's life, health, social welfare, dignity or physical or psychological development.'

This law has limitations in that it protects girls only up to the age of 17 years and does not protect women from being forcefully circumcised.

"By placing FGM/C within the Children's Act, it is seen as children's issue rather than being of wider significance and therefore carries little weight," Murugi protested.

The UNFPA-funded report also faults the Kenyan law for the increased prevalence in the country. "It is not a stand-alone law and the absence of FGM/C legislation in the Sexual Offences Act is a lost opportunity as it may be more effectively implemented within this framework," it states.

Hannah Ndung'u, Nanyuki's acting senior principal magistrate, urged minors on Tuesday to make applications so that they can receive compensation from their parents. Speaking during an alternative rite of passage event at the Al'Jijo primary school in Laikipia North district, Ndung'u expressed hope that penalties to be imposed against rogue parents would help eradicate the retrogressive practices. But the lawsuits, she observed, should be filed before the girls attain 18 years of age. Ndung'u noted that the penal code illegalizes any violation of children's rights, especially where their bodies would be harmed.

Despite all that traditional FGC practitioners continue performing FGC due to the monetary gains received and in response to continued demand for their services. One practitioner said that she had stopped after seeing the complications suffered by circumcised girls and women. Others said that they would abandon the practice if they had an alternative sustainable source of income and if the government enforced anti-FGC laws. "If the force or law enforcement comes, then nobody will be willing to break the laws. If the government bans our profession, then we have no choice, even if it is important culture." (FGC practitioner, North Eastern)

CHAPTER THREE

3.0 METHODOLOGY AND SCOPE OF WORK

The study uses both qualitative and descriptive techniques in analyzing secondary data and information on the prevalence of FGM in Kenya. Analysis of the law and policies affecting women and whether they are informed by statistics on the situation of women in Kenya is also present.

As indicated in the previous section, the prevalence of FGM in both Kisii and Meru remain some of the highest in Kenya, despite considerable resources being allocated by agencies and the government over recent years to encourage the two communities to abandon FGM. This study was conducted to investigate the context within which FGM is carried out in Kisii and Meru to combat FGM and to provide an assessment of the factors which would need to be taken into account when selecting Alternative Rites of Passage (ARP) approaches for the abandonment of FGM in these districts.

The literature review indicated that the success of interventions to encourage the abandonment of FGM depends on the cultural context of the communities. Consequently, separate case studies for Meru and Kisii were developed exploring the social context within FGM takes place, including the pressures to continue the practice and the factors which contribute to its abandonment. By analyzing the way in which ARP-type approaches have been used, it was hoped to identify the key factors necessary for the successful in the use of ARP-type approaches in the abandonment of FGM.

3.1 RESEARCH DESIGN

The study used a qualitative approach, exploring attitudes and social practices in order to understand the factors which influence decision-making in relation to FGM. Focus group discussions (FGDs) and key informant interviews (KIIs) using semi-structured questions were conducted with selected respondents in the two districts. The respondents were chosen to represent most of the key stakeholder groups involved in FGM in the two communities.

FGDs were conducted with the following groups:

- Mothers, with separate groups for mothers whose daughters:

(a) have been cut;

(b)have not been cut; and

(c) have been through an ARP ceremony (in Kisii) or who have attended a rescue camp (in Meru)

- Community leaders (men and women);
- School teachers;
- Young women over the age of 18, with separate FGDs for:

(a) those who have undergone FGM; and

(b) those who have not undergone FGM;

- Young women over the age of 18 who have participated in ARP ceremonies – this group was only interviewed in Kisii;
- Young men over the age of 18, with separate FGDs for those who were married and unmarried;

- Older men and women.

Interviews were held with these groups of selected individuals: (appendix A);

- Key individuals in Meru and Kisii, including police and paralegal officers, local administrators, managers from local agencies implementing FGM activities, a traditional circumciser and a retired nurse who used to circumcise.

RATIONALE FOR THE SELECTION OF RESPONDENTS

Parents were included as they are among the key decision makers about whether a girl undergoes FGM. Even in cases where girls make the decision themselves, parents often influence their daughter's opinion, and are likely to arrange for the ceremony. ***Community leaders*** are influential in upholding cultural traditions in both regions and in Kuria the Council of elders decides on the timing of the FGM season. Previous studies have highlighted the importance of including men as well as women in interventions to encourage the abandonment of FGM, especially as social respectability and ability to get married are some of the reasons driving the practice.

Traditional circumcisers were interviewed because of their direct involvement in perpetuating FGM, but they can also be powerful agents for encouraging its abandonment. In Meru and Kisii, traditional circumcisers have been involved in the ARP ceremonies and teaching at the rescue camps. ***School teachers*** have been included as potentially influential people in the lives of young people. Various NGO's have been working with schools to establish student clubs to discuss and question issues like early marriage and FGM. The views of young women themselves are essential to

understanding the factors driving FGM and the impact of ARP ceremonies. ***Young women (over 18 years)***, including those who have undergone FGM, those who have participated in ARP and those who have not undergone either of these practices were also included in the study. ***Health professionals*** were included because of their documented involvement in the practice in Kisii area, driven by demand from the community arising from increased awareness of the health risks associated with FGM. ***Police officers and Children and Gender officers*** have been included as they have a role to play in upholding the law on FGM and in child protection.

