

AUGUST 2010

LEGISLATIVE REFORM TO SUPPORT  
THE ABANDONMENT OF FEMALE  
GENITAL MUTILATION/CUTTING

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## ACKNOWLEDGEMENTS

This publication was drafted by Yasmine Wahba who ably undertook the work and manifested strong knowledge, conceptual clarity, and research skills. An important source document was the *Study on Female Genital Mutilation Related Laws in Select African Union Countries*, undertaken in 2007 by Equality Now and No Peace Without Justice. Technical guidance for preparation, review and finalisation was provided by an interdisciplinary team of UNICEF staff, with the main contributions coming from Francesca Moneti and Caroline Bacquet-Walsh from the Child Protection Section of the Programme Division and Nadine Perrault and Paolo Marchi from the Gender, Human Rights and Civil Engagement Section of the Division of Policy and Practice. Clarice Da Paula e Silva provided support for the initial research. Special thanks go to H.E. Minister Mushira Khattab of the Egyptian Ministry of State for Family and Population and a number of other Egyptian colleagues for providing valuable information on the legal reform in Egypt. Sincere thanks are also due to Marta Santos Pais, Special Representative of the Secretary-General on Violence against Children, Nafissatou Diop, Coordinator of the UNFPA-UNICEF Joint Programme on Accelerating the Abandonment of Female Genital Mutilation/Cutting and Samira Ahmed of UNICEF Sudan for their input.

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## NOTE ON TERMINOLOGY

**Female genital mutilation/cutting (FGM/C)** refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. It reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against girls and women that is profoundly entrenched in social, economic and political structures. The practice is perpetrated without a primary intention of violence, but is *de facto* violent in nature. The terminology “female genital mutilation/cutting” is used in this paper to underline the importance of using non-judgmental language in social contexts where it is deemed to be a necessary part of a girl’s upbringing. Retaining the word “mutilation,” however, emphasises the gravity of the act.

## ABBREVIATIONS

<b>ACPF</b>	The African Child Policy Forum
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CNLPE</b>	Comité National de Lutte Contre la Pratique de l’Excision (Burkina Faso) (National Committee against the Practice of Excision)
<b>CRC</b>	Convention on the Rights of the Child
<b>DWG</b>	Donors Working Group on FGM/C
<b>FGM/C</b>	Female Genital Mutilation/Cutting
<b>HRBA</b>	Human Rights Based Approach
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IOM</b>	International Organization for Migration
<b>NCCM</b>	National Council for Childhood and Motherhood
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children’s Fund
<b>WHO</b>	World Health Organization

## EXECUTIVE SUMMARY

The development and enforcement of legislation intended to bring an end to harmful practices that are accepted and even upheld within society poses a set of specific challenges. This paper presents the key features of a comprehensive legislative framework to support the abandonment of FGM/C. It also provides specific guidance on the content of the legislation, and its relationship to the process of social change that it is meant to support.

Female genital mutilation/cutting (FGM/C) is widely recognised as a harmful practice and a violation of the human rights of girls and women. It reflects deep-rooted discrimination against girls and women, profoundly entrenched in social, economic and political structures. While *de facto* violent, the practice is perpetrated without a primary intention of violence. It is considered to be a necessary step to enable girls to become women and to be socially accepted, together with the rest of the family. FGM/C functions as a self-enforcing social convention or social norm. Families and individuals uphold the practice because they believe that their group or society expects them to do so and they expect that they will suffer social sanctions if they do not. In this context, if individual families were to stop practicing on their own they would harm the marriage prospects of their daughter as well as the status of the family. Ending the practice requires a process of social change that enables communities to coordinate and decide to abandon the practice, and that ultimately results in new expectations on families.

A legal framework that clearly states that harmful practices are unacceptable is undeniably an important necessary measure for contributing to the end of these practices. However, when laws that ban the practice are introduced in contexts where people are still expected to engage in the practice and fear social punishment if they do not, the practice will continue and may be driven underground. The challenge is therefore to develop, introduce and implement legislation in ways that contributes to a social change process that ultimately results in the decision by communities to abandon the practice.

When it is accompanied by human rights education programmes and community dialogue to foster a consensus on the abandonment of the practice, a legislative approach can be an important instrument for promoting the abandonment of FGM/C. Together with information from trusted sources on the harms of the practice and on the fact that it is not a religious obligation, information on the existence of legislation against the practice and the prospect of legal sanctions can be an additional element to encourage communities to abandon the practice. This information, and the opportunity to discuss its implications as a group, can encourage communities to discover that if they all abandon the practice they can ensure the marriageability of their daughters and the status of the family without needing to cut their girls, and will therefore all be better off.

Regarding the legislative reform *per se*, this paper argues that a human rights-based approach is particularly important in the development, enactment, implementation and monitoring of legislation on FGM/C, especially where there is societal support for the practice. Such an approach ensures that the legislation is a positive force in promoting the abandonment of FGM/C as it requires public participation of those directly or indirectly affected by the legislation. By

enabling people to recognise and claim their rights, a human rights-based approach to legislative reform promotes a transformative process.