3.2 SAMPLING SIZE

Five focus-group discussions (FGDs) and five interviews were conducted over a period of 2 weeks in Meru and Kisii. Each FGD had a maximum of 5 participants and lasted between 20 and 40 minutes. KIIs lasted between 25 and 45 minutes. A total of 30 participants were interviewed (appendix A), 15 in Meru (7 men and 8 women) and 15 in Kisii (6 men and 9 women).

With the help of NGO's the respondents were willing to participate during a community awareness in the two districts and even helped set up the FGDs, to ensure that they were representative of the local community and stakeholders. The two organizations started identifying and mobilizing the target groups in late November last year. Two local agencies from the districts discussed the aims of the survey and the relevance of the various target groups for FGDs and interviews.

Community mobilization meetings were subsequently undertaken in Meru and Kisii to raise awareness about the research, to pilot the questions to be used and to enable the recorders from the partner organizations to develop their skills. These groups had up to 5 participants, from whom a cross-section of individuals were invited to participate in the FDGs.

3.3 DATA ANALYSIS

FGDs were conducted in Kisii and Meru at venues accessible to the participants, facilitated with the help of an experienced researcher who was informed about FGM and expertise in qualitative research, including FGD facilitation. All FGDs were conducted in Kiswahili and the notes translated into English. Before each FGD or interview, I as the researcher explained the research to all the participants and obtained their consent to participate (see informed consent forms in appendix B and C). Even used a questionnaires to obtain the valuable data(appendix D)

As a qualitative study, data analysis was interpretive, rather than statistical. Data was collated using a case study approach, constructing brief mini-cases in narrative form from each of the FGDs and individual interviews, using the frameworks provided by the questions as a template (see appendix B). The mini-cases were drafted within a few days of the FGDs, whilst the researchers were still in the communities. This enabled data verification to take place between the researcher, the recorders and at times the respondents at this early stage. Once the mini-cases were completed, larger, more

comprehensive case studies were produced separately for Kisii and Meru, drawing on the mini-cases.

3.4 RESEARCH APPROVAL

This study was consented by the various respondents I was able to interview during my research. Ethical clearance was not required for the study, as it did not involve under 18s, and did not include any invasive procedures.

3.5 LIMITATIONS IN THE STUDY

Due to the time frame my research did not exhaustively cover all the arguments for and against the practice of FGM and not every respondent was particularly responsive during the interviews. However the views presented above are true to my knowledge.

CHAPTER FOUR

4.0 FEMALE GENITAL MUTILATION IS A VIOLATION OF HUMAN RIGHTS.

INTRODUCTION

Female Genital Mutilation of any type has been recognized as a harmful practice and a violation of the Human Rights of girls and women. Human rights;-civil, cultural, economic, political and social are codified in several International and Regional treaties. The legal regime is complemented by a series of political consensus documents, such as those resulting from the United Nations World Conferences and Summits, which re-affirm human rights and call upon governments to strive for their full respect, protection and fulfillment.

Many of the United Nations Human Rights treaty monitoring bodies have addressed Female Genital Mutilation in their concluding observations on how States are meeting their treaty obligations. The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC) and the Human Rights Committee are the key committes which have been active in condemning the practice and recommending measures to combat it, including the criminalization of the practice. The Committee on the Elimination of All Forms of Discrimination against Women issued its General Recommendation on Female

Circumcision[22] that calls upon states to take appropriate and effective measures with a view to eradicate the practice and requests them to provide information about measures being taken to eliminate Female Genital Mutilation.

Strong support for the protection of the rights of women and girls to abandon Female Genital Mutilation is found in International and Regional Human Rights treaties and consensus documents which condemn the practice in some form or another e.g. the bodily and sexual injuries, discrimination against women and girls e.t.c. Despite all this legislation, few countries are taking direct action to stop FGM and prosecute those people who participate in FGM-related practices and have been discussed thereafter. They include:

International treaties

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on Civil and Political Rights
- Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child

[22] *General Recommendation No 14 1990*

• Convention relating to the Status of Refugees and its Protocol relating to the Status of Refugees

Regional treaties

• African Charter on Human and Peoples' Rights (the Banjul Charter) and its Protocol on the Rights of Women in Africa

• African Charter on the Rights and Welfare of the Child

• European Convention for the Protection of Human Rights and Fundamental Freedoms

Consensus documents

• Beijing Declaration and Platform for Action of the Fourth World Conference on Women

• General Assembly Declaration on the Elimination of Violence against Women

• Programme of Action of the International Conference on Population and Development (ICPD)

• UNESCO Universal Declaration on Cultural Diversity

• United Nations Economic and Social Council (ECOSOC), Commission on the Status of Women.

Before the United Nations began official discussion of the issue, it was not until the 1970's, at the instigation of Non-Governmental Organizations, that United Nations agencies were pushed to address the multitude of problems related to the practice. In

July, 1980, the World Conference of the United Nations' Decade for Women was held in Copenhagen on the sub-themes of health, education and employment. In 1984, participants from twenty African countries, as well as representatives of International Organizations attending a seminar in Dakkar on "Traditional Practices Affecting the Health of Women and Children", recommended that the practice be abolished. States acknowledged that there was a need to establish strong, on-going education programmes for meaningful progress towards elimination of the practice.