This paper is intended to serve as guidance for legislators, parliamentarians, jurists, lawyers, judges, ministries, government officials, human rights and children's rights advocates, policy-makers, and for all those involved in laws, programmes and policies that address FGM/C. It is designed to be used as a practical guide to assist in legislative reform to support the abandonment of FGM/C and the realisation of children's rights.

# 1. INTRODUCTION

Female genital mutilation/cutting (FGM/C) refers to several different harmful practices involving the cutting of the female genitals. The United Nations Children’s Fund (UNICEF) estimates that each year three million girls undergo FGM/C on the African continent alone.<sup>1</sup>

FGM/C is recognised as a violation of the human rights of girls and women.<sup>2</sup> It is an act of violence that harms women and girls in many ways, limiting their potential for full development, and a major obstacle to the achievement of gender equality.<sup>3</sup> Families and communities that support FGM/C believe that it is a necessary requirement for raising girls to become “proper” women. It is a practice deeply rooted in tradition and persists because it is a social convention upheld by underlying gender structures and power relations.

The majority of countries worldwide have committed themselves to protecting the rights of women and children – both boys and girls – by ratifying a number of international and regional treaties that address various forms of discrimination and violence. In recent years, and particularly since the 1990s, African countries and most countries receiving immigrants from communities practicing FGM/C have also passed specific legislation on FGM/C. Some countries, like the United Kingdom, have chosen to enact specific laws to criminalise the practice. Others, like Senegal, have added clauses addressing FGM/C within their Penal Codes. Still others, such as France, have addressed FGM/C under general criminal law provisions.

Interest in legislative reform to support the abandonment of FGM/C stems from a recognition that institutional frameworks play an important role in promoting and supporting social change, human rights, good governance and the rule of law. Ensuring a legal framework is in place that supports the abandonment of FGM/C and the fulfilment of women’s and children’s rights in a sustainable manner is an important step towards ending the practice. There is little research, however, on the process and type of legislative reform needed to promote the abandonment of FGM/C in different contexts with varying degrees of social acceptance of the practice. The specific role that legislation plays in promoting behavioural change in FGM/C is an area that is particularly complex, under-researched and not fully understood.

This paper adopts a human rights-based approach (HRBA) to legislative reform on FGM/C, an approach based on the recognition that children, men and women have a full range of rights that are outlined in international standards and norms and that a State has obligations under international human rights instruments to which the State is party.<sup>4</sup> It is an approach that views FGM/C as a human rights violation, stresses the importance of participation of those directly or indirectly affected by the law in all stages of development, implementation and monitoring of the legislation, and places the realities of girls and women at its core.

This paper does not provide a compendium of national laws on FGM/C that have been enacted but rather examines key elements that should be integrated into any legislative reform process addressing FGM/C. It offers a set of guidelines on how to develop and maximise the influence of legislation promoting FGM/C abandonment. It does not advocate for a specific law on FGM/C, but argues that legislative reform on FGM/C that protects, respects and fulfils human rights should be comprehensive, participatory and inclusive. Reform should take into account the

reality of the lives of children and women, and should include legal measures that prevent FGM/C, support and assist “victims” of FGM/C, and make accountable and punish perpetrators. This paper also focuses on the processes needed for the development and enactment of the law. It recommends a holistic approach to law-making to increase the potential of the law to support a process of social change that will favour the abandonment of FGM/C.

A wide range of literature was reviewed for this paper: academic literature on FGM/C and social change theory, legal texts on international and regional human rights law, documents on legal reform pertaining to violence against women, and papers that analyse initiatives for FGM/C abandonment. Country examples were chosen for their instructive value and to show reform within differing contexts, where there are varying degrees of social acceptance of FGM/C.

Following the introduction, section two provides an overview of FGM/C and explores how a human rights-based approach to legislative reform can be used as a tool to support the abandonment of the practice. It also looks at the harmonisation of national legislation with international human rights instruments and examines the process of internalisation of legal norms. Section three examines specific components of a comprehensive legislative framework to address FGM/C. It provides recommendations for legislative reform, including those inscribed in the law, as well as policies and programmes that are necessary for the diffusion and implementation of the law. It looks at legislative measures to support the prevention of FGM/C, measures to support and assist girls and women who have undergone FGM/C, measures to punish perpetrators, and measures that can bring about the effective implementation of the legislation. Each component is analysed according to the relevant international and regional legal provisions, and country examples are highlighted to demonstrate how these components are addressed in differing contexts. Finally, section four provides a checklist of issues that should be considered when undertaking comprehensive legislative reform on FGM/C.

## **2. LEGISLATIVE REFORM ON FGM/C AS A TOOL FOR SOCIAL CHANGE**

### **2.1. Basic Information on FGM/C**

FGM/C describes several different harmful practices involving the cutting of the female genitals. The World Health Organization (WHO) defines FGM/C as “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons”.<sup>5</sup> All types of FGM/C are irreversible and can lead to a range of physical and psychological damage. While health consequences vary, they are both immediate and long-term. FGM/C is an intolerable form of violence that women and girls experience within the family and the community. It is considered by many to reflect deep-rooted gender inequalities and denies women and girls their right to life, bodily integrity and health, and their right to be free from discrimination and violence.<sup>6</sup>

United Nations organisations have estimated that up to 140 million girls and women have undergone FGM/C worldwide, with three million girls living in Africa at risk of being cut annually. FGM/C is commonly performed on girls between four and 12 years of age. In some countries it is practiced as early as a few days after birth, and in others as late as prior to marriage or after pregnancy. FGM/C is mainly prevalent in 28 countries on the African

continent, and there is evidence of cases in the Middle East and Asia (Yemen, Oman, Jordan, Palestinian Territories/Gaza, Iraq, Malaysia, Indonesia and India).

The practice has also been reported in varying degrees in migrant communities in Europe, North America, New Zealand and Australia, although evidence on the prevalence of the practice in countries of immigration is difficult to obtain.<sup>7</sup> According to the International Organization for Migration (IOM), the migration of populations who practice FGM/C to other countries has added a new dimension to the issue of “integration”.<sup>8</sup> IOM has found that difficulties in integration have led to stricter application of cultural practices amongst migrant communities as a means of distinguishing themselves from the “receiving” society and preserving their ethnic identity.<sup>9</sup> Addressing FGM/C in “receiving” countries has particular challenges, since initiatives that promote FGM/C abandonment can be perceived as judgmental or morally offensive and result in negative reactions in migrant communities.<sup>10</sup>

Although the numbers of girls and women affected by FGM/C is staggering, a recent report by UNICEF indicates there has been a slow decline in the overall prevalence of FGM/C over the past decades.<sup>11</sup> In many countries, including those with high prevalence rates, not all women support FGM/C, and the data indicate that increasing numbers of women are opposed to the practice.<sup>12</sup> Moreover, the same report shows that older girls and younger women are less likely than older women to have experienced any form of FGM/C in 28 countries (1997-2007)<sup>13</sup>, indicating a generational shift towards ending the practice. The positive changes may be reflecting supportive legal and policy environments at national level as well as community-based efforts to abandon FGM/C.

Despite the progress made in some countries, many girls still remain at risk of FGM/C.<sup>14</sup> Numerous justifications that vary contextually have been presented to explain the persistence of FGM/C. Interconnected variables – such as marriageability, assumed religious obligation, chastity, female honour, beauty, health and aesthetics – explain how FGM/C functions as a social norm enforced by informal social sanctions.<sup>15</sup> Parents and guardians actually “protect” their girls from being ostracised and socially excluded from specific communities by cutting them.<sup>16</sup> Therefore, especially in communities where FGM/C is widely practiced, as Toubia (2003) suggests, perpetrators of FGM/C have mostly been “celebrated and rewarded, not punished”.<sup>17</sup> In instances when the social pressure is not so strong, such as in countries of immigration, young girls and their mothers may also hold on to the practice as a mark of distinction. According to UNICEF, research undertaken in eight countries reveals the powerful role of these factors in perpetuating FGM/C and demonstrates that large-scale abandonment of the practice cannot be brought about solely by a change in individual attitudes.<sup>18</sup>

## **2.2. A Social Change Approach to Bring an End to FGM/C**

Most successful programmes and approaches promoting the abandonment of FGM/C have tended to be based on a social change approach that includes several key elements (see box).<sup>19</sup>

These elements have increasingly formed the basis of any intervention supporting the large-scale abandonment of FGM/C.<sup>20</sup> Given the differences between communities and the differing contexts in which FGM/C occurs, each country must develop its own specific strategies that are workable at the local level.

Social change theories maintain that positive social change is produced through a process of community dialogue and collective action.<sup>21</sup> The collective decision to abandon a socially upheld practice such as FGM/C requires a process of deliberation, where members of the community share concerns about the negative consequences of the practice and over time commit to ending it. When groups publicly manifest their agreement to abandon the

#### **Key Elements of a Protective Environment for Girls and Women Affected by FGM/C:**

- Coordinated multicultural and sustained action and partnerships with civil society, including opinion leaders
- Promotion of human rights and capacity development at all levels of society
- Culturally sensitive awareness-raising of the public at large – through information, legal prevention/protection, exposure to alternatives, and education – that enables girls and women to claim their rights
- Empowered girls and women, using a participatory approach of community-wide debate and discussion
- Supportive media, and large-scale awareness-raising and open discussion
- Collective public pledge to abandon FGM/C on the part of entire communities that are closely connected
- A strong political will and governmental commitment to address FGM/C embodied in ensuring law enactment and enforcement, policy development, allocation of resources, capacity development of professionals and provision of relevant services.

practice, they make their intention visible to others, thereby making each other confident that they are not alone in their commitment to abandon and therefore do not risk their daughters' future. Actions supporting the public dialogue process can serve to expand the dialogue across communities and even beyond national boundaries.<sup>22</sup>