FGM was again addressed by the 1993 United Nations World Conference on Human Rights. A Conference declaration stated:

The World Conference supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl-child. The World Conference urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl-child.[23]

In 1995, the Platform for Action of the World Conference on Women in Beijing included a section on the girl child and urges Governments, International Organizations and non -Governmental groups to develop policies and programmes to eliminate all forms of discrimination against the girl child including FGM.

---

[23] *Female Genital Mutilation: UNITED NATIONS ACTION, World Health Organization, August 1996,*

Canada plays a prominent role in the international arena as a supporter and promoter of women's human rights. In 1995, at the 9th United Nations Congress on the "Prevention of Crime and the Treatment of Offenders", Canada introduced a resolution on the "Elimination of Violence Against Women" (Agenda Item 6: Cairo Egypt, April 29 - May 8,1995). The resolution, which was passed by the Congress, strongly urged States, *inter alia,* to take measures to:... *prevent, prohibit, eliminate and impose effective sanctions against rape or sexual assault, sex abuse and all practices harmful to women and girl children, including* ***Female Genital Mutilation*** *(emphasis added).*

International Conventions, Covenants and Declarations which Canada has signed recognize that human beings have the inherent right to life, equality, freedom and security,[24] the right not to suffer discrimination, the right to the best possible state of physical and mental health, [25]and the right not to be subjected to torture or to cruel and degrading punishment or treatment. FGM and the International Conventions have been have also been discussed in the following topics inorder to safeguard the general human rights.

---

[24] *Universal Declaration of Human Rights, Art. 3; International Covenant on Civil and Political Rights, Art. 9; International Convention on the Elimination of all Forms of Racial Discrimination, Art. 5(b).*

[25] *International Covenant on Economic, Social and Cultural Rights, Art. 12.*

4.1 HUMAN RIGHTS, LEGAL AND PROFESSIONAL RESPONSIBILITY ISSUES

4.1.1 Human rights

FGM is clearly not just a matter of health problems. It also engages some fundamental human rights guaranteed by a variety of International agreements, the most significant of which, in terms of UK law, is the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, drawn up by the Council of Europe in 1950. This has now been incorporated into domestic law through the Human Rights Act 2000. The Act affords citizens a variety of legal remedies in circumstances where their rights have been interfered with. Relevant rights in the context of FGM include:

- Article 3 – protection against inhuman or degrading treatment
- Article 8 – the right to respect for privacy and family life.

The requirements of the Convention reflect, very closely, existing good professional practice. Accordingly, for a health professional to act contrary to acceptable professional standards, is likely to be a breach of the Human Rights Act 2000. A failure of the state to fulfil its positive obligation to protect child and adult female rights in these circumstances, by prosecution or otherwise, will itself be open to challenge under the Human Rights legislation.

Various forms of mutilation, whether carried out for religious or social reasons, and conducted without the child's consent and for non-therapeutic purposes, infringe the child's right to bodily integrity. Although parents have rights to bring up their children according to their own beliefs, the rights of the child to protection come first and courts will inevitably weigh the balance more heavily in favor of child protection.

4.1.2 Professional responsibility

Health care professionals have a responsibility to ensure that their practice is performed within contemporary law and policy as well as related professional codes. While the overarching legal issue related to FGM is its illegality, practitioners must also ensure that they provide care and support that is consistent with safeguarding law and policy. Professionals should be familiar with "*What to do if you are worried a child is being abused.*"[26]

And *working together to safeguard children*[27] and the appropriate sections of the Children Acts of 1989 and 2004 of England and Wales or Scottish legislation.

All areas have in place local procedures for safeguarding children, young people and vulnerable adults, and all practitioners must ensure that they are aware of and follow these procedures. Area-based procedures are produced by Area Child Protection Committees, which will soon become Local Children's Safeguarding Boards in England

[26] *(DH,2003)*

[27] *(DH, 1999)*

and Wales. Also, practitioners must have in mind their responsibilities under Articles 3 and 19 of the UN Convention on the Rights of the Child, of which the UK is a signatory. All nurses and midwives have a duty of care to girls and women who are at risk of having FGM performed, or who have already been cut in the past. The Nursing and Midwifery Council's (NMC) *Code of Professional Conduct* states that nurses and midwives in the UK must 'act to identify and minimize risk to patients and clients' (2002). There are clear child protection issues, as well as the practical and psycho-social care issues that are considered later. It is essential to collaborate with others such as teachers and social service colleagues. The police may also need to be involved in an emergency.

Safeguarding girls at risk of harm through FGM poses specific challenges because the families may give no other cause for concern such as parenting responsibilities or relationships with their children. Family members may indeed believe FGM is the loving thing to do and consider that it is in the child's best interest. Adults may find it difficult to understand why the authorities should intervene in what they may see as a cultural practice specific to their way of life. The family situation may be compounded by those who wish girls to be ritually cut when others disagree. Similarly there may be an inter-generational element, or husband and wife may have differing views about their daughters. The wish to carry out FGM is also not confined to individuals within particular levels of education or social class. The pressure to undertake this procedure

may be embedded in family structures. At all times, however, it is important to 'think the unthinkable', and act with 'respectful uncertainty'[28]

Four specific issues are important in this context:

1. An illegal act being performed on a female, regardless of age
2. The need to safeguard girls and young women at risk of FGM
3. The risk to girls and young women where a related adult has undergone FGM
4. Situations where a girl child may be removed from the country to perform FGM.