In order to trigger a dialogue within the community, a stimulus, be it internal or external, may be introduced.<sup>23</sup> Experience shows that *empowering or transformative human rights education* provides opportunities for community members to discuss new knowledge, relate it to their situation, and consider alternatives to current practices, including FGM/C.<sup>24</sup> Human rights education builds a positive vision of girls and women in society and allows for a discussion of better alternatives to fulfil the moral norm of “doing the best for their children”.<sup>25</sup> An understanding of why some individuals have challenged the societal expectations of FGM/C provides locally rooted alternatives. Raising the awareness of women and girls about FGM/C in the context of a broad range of issues – such as health, hygiene and human rights – in a culturally sensitive manner and tailored to their needs has an empowering effect. Also critical to FGM/C abandonment are analytical and organisational skills, legal protection, and exposure to alternatives. Thus, positive social change may occur when individuals are supported to collectively abandon FGM/C in a coordinated fashion and within a comprehensive social development approach that is based on human rights education and community dialogue.<sup>26</sup>

A strong political commitment is also required for bringing about change and it needs to be translated into human, technical and financial resources and comprehensive child protection programmes, policies and mechanisms that coordinate governmental and non-governmental service delivery for children – including judicial, police, social, welfare and basic services.

In this context, legislation contributes to creating an enabling environment to accelerate the abandonment of FGM/C. Experience, however, has proven that failure to take into account the level of consensus and social acceptance of FGM/C can render laws, particularly those purely punitive in nature, ineffective.<sup>27</sup>

### 2.3. Human Rights-Based Approach to Legislative Reform on FGM/C

*“Because FC/FGM plays a vital role in defining gender, women’s status and self-identity for the majority of those communities that practice it, persuading them to view FC/FGM differently is not an easy challenge. Stopping the practice by providing women with the information and choices to abandon FC/FGM cannot be achieved by the simple act of drafting or interpreting a set of human rights principles or laws, even though such steps are necessary to enhance the process of change. To effect such profound social change, government action should take multiple forms and be part of a long-term process of obtaining social justice for all, particularly women”.*<sup>28</sup> (Rahman and Toubia)

The relationship between legislation and positive social change manifested in the abandonment of FGM/C is complex. Attempts made towards legislation to effect a change in the practice of FGM/C may have a variety of direct or indirect outcomes, intended or un-intended consequences, depending on the approach undertaken.

Many countries with varying degrees of social acceptance of the practice (both high and low prevalence countries) have passed criminal law provisions that include penalties for participation in the practice or provide protections and remedies for those who have undergone the procedure or are at risk of doing so. Table 1 highlights the countries that have enacted legislation criminalising FGM/C.

**Table 1: Criminalisation<sup>29</sup> and Prevalence of FGM/C (%)**

AFRICAN COUNTRIES*				COUNTRIES OF IMMIGRATION**	
Date of Entering into Force	Prevalence (%)	Date of Entering into Force	Prevalence (%)	Date of Entering into Force	Date of Entering into Force
Benin (2003)	13	Kenya (2001)	32	Austria (2002)	Canada (1997)
Burkina Faso (1996)	73	Mauritania (2005)	72	Belgium (2000)	New Zealand (1995)
Central African Republic (1966)	26	Niger (2003)	2	Cyprus (2003)	United States (Federal law, multiple states)
Chad (2003)	45	Nigeria (multiple states)	19	Denmark (2003)	Australia (multiple states)
Côte d’Ivoire (1998)	36	Senegal (1999)	28	Italy (2005)	
Djibouti (1994)	93	South Africa (2000)	N/A	Norway (1995)	
Egypt (2008)	91	Sudan (state of South Kordofan)	89	Portugal (2007)	
Eritrea (2007)	89	Sudan (state of Gedaref 2009)		Spain (2003)	
Ethiopia (2004)	74	Tanzania (1998)	15	Sweden (1982, 1998)	
Ghana (1994)	4	Togo (1998)	6	United Kingdom (1985)	
Guinea (1965, 2000)	96	Uganda (2009)	0.6		
		Zambia (2005)	1		

Notes: \*Prevalence rates are based on the latest Demographic Health Survey (DHS) and Multiple Indicator Cluster Survey (MICS) data.

\*\*Estimates of prevalence of FGM/C for girls and women who have been subjected to the practice in countries of immigration are difficult to obtain.<sup>30</sup>

As of 2009, a total of 20 African countries and 13 countries that receive immigrants from countries where FGM/C is practiced have enacted laws criminalising FGM/C. In Nigeria, Australia and the United States, several states have enacted legislation on FGM/C. In Sudan, the states of South Kordofan and Gedaref have enacted such legislation. In several countries, mostly in Europe (e.g., France), FGM/C can be prosecuted under general criminal legislation provisions in the Penal Code.<sup>31</sup>

The approach taken by governments, as well as their reasons for undertaking legislative reform on FGM/C, often determine the results. For legislation on FGM/C to have the necessary public support that facilitates the process of implementation and acceptability of the law, the reform process needs to move beyond “putting the law in place”. It should echo concerns existing within society about the practice and strengthen consensus to protect the human rights of girls and

women. A number of existing laws that address FGM/C, however, did not emerge from such a process. According to some scholars, legislation that criminalised FGM/C in the 1990s was primarily passed as a result of pressure on countries to adopt international values and to recognise that FGM/C is not only a health issue, but a matter of human rights.<sup>32</sup>

A study that examined community responses to a penalising law on FGM/C in Senegal, which was passed without any community consultation, found that while some supported the ban, others defied it.<sup>33</sup> The study quoted a Senegalese Parliamentarian who opposed the passage of the law criminalising FGM/C as saying, “the law has not only undermined local efforts to stop female circumcision, it has undermined our democratic process” (Hecht 1999a cited in Sell Duncan et al. 2009).<sup>34</sup> Moreover, community members who defied the ban expressed (1) a “reactance” or resistance on behalf of the community who felt a cultural attack on its norms and values, (2) a shift to “travelling circumcisers” with questionable skills, and (3) a trend towards “moving beyond the shadow of the law” or cutting in secrecy.<sup>35</sup> The same study finds that a legislative approach can promote the abandonment of FGM/C if accompanied by human rights education programmes and community dialogue. Experience in Burkina Faso also indicates that a multiplicity of interventions aimed at community empowerment coupled with the enactment and enforcement of legislation account for the decline of the practice in that country.<sup>36</sup>

This paper goes further and argues that, where there is societal support for FGM/C, a human rights-based approach to legislative reform is particularly important in the development, enactment, implementation and monitoring of legislation on FGM/C and ensures that such legislation is a positive force in promoting FGM/C abandonment. A human rights-based approach to legislative reform recognises the rights of children, men and women and the obligations of the State under the international human rights instruments to which it is party.<sup>37</sup> It also “demands full public participation in the drafting, debate and approval of legislation by all those directly or indirectly affected by the legislation”.<sup>38</sup> By enabling people to recognise and claim their rights, a human rights-based approach to legislative reform promotes a transformative process. This process entails:

- (1) Strengthening the capacity of duty bearers to meet their obligations (protecting, respecting and fulfilling human rights); and
- (2) Empowering citizens – including women and children – to articulate their priorities and claim their rights. Ultimately it involves a transformative shift in power relations.

A human rights-based approach to legislative reform seeks to influence change and achieve the intended results by promoting a wide process of information, sensitisation and mobilisation for the law to be drafted, known, accepted and operationalised. Its effectiveness is based on the extent to which the reality and needs of women and girls are addressed in the enactment and reform of laws, and on the extent to which legal measures affect policies, such as wider resource allocation and institutional requirements, that are essential for the effective implementation of anti-FGM/C laws. It looks at the totality of rights of those that it seeks to protect, instead of only penalising, and as a result, has the potential to address some of the root causes of the practice.

A rights-based approach demands that national legislation addressing FGM/C be aligned with and comply with international and regional legislative standards and norms, where either ratification of, or accession to such treaties has occurred. All countries are party to some or all of the international and regional human rights conventions that are applicable to FGM/C (see Annex I), and regularly report to the respective treaty bodies.<sup>39</sup>

There is no fixed model for harmonisation of national legislation with international standards, due to the multiplicity of legal systems, which include monist, dualist and mixed systems.<sup>40</sup> Building on experiences of harmonising laws on children,<sup>41</sup> the process of harmonising FGM/C legislation with international and regional standards might entail a review of existing national laws, followed by drafting, implementation, monitoring and evaluation of the new legislation as appropriate, in consultation with civil society, especially practicing communities.

#### ➤ **Review of Existing National Laws**

Any harmonisation process needs to include a review of all existing national laws against the international and regional norms and standards relevant to FGM/C (see Annex I). This process often includes: an analysis of the existing legislation and measures to identify non-compliance or existing gaps against the international and regional provisions, as well as the ways in which that legislation directly or indirectly impacts the lives of women and children of the country concerned; consultations with stakeholders; and the identification of measures to remedy the existing gaps. Special attention should be given during this review phase to an analysis of the existing consensus for or against FGM/C.

In addition, a review of the United Nations General Assembly resolutions and the comments and recommendations on FGM/C of the various treaty bodies established to monitor treaty implementation needs to be undertaken. General Assembly Resolution 56/128 (2001) on traditional or customary practices affecting the health of girls and women calls upon States to ratify relevant human rights treaties; collect and disseminate data regarding FGM/C; develop and implement national legislation, policies and programmes that prohibit FGM/C; establish a mechanism for monitoring implementation; provide support services to “victims” of FGM/C; train health workers and other personnel; empower women; raise awareness on FGM/C; address harmful practices in education curricula; increase men’s understanding of their roles and responsibilities with regard to FGM/C; and increase capacity and work closely with communities, organisations and UN agencies.<sup>42</sup> Three more General Assembly resolutions are also relevant: Resolutions 61/143 (2006)<sup>43</sup>, 62/133 (2007)<sup>44</sup> and 63/155 (2008)<sup>45</sup>, which focus on the intensification of efforts to eliminate all forms of violence against women. The three resolutions stress the role of the State to promote and protect all human rights, including those of women and girls, to prevent and punish perpetrators, to eliminate impunity and to provide protection to the “victims”. They urge States to take action to eliminate all forms of violence against women through more systematic, comprehensive, multisectoral and sustained approaches, and to ensure initiatives are adequately supported and facilitated by strong institutional mechanisms and financing. The international community is called upon to support national efforts and to intensify international efforts to eliminate all forms of violence against women.