Under Articles 19 and 36 of the UN Convention on the Rights of the Child any person below the age of 18 has the right to protection from activities or events that may cause them harm.

These articles are enshrined in recent Human Rights legislation, as well as reflecting other laws including the Children Act 2004 (England and Wales), Protection of Children Act (Scotland) 2003 and Children (Northern Ireland) Order 1995. This requirement is in addition to other legislation that criminalizes the practice of FGM.

Under the Children Act (1989) section 47, everyone who has information that a child is potentially or actually at risk of significant harm is required to inform social services or the police. Initially the practitioner will refer as a *child in need* and social services will assess the risk. This definition of harm has been extended in the Adoption and Children Act (2002), which includes where someone sees or hears the ill-treatment of another.

[28] *(DH, 2003).*

Specifically, this relates to situations where there may not be direct disclosure of FGM being performed.

4.2 COMPARATIVE ANALYSIS

4.2.1 The Kenyan legal framework

The Government of Kenya is a signatory to International Conventions and treaties that address FGM. Examples are : Convention of the Elimination of all forms of Discrimination against Women defines "Violence against Women" as encompassing, *inter alia*, "Female Genital Mutilation and other traditional practices harmful to women".[29]

FGM was again addressed by the 1993 United Nations World Conference on Human Rights. A Conference declaration stated:

> *The World Conference supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl-child. The World Conference urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl-child.*[30]

---

[29] *Declaration of the United Nations General Assembly on the Elimination of Violence Against Women, Plenary Session A/Res./48/104, December 20, 1993.*

[30] *Female Genital Mutilation: UNITED NATIONS ACTION, World Health Organization, August 1996.*

The *Convention of the Rights of the Children* explicitly requires States to take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children. The African Charter on Human and People's Rights include the following the: Right to gender equality, Right to be free from all forms of mental and physical violence and maltreatment, Right to be free from torture or cruel, inhuman, degrading treatment. It is also a requirement that member states take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children.[31]

Alongside those, there has been implementation of the International laws into our domestic laws which have tried to condemn and outlaw the practice. The government is required under the law to implement and safeguard rights of the child through the courts of law and its administrative system. This has been done through:

- The Kenyan Constitution.
- The Kenyan Penal Code.
- The Children's Act 2001

Under the Kenyan Constitution section 74 protects every individual from torture inhuman and degrading treatment. "No person shall be subject to torture or inhuman or

[31] *African Charter on Human and People's Rights.*

degrading punishment or other treatment."[32] Offences relating to FGM have heavily relied on this provision stating FGM is torturous since in most cases the girls and the women are forced to partake the practice and its inhuman to their dignity since there are deprived of sexual pleasure.

The Penal Code Article 251 states that "Any person who, with intent to maim, disfigure or disable any person or to do some grievous harm to any person is guilty of a felony and is liable to imprisonment for life, with or without corporal punishment".[33] This Provision has provided for a penal offence in which punishment can be administered for offences relating to FGM.

Other statutes which have dealt with Female Genital Mutilation in Kenya are:-

Sexual Offences Act (Sec 29)- Cultural and religious offences

Forcing a person to take part in a sexual act for cultural or religious reasons is an offence under the Act and prescribes a minimum sentence of 10 years. This clause is important in helping curb harmful cultural practices like early child marriages and cultural rites of passage e.g. FGM

The Proposed FGM bill provides for punitive penalties including a jail term of seven years or a fine of 500,000 Kenya Shillings for anyone convicted of FGM offence. Moreover, anyone who causes death in the process of carrying out FGM will be liable to life imprisonment. It also seeks to remove some of the loopholes in current

[32] *The Kenyan Constitution.*
[33] *Penal code.*

legislation, for example by remove the requirement for the police to obtain a warrant to enter premises where they suspect FGM/C is being carried out.

The National Commission on Gender and Development, the Affirmative Action Bill and the Domestic Violence Bill are some of legal measures which were established and it aimed at curbing the vice. They generally stated that customs / traditional practices that are likely to affect the child negatively should be abolished.

Children's Act, Cap 586 of Laws of Kenya defined a child as any human being under the age of 18 years and provides for the following safeguards for the rights and welfare of the child:-

- Realization of the rights of the child.
- Inherent right to life.
- Right to education.
- Right to religious education
- Right to health care.
- Right to privacy.

The Children's Act also offers protection to the child from:

- Torture and deprivation of liberty.
- Sexual exploitation the law
- Abuse including physical, sexual, psychological and mental injury.

The above protection was also presumed to protect children from harmful cultural practices such as FGM since it was regarded as abuse encompassing physical, sexual psychological and mental injury.