Various treaty bodies’ general recommendations and comments have also addressed FGM/C. The Committee on the Elimination of Discrimination against Women, recognising that harmful practices such as FGM/C have serious health and other consequences to children and women, has recommended to State parties to “take appropriate and effective measures with a view to eradicating the practice of female circumcision” (Recommendation 14). In addition, in its General Recommendation 24 on women and health, the CEDAW Committee specifically emphasises States parties’ obligation to take steps to eliminate FGM/C. The Committee specifically recommends the “enactment and effective enforcement of laws that prohibit female

genital mutilation”. In its General Comment 4, the Committee on the Rights of the Child notes the duty of States parties to fulfil their obligation to protect adolescents from all harmful practices, such as FGM/C, within the broader context of States parties’ obligations with respect to the life, health and development of adolescents. The Committee on Economic, Social and Cultural Rights, in its General Comment 14 on the right to the highest attainable standard of health, calls for measures that are appropriate to abolish harmful practices. The Committee on Economic, Social and Cultural Rights, in referring to States’ duties to ensure the equal enjoyment of the right of men and women to health (under Article 12) declares that States must, at a minimum, remove “legal and other obstacles that prevent men and women from accessing and benefiting from health care on a basis of equality. This includes [...] the prohibition of female genital mutilation [...]” (General Comment 16). Furthermore, in its General Comment 28, the Human Rights Committee frames FGM/C as a violation of Article 7 of the Civil and Political Rights Covenant, which is the right to be free from torture and other cruel, inhuman or degrading treatment, stating that in “states parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided.”

Multiple stakeholders can be involved in this review or analysis, to different degrees, depending on the task at hand. In some instances, consultations with various stakeholders and the public can be undertaken during this stage with the aim of understanding the impact of existing legislation on FGM/C on women and girls and how proposed legislation might affect the current situation. For example, in Uganda a Child Law Review Committee was established to undertake research and consultation on children’s issues for a period of two years.<sup>46</sup> It used various consultation techniques, including interviews, visits and questionnaires, which were directed at members of institutions and the broader public.<sup>47</sup>

### ➤ **Drafting**

Following a legislative review, governments need to decide which legislation and policies to enact or modify in order to comply with international laws and standards on FGM/C. They also need to decide whether to adopt a single comprehensive children’s Act (for example, as in Kenya) or standalone legislation addressing FGM/C or a combination of both. An additional consideration is whether to adopt sub-national or national laws. For example, in Nigeria due to various political obstacles faced at federal level, state-level laws were passed. In Sudan, the Council of Ministers withdrew article 13 of a draft national Children’s Act of 2009, which was submitted by the Minister of Welfare, Women’s and Children’s Affairs and prohibited and criminalised all forms of FGM/C. A law prohibiting FGM/C, however, was passed in the State of South Kordofan. The United States has both national-level legislation prohibiting FGM/C and state-level laws. Regardless of the approach taken, it is important to ensure the complementarity of different legislation and that laws are comprehensive so that they enable girls and women to realise their rights.

The legislation-drafting process can take different forms in different contexts. It can fall under the responsibility of a working group that includes civil servants and independent experts, or a group that includes NGO representatives and other sectors of civil society. In either case, the draft legislation should be the subject of public consultations to allow for a comprehensive and owned process, which is necessary for effective implementation. Experience has shown that passing legislation against FGM/C is most successful when educational campaigns that include discussion of the role of law have informed the development of the law and accompanied its implementation (see Egyptian example).

### ➤ **Implementation**

Legislation addressing FGM/C requires the planning of specific implementation measures and tools, such as regulations, policies, plans, budgets and institutions. A proposed piece of legislation addressing FGM/C may contain proposals on: allocation of budgets needed for implementation, training of professionals who will be involved in the implementation of the law (e.g., police, judges, social workers, medical practitioners), development of implementation guidelines and policies, and institutions responsible for the development of policies, plans, programming and coordination of implementation amongst the different partners. Section 3.6 will discuss these elements in more detail.

### ➤ **Monitoring and Evaluation**

It is important to establish a comprehensive monitoring mechanism to track progress on legislation, as well as on the protection of girls and women from FGM/C and the realisation of their rights. Monitoring can be through an independent or self-monitoring mechanism mentioned in the legislation itself, or by a national institutional mechanism that may include various stakeholders, including government, ombudspersons, parliament and civil society. Children should be enabled to participate as mandated by the CRC. For these measures to be effective, the independence of the mechanism has to be secured, so that it is allowed to hold independent inquiries.<sup>48</sup> This mechanism also needs to be sufficiently endowed with the necessary human and financial resources. This will be discussed in more detail in section 3.6.