The biggest achievement in legislation in trying to outlaw Female Genital Mutilation was the revision of the Children's Act Cap 586 and the enactment of Children's Act No 8. 2001 which also includes the above rights and protection. Under section 14 of the said Act states specifically " no person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development"

It is therefore clear that the practice of FGM/FGC violates the laws of Kenya under this provision. Section 20 notes that any convictions of FGM related offences carries penalties of 12 months imprisonment or a fine of kshs. 50,000 or both. (The conviction here includes the person who takes or forces the girl to be circumcised, the circumciser and those involved in the ceremonies).

4.2.2 The UK legal framework

Two Acts of Parliament have made it a criminal offence for anyone to perform aid, abet, or counsel to procure FGM in the United Kingdom. It is also illegal to take a child

out of the country to perform FGM. The Acts are the Prohibition of Female Circumcision Act 1985 and the Female Genital Mutilation Act 2003. The 2003 Act applies to England, Wales and Northern Ireland. Scotland has passed the Prohibition of Female Genital Mutilation (Scotland) Act 2005. Doctors, nurses and midwives participating in FGM also face removal from their respective professional registers and would be prosecuted for taking part. The 1985 Act states that it is an offence for any person to:

- 'excursion, infibulate or otherwise mutilate the whole or any part of the labia majora or clitoris of another person'
- 'aid, abet, counsel or procure the performance by another person of any of those acts on that other person's own body.'

This also means that following childbirth or de-infibulation, the anterior middle incision can only be over-sewn and not closed back to its original state.

However, because of a legal loophole concerning taking girls out of the country for FGM, and the consequent lack of prosecutions, it became necessary to amend the law and repeal the 1985 Act. The Female Genital Mutilation Act (2003) came into force in March 2004. It sends a strong message to communities practicing FGM, and practitioners involved in aiding, abetting, counseling to procure and performing FGM, that the practice is no longer acceptable in the UK even if performed in another country.

One important aspect to note is the change in terminology from *circumcision* to *mutilation.*

The main changes made are:

- It is now against the law for 'UK nationals or permanent UK residents to carry out FGM abroad, or to aid, abet, counsel or procure the carrying out of FGM abroad, even in countries where the practice is now legal' (2003). This means that the law protects any girl who is a UK national or permanent resident from FGM anywhere in the world
- The penalty has been increased from 5 to 14 years' imprisonment
- *Mutilation* is used instead of *circumcision.*
- 'aiding, abetting and counseling applies to those who assist or persuade a girl to perform FGM on herself even though it is not itself an offence for that child to carry it out on herself.

Girl includes woman' (Female Genital Mutilation Act, 2003) although not an offence for a girl or young woman to perform FGM on herself, consideration should be given to whether such self-harm is a safeguarding issue where the action may be the result of adult pressure.

Midwives need to note that it is illegal to reinfibulate a woman following the birth of her baby. This is crucial although FGM is clearly illegal in UK, and it is against the law to take girls and young women out of the country to perform FGM, the law should be seen as only one aspect of tackling FGM. Safeguarding law provides the framework through which a girl or young woman's needs are assessed and her best interests considered. The welfare of the child is the paramount issue according to the Children Act (1989), and allows legal action to be taken. However, legal measures may not be appropriate if protection cannot be achieved without them. Judgmental attitudes are potentially harmful and bringing about change is more effective if people's long-held attitudes are addressed. It is important to promote understanding and to protect girls and women from the practice through a continuing programme of education and awareness-raising. This needs to include explaining the reason why FGM is considered to be a violation of human rights, and the connection between the procedures and the long-term effects on the body and the emotions.

To safeguard children and young people as required by UK law, it may be necessary to give information to people working in other parts of the health service or outside of it. For some practitioners this can pose dilemmas when it involves going beyond the normal boundaries of confidentiality. Nonetheless, both law and policy allow for disclosure where it is in the public interest or where a criminal act has been perpetrated. Guidance about disclosure is available in *what to do if you are worried a child is being*

abused.[34]Parents are responsible for their children and they may fear having this responsibility (or even the child) taken away from them. There may also be the perception that passing on information can damage the relationship of trust built up with families and communities. However, it is crucial that the focus is kept on the best interests of the child as required by law.

The NMC (2002) gives clear guidance when a nurse or midwife can breach confidentiality. It is normally expected that information is shared with others only with the consent of the patient or client, but makes provision for when this is not possible 'if the patient or client withholds consent, or if consent cannot be obtained for whatever reason'. Disclosures may be made only where they:

- can be justified in the public interest (usually where disclosure is essential to protect the patient or client or someone else from the risk of significant harm)
- are required by law or order of court.

The NMC guidance also states: 'Where there is an issue of child protection, you must act at all times in accordance with national and local policies.'

Lord Laming in his report of the inquiry into the death of *Victoria Limbe* makes a statement that is helpful to practitioners involved in protecting girls at risk of FGM:

[34] *(DH, 2003).*

'The basic requirement that children are kept safe is universal and cuts across cultural boundaries. Every child living in this country is entitled to be given the protection of the law, regardless of his or her background. Cultural heritage is important to many people, but it cannot take precedence over standards of care embodied in law.'

In Kenya, there are no such strong laws that govern the midwives or medical personnel from practicing FGM as well as binding them to have a professional responsibility to protect the young girls and women from FGM where they can be able to report to an authority that a child has been brought to undergo the cut although this can pose dilemmas when because it goes beyond the normal boundaries of confidentiality. In UK law and policy allows for disclosure where it is in the public interest or a criminal act has been perpetrated. Strong measures need to be enforced in order to completely eliminate FGM.

Kenya also lacks laws or provisions which can prevent a child from being taken out of a country in order to undergo FGM. In UK Child Abduction and Custody Act (1985) and other statutes has enable them to curb the practice since the girl is prevented from being removed from a country by a parent or an adult to be circumcised. Kenya requires such laws as well as more punishment rather than the 12months imprisonment or the 50,000 shillings fine to completely deter members of the community from practicing it.

CHAPTER FIVE

5.0 OBSERVATIONS AND CONCLUSIONS

World Health Organization conducted a study that showed that FGM in Kenya still rampant, with the three Gusii districts of Kisii, Gucha and Nyamira recording the highest rate - 97 per cent as well as parts in North-Eastern, Central provinces."Circumcision is part of a people's culture and telling them that it is primitive only makes them aggressively defend it and continue practicing it," says Prof Jesse Mugambi of the University of Nairobi's Cultural Studies Department.

FGM has been condemned by numerous International and Regional bodies including: the World Health Organization, United Nations Commission on Human Rights, the United Nations International Children Emergency Fund (UNICEF), the African Union and the World Medical Association. In addition to the broader issues of health and human rights of the child, FGM is gender-specific discrimination related to the historical suppression and subjugation of women that is unique to women and female children this was outlined in the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child CRC which have vehemently tried to ensure the abolition of harmful practices which affect the women and female children.

Kenya being a signatory of the various Conventions that outlaw FGM, it has domesticated the provisions of International Legislations in their National laws for example in the Children's Act 2001 in section 14 the Act prohibits the performance of the procedure in children. However, many Kenyan girls and women have undergone Female Genital Mutilation after the passage of the Children's Act law passed by Parliament in 2001. Therefore there is a need to reinforce the laws curbing Female Genital Mutilation in Kenya. There is much that needs to be done to curb the vice apart from domestication of International legal provisions since the practice has gone underground and is being performed in silence there is need for it to be given a major focus in the fight against FGM.

The Former Assistant Minister for Higher and Technical Education, Beth Mugo criticized the current Kenyan legislation for leaving women over the age of 18 with no legal grounds to resist FGM. "A bill needs to be enacted to criminalize the practice completely," says Mugo.

Former Minister of Home Affairs Linah Jebii Kilimo says the practice is still widespread. She estimates that 38 percent of Kenyan women have undergone FGM and that the figure soars to 80 or 90 percent for girls in some of the more rural districts."Despite legal instruments already in place, the government has not yet set all structures in place to fully implement their provisions," says Kilimo, who spoke with Women's ENews in September, during a Conference in Nairobi about promoting the

Maputo Protocol, part of the African Charter on Human and People's Rights that outlaws any form of abuse on women and was adopted in August 2003.

Kilimo says politicians are doing little to actively combat FGM because the practice is still so culturally ingrained and esteemed in Kenyan society. "Despite their actions in December 2001, Kenyan Parliamentarians have showed reluctance to discuss FGM," she says. "Indeed it appears that politicians fear losing voters. As a result those who speak against it risk isolation by their peers."

FGM is viewed as cultural practice, which, if threatened, endangers the cohesion of an entire community, says Rukia Subow, Vice Chair of Maendeleo Ya Wanawake Organization (MYWO. "FGM is considered most significant rite of passage to adulthood, enhancing tribal cohesion, providing girls with important recognition."

For centuries, FGM was performed openly in Kenya, sometimes as part of public village ceremonies. After being outlawed, however, it went underground. To the dismay of many anti-FGM advocates who worked to dissuade midwives from performing the traditional rite, it is conducted under a cloak of secrecy in more clinical environments, such as rural and small-city hospitals. There are even accounts of mobile FGM clinics, in which nurses and clinicians move from village to village, easily eluding police. The government as well civil society must come up with strategies to counter the practice once and for all and my recommendations in doing so would be the following.

5.1 RECOMMENDATIONS

There is need to intensify general education among the public be it health education, civic education at all levels with the emphasis on the dangers of FGM. This has been done through the Non-governmental organizations who have set up seminars to educate the women on the dangers of FGM and the need to for alternative rite of passage. MYWO has started this in which government can take initiative to go to the grass root level and educate the rural woman as well as the urban woman which will ensure all kinds of women receive education on FGM.

There is need for the government to establish strong, on-going education programmes for meaningful progress towards elimination of the practice. In doing so the government must focus its effort in the development of policies and programmes to eliminate all forms of discrimination against the girl child including FGM. The government must be in forefront in supporting and promoting the rights of the child.

The civil society may also assist in the drawing up of gender responsive agendas for the community development in which the community is involved actively in planning of programmes which affects them.

It is also imperative for the Ministry of Education to introduce anti-FGM curriculum in schools this will promote the education of the girl-child as she will be empowered to make informed decisions thus curbing the practice.

It is not enough for the government to come up with legislation like the Children's Act 2001, it is equally important for the government to implement the provisions of the said Act especially section 14 and strengthen the departments charged with the implementation of such policies in areas where the practice is rampant this can be done through the police and provincial administration.