### **Process Preceding an Anti-FGM/C Law in Egypt**

In Egypt, FGM/C is incorporated into the country's criminal code. The recent criminalisation of FGM/C is a result of a broader process of change that preceded the legislation and included:

- Sensitising the public about the harmful effects of FGM/C, using a rights-based approach. Awareness-raising covered medical, religious and legal perspectives and resulted in public commitment against FGM/C, expressed through more than 50 public declarations
- Intensive media reporting to raise awareness of individual FGM/C cases
- Establishing groups of community volunteers to address FGM/C and raise awareness
- Capacity building and empowerment of the local community
- Local leaders who exercised their leadership role to reject the practice
- Coordinated action that included multiple stakeholders from the government and the civil society (e.g., Ministry of Health, the media and the religious institutions)
- Ministry of Health Ministerial Decree (# 271 of 2007) that prohibits FGM/C
- A national institution that advocates for children's rights and a Child Helpline for reporting FGM/C cases and providing referrals for counselling services
- Strong political will and commitment to address FGM/C

*Source:* Communication with NCCM, UNICEF

It is important to stress that a human rights-based approach to legislative reform demands participation and consultation of all sectors of society and government, and ensures that the views of the vulnerable and marginalised, including children themselves, are taken into account in *all stages* of the legislative reform process. In the case of legislation on FGM/C, the participation of practicing communities as well as of those who may have abandoned the practice will be important.

## 2.4. Internalisation of the Legal Norms

*“Identifying social and cultural values that support legislative initiatives to realise the rights of women and children (girls and boys), as well as highlighting social and cultural practices that compromise human rights-based legislative reform, are critical to the adoption and implementation of effective initiatives. Work in this area, therefore, often requires an emphasis on education and shaping of cultural values.”*<sup>49</sup> (UNICEF)

Legislation should be a supportive tool that strengthens the environment for the abandonment of FGM/C and an “avenue for forging consensus” around a new social norm of “not cutting”.<sup>50</sup> Consensus is formed through deliberation on the legislation, starting from the review of current legislation and the drafting process, which serves as a catalyst to stimulate community dialogue. If effective, this dialogue can contribute to individual and collective decisions to abandon cutting. These deliberations can contribute to a wider societal process of debate that connects the discussion of rights to an assessment of the effect of the actual laws on the lives of children and the real improvements that can be achieved. If a significant degree of consensus is reached, it can possibly sustain change on the basis of a shared system of norms.

Successful legislative reform is dependent on the extent to which society is prepared to accept the new legal norm at a given point in time. For this reason, legislative reform on FGM/C needs to take into account the degree of social acceptance of the practice. The further the legal norms are from the existing social norms, the greater the gap will be between the law and society and the more challenging the law will be to implement. In that sense, laws become a necessary but not sufficient condition for supporting the long-term process of FGM/C abandonment. Another necessary condition is that a significant practicing segment of the population must agree that girls and women should not undergo the practice. This can be achieved through a broader

### **Legislative Reform on FGM/C in Burkina Faso**

In Burkina Faso, a comprehensive process was introduced, which not only encouraged the adoption of the legislation against FGM/C but also facilitated its enforcement. The process included the following elements:

- Political will to address the issue of FGM/C and the rights of girls and women
- Participation by stakeholders at various stages of implementation
- Establishment of the National Committee Against the Practice of Excision (CNLPE), an institution to monitor and coordinate the implementation of the law, with a mandate to intervene in case of violations
- Education and awareness-raising campaigns about the law and the harmful effects of FGM/C
- Strong partnerships with various stakeholders (including opinion leaders, decision-makers, media, youth, and others)
- Capacity development of various stakeholders (such as judges, lawyers, police, and others)
- Establishment of services, including rehabilitation services, and an SOS/Excision hotline for reporting and education
- Research, which allowed for a better understanding of the root causes and scope of the problem

*Source:* Kambou (2003), Diop et al (2008)

governmental strategy that includes outreach, awareness-raising and human rights education programmes to generate popular demand for such reforms *prior* to any condemnation of the practice. The example of Burkina Faso presents some of the elements that enabled the adoption of legislation against FGM/C.<sup>51</sup>

The process of participation and consultation during the review, drafting, implementation and monitoring of legislation has many benefits, and results in legislation on FGM/C that is more in sync with the realities of girls and women. First, it fulfils the right of women and children to participate in shaping legislation that affects their lives. Second, it can minimise resistance and challenge to a proposed piece of legislation on FGM/C that threatens existing power relations in society. Third, it builds the capacities of right holders and is empowering. Lastly, partnerships formed during the consultative processes between government, key stakeholders, NGOs, media and others become critical in promoting legislative reform and ensuring internalisation of the new legal norms and implementation of the law.

Identifying ways for the effective and real participation of children or other marginalised groups (such as the illiterate) is important. Processes that enable them to express their views should lead to a more enforceable draft legislation that can be submitted to parliament for final consideration and approval. For example, draft legislation may need to be translated into a child-friendly or a more simplified version in order to allow children and parents/community members to express their views.