The government also needs to formulate stronger laws and policies which outlaw the vice in all aspects meaning create laws which prohibit the midwives and medical personnel from aiding in the performance and those who do the procedure secretly should be taken to court and charged with the offence so that they can serve as an example to other FGM Practitioners so that they can quit the practice. In addition they enact laws which also protect women over 18 from being forced to circumcision as the Mungiki do circumcise their women forcefully.

The church, civil society and provincial administration should work together in enlightening the communities on the dangers of the practice and the positive attitudes that may come about if they abandon the practice. The civil society may also conduct country wide anti-FGM campaigns which could sensitize the community so that they be able to report incidences of FGM. Gender sensitization of the public consciousness is also construed as being necessary of women who have undergone the practice in order to eradicate the stigma attached to those who have undergone it.

Guidance and counseling also acts as a sensitization forum, plays a big role as the children and women are imparted with knowledge about the dangers of the practice and in turn use to educate their families especially those whose parents are illiterate. This can be offered in schools in the Guidance and Counseling Department. Guidance and Counseling should also be provided for both victims and non-victims to enable these two groups to interact and accept one another.

An alternative rite of passage should be introduced in order to eliminate the practice completely. This would allow positive aspects of a culture to be retained such as the education given during the transition of childhood to adulthood. An alternative rite of passage can focus on the religious rights and responsibilities, health and community obligations required from the girl. This is referred to as "initiation without mutilation.

5.2 CONCLUSION

The findings of this study show that, despite strong social resistance, progress towards abandonment of FGM can be achieved through well-focused, incremental programmes and strong legal policies implemented. This study provides some insights into the factors, in Meru and Kisii, which contribute to the continuation of FGM and those which encourage its abandonment.

The study identified a section of the communities in both Kuria and Kisii, who are informed about the health risks of FGM and would prefer not to have their

daughters circumcised, but who feel the stigmatisation of uncircumcised women is so strong that they will send their daughters to be cut in order to be socially acceptable. Reducing the stigma against uncircumcised women is therefore a crucial element in future strategies to encourage abandonment in Meru and Kisii. Although more could be done to increase awareness about the health risks and illegality of FGM, this study suggests that a combination of having respected figures in the community consistently opposing FGM in their public and private lives, combined with appropriate action taken against those who continue the practice would help them to make the brave step not to have their daughters circumcised. This should be seen especially among the Poltical leaders. The study concludes, therefore, that Alternative Rites Passage is most effective when it takes place at the end of a structured girls empowerment programme and involves a community ceremony, and is explicitly recognised as an alternative to undergoing FGM. In this way ARP can play a role in reducing the stigma against uncircumcised women, by presenting them as young women who have undergone a thoughtful and culturaliy appropriate programme of education and have acquired skills and knowledge for their adult role in their society. It is hoped that the findings from this study will enable more effective interventions to be developed in Meru and Kisii to encourage the abandonment of FGM.

REFERENCE

African Commission on Human and People's Rights website: www.achpr.org/english/_info/

Chege J, Askew I and Liku J (2001) *An assessment of the Alternative Rites Approach for Encouraging Abandonment of Female Genital Mutilation in Kenya*. FRONTIERS, Population Council.

Chege Jane(1993)*The Politics of Gender and Fertility Regulation in Kenya*: A case study of the Igembe. Ph.D thesis Lancaster University

Cook, Introduction: *The Way Forward, in Cook*, ed., supra,

Declaration of the United Nations General Assembly on the Elimination of Violence Against Women,Plenary Session A/Res./48/104, December 20, 1993.

Gachiri (2000)*Female Circumcision with Reference to the Agikuyu of Kenya*. Pauline Publishers, Africa, Kolbe Press, Limuru

Gachoka (2001)*Health Crisis among African: Findings,Challenges and Options,* Complied for PACWA in partnership with PMU interlife

GTZ.(2001). *Addressing Female Circumscision:Challenges and Perspectives for Health Programmes*. Part 1:Select approaches.Eschborn:GTZ

International Covenant on Economic, Social and Cultural Rights, Art. 12.

Kenyatta (1938*) Initiation of boys and girls in "Facing Mt.Kenya.*

Ministry of Health, Kenya (2008) *National AIDS/ STD Control Programme: National Guidance for Voluntary Male Circumcision in Kenya.*

Mohamud A, Ali N and Yinger N (1999) *FGM programmes to date: What works and what doesn't work.* Geneva: WHO/PATH

Muteshi J and Sass J (2005) *Female Genital Mutilation in Africa:* An analysis of current abandonment approaches. PATH

Ratified by Canada on December 10, 1981; *date of entry into force in Canada, was January 10, 1999*

Thomas J.(2001) *Repugnant customs colonial economics and the constitution of authority*

Toubia N (1993) *Female Genital Mutilation: A call for Global Action.* New York: Rainbow

UNICEF (undated) *A research review of FGM in East and Southern Africa.*

WHO Kenya Demographic and Health Survey 2008/2009 http://apps.who.int/medicinedocs/

WHO (2007*) Eliminating FGM:A interagency Statement.*

WHO; Regional Plan of Action for Elimination of FGM in Africa

World Vision (2001): *FGM and Early Marriage In Africa. Based on Research from Ethopia, Kenya And Ghana. Gender and Development Office, World Vision International.*

APPENDIX A

SELECTED INDIVIDUALS FROM MERU AND KISII DISTRICT

TOWN/VILLAGE	CATEGORY	NO.OF PARTICIPANTS	AGE GROUP	GENDER
Nyamira	Young Unmarried Women(Circumcised)	4	12-18	Female
Kisii	Married(Circumcised) women	4	30-45	Female
Meru	Married men	3	55-80	Male
Meru	Head teacher	2	40-60	Female
Kisii	Traditional circumciser	2	70-80	Female
Nyamira	Nurse	2	40-47	Female
Kisii	Police Officer	3	30-40	Male
Ntimaru	Parents with uncircumcised girls	3	35-50	Female

APPENDIX B

CONSENT FORM-FOCUS GROUP DISCUSSIONS

Hello. My name is _____ I am a student of law at Kampala International University undertakes research on; THE EFFECTIVENESS OF KENYAN LAW AND POLICY IN CURBING FGM (MERU AND KISII DISTRICT), in partial fulfillment of the requirements of the award of LLB (Hons). I am collecting information from people living in this area about female circumcision. This information will be used by local organizations to improve their program implementation. I would like to invite you to join a group discussion about female circumcision, to learn more about community attitudes and practices. If you agree to take part in the discussion, we will be discussing the group's ideas, attitudes and opinions on various aspects of female circumcision. There are no right or wrong answers to the questions we will ask as I expect that there will be different experiences and opinions among the group participants.

The group discussion will take about 30 minutes. If you do not want to participate in discussing some or any of the issues, you do not have to and you can leave the discussion group at any time.

We will be taking notes of the discussion. No names will be used in the notes and so anything you say will be treated as confidential and the notes will be destroyed afterwards. Any report from this discussion group will not use any names or any other information that may identify any individual person.

Do you agree to participate in the discussion group?

YES / NO

Signature (or mark) of group participant

Date

Signature of interviewer

Date

APPENDIX C

INFORMED CONSENT FORM-INDIVIDUAL INTERVIEW

Hello. My name is _____ I am a student of law at Kampala International University undertakes research on; THE EFFECTIVENESS OF KENYAN LAW AND POLICY IN CURBING FGM (MERU AND KISII DISTRICT), in partial fulfillment of the requirements of the award of LLB (Hons).I am collecting information from people living in this area about female circumcision. This information will be used by local organisations to improve their program implementation. I would like to ask you some questions about female circumcision. If you agree to be interviewed, I will be asking you about your ideas, attitudes and opinions on various aspects of female circumcision. There are no right or wrong answers to the questions I will ask you. Your opinions and experiences are important to us and so we want you to be honest and truthful in answering our questions. The interview will take about 30 minutes. If you do not want to answer any question, you do not have to and you can stop the interview at any time. I would like to take notes of the discussion. Your name will NOT be used in the notes. The notes will be kept safely and will be considered private and confidential. They will be used for this study only and the notes will be destroyed afterwards. Any report from this discussion group will not use any names or any other information that may identify any individual person.

Do you agree that notes can be taken of the interview?

YES/NO

Do you agree to be interviewed?

YES/NO

Signature of interviewer

Date

Signature (or mark) of interviewee

Date

APPENDIX D

QUESTIONNAIRE

I would like us to begin by focusing on the meaning and significance attached to female circumcision in this community.

1. **Generally how does the community here view female circumcision, what meaning, value and importance is attached to the practice?**

Investigate on:

- ∂ How prevalent is the practice?
- ∂ In your understanding, why do some FAMILIES choose to circumcise their girls while others decide not to circumcise them?
- ∂ In your understanding, why do some GIRLS choose to be circumcised and others decide not to be circumcised?
- ∂ From your general observation, what kind of people support and encourage the practice and what kind of people discourage or don't practice female circumcision?
- ∂ From your point of view do you think legislation will help curb out the practice?

2. What are the procedures and practices associated with female circumcision?

***Investigate on*:**

- ∂ Age of circumcision
- ∂ Time (or season) when it takes place and number of girls involved

- ∂ Decision-making power (the girl, mother, father, other relatives or clan)
- ∂ Level of secrecy / knowledge of girls prior to circumcision
- ∂ Implications for a girl failing to comply
- ∂ Who the practitioners are
- ∂ Kind of education, information & skills initiates receive
- ∂ Persons responsible for passing on this education/information
- ∂ Length of period of seclusion
- ∂ Gifts provided to initiate
- ∂ Rights, duties and social expectations of the initiate

3. In your view, what are the main differences between circumcised and uncircumcised girls?

4. In your view, how does the government view FGM and has it aided in this community?

Investigate on:

- ∂ Knowledge of legality
- ∂ Awareness of prosecutions nationally, locally
- ∂ Need for better reinforcement methods, if any suggestions.

5.By taking a stand against FGM are there pressures?

Investigate on:

- ∂ What, if any, pressures are there in your community in relation to FGM?

10.Do you think the law banning FGM practice in Kenya is reasonable in its provisions and how enforceable is it.

.....

.....

.....