### **Participation in Legislative Reform Processes to Support FGM/C Abandonment in Egypt**

In 2008, the Egyptian Parliament criminalised FGM/C by amending the country's Penal Code (through Article 242bis) to ensure that existing articles that address deliberate bodily injury (Articles 241 and 242) be applied to FGM/C. That same year the Egyptian Parliament amended the Child Law. While the amendment to the Child Law did not specifically address FGM/C, it supported the revised Penal Code by establishing decentralised Child Protection Committees at governorate and district levels. These committees are responsible for developing child protection policy at governorate level, identifying and referring child abuse cases, and monitoring the enforcement of the anti-FGM/C law and Ministry of Health decree on FGM/C at governorate, district and community levels.

The process of amending the Child Law and the Penal Code to criminalise FGM/C was led by the National Council for Childhood and Motherhood (NCCM). A working group was established, comprised of governmental and non-governmental organisations, UN agencies, independent experts and public figures to support the drafting and consultation process. NCCM held several consultations on the draft legislation in several governorates of Egypt with religious leaders, parliamentarians, media, community development associations, doctors, community members and judges. The aim was to measure the acceptance of penalising FGM/C and to lobby for stakeholder support in passing the law. Information workshops on the proposed Penal Code were held with parliamentarians, media personnel and religious leaders.

The adoption of the amended Child Law and the Penal Code provisions criminalising FGM/C in 2008 was due in large part to the effectiveness of the network of civil society organisations and government agencies that supported and promoted the reform. The extensive public information and education campaign that preceded the legal reform helped to build the necessary popular consensus in favour of the legislation even before it was passed. The coordinated effort between the different stakeholders enabled the consultations to take place and was unprecedented in creating a locally owned process.

*Source:* Communication with NCCM, UNICEF, Save the Children UK, and Egyptian Centre for the Rights of the Child

As empowerment is an essential part of the participatory legislative reform processes addressing FGM/C described above, some discussion is needed to examine what empowerment actually entails. Kabeer defines empowerment as a process of change whereby “those who have been denied the ability to make choices acquire such ability”.<sup>52</sup> Inherent to this process is a change in underlying power relations. Through the process of deliberation and community dialogue on legislation addressing FGM/C, a “critical consciousness”<sup>53</sup> is developed, existing norms and rules that are unfavourable to women and girls are challenged, and the ability of the community, as well as women and girls, to exercise life choice – such as abandoning FGM/C – is increased. Choices are a function of resources and achievements.<sup>54</sup> As has been shown above, women’s and girls’ acceptance of FGM/C, while it can be perceived to reflect choice, actually often stems from and serves to reinforce what Bicchieri refers to as the automatic component of compliance.<sup>55</sup> It is a result of various factors, including possible guilt over not “protecting” one’s daughter, fear of being ostracised from the community and fear of being differentiated amongst one’s peers. A timely undertaking of a human rights-based legislative reform can protect the emerging resistance to FGM/C and give legitimacy to women’s and girls’ voices, which is essential to achieve social change and redress the balance of power. The isolated passing of an act criminalising FGM/C without empowering women and girls or involving the community could create an environment hostile to women and girls, leading to their disempowerment and ultimately to the further violation of their rights.

### **3. COMPONENTS OF THE LEGISLATIVE REFORM FRAMEWORK TO SUPPORT FGM/C ABANDONMENT**

Section two highlighted the necessity of a multi-pronged strategy to address FGM/C, and identified comprehensive legislative reform as a necessary condition for creating a supportive political and legal environment that deters people from practicing FGM/C. The following section will examine key features of a comprehensive legislative framework that protects the rights of girls and women in relation to FGM/C, and that is rooted in a culturally sensitive human rights-based approach. This framework is intended to serve as a guide for organisations and legislators working on laws, programmes and policies that address FGM/C, and presents some specific issues that should be taken into account while drafting legislation aimed to support the abandonment of FGM/C. It is important to keep in mind that addressing the different forms of violence against children and women independently may lead to an inaccurate perception that different forms of violence against women are separate and unrelated issues.

The proposed comprehensive legislative reform framework on FGM/C that respects the human rights of girls and women includes punitive and non-punitive measures for the:

- **Prevention** of FGM/C, which includes providing credible information and facilitating dialogue within social networks to reach a collective decision to abandon FGM/C,
- **Support and assistance** to the “victim/claimant/right holder”: these measures support the provision of services for girls and women who have been cut,
- **Punishment** of the perpetrator and accomplices, and
- **Implementation and evaluation** of the law.

Inherent to this framework is the ability and willingness of the “victims” to claim redress for the violation of their rights, and the ability and willingness of governments to support prevention and be held accountable. Demanding redress with respect to FGM/C relates to the degree to which

individuals are able and willing to seek remedies and punishment through formal and informal systems. Their ability to do so often depends on the degree to which they are knowledgeable of their rights and capable of demanding they be fulfilled through access to technical expertise and legal representation. However, even if people are able to demand redress, they are often not willing to risk being ostracised by the community for interacting with public systems in ways that are deemed to contradict community values. Supplying redress involves a strong institutional framework and the ability and willingness of the government to enable a series of processes such as investigation, prosecution, enforcement and monitoring to ensure accountability.

This section will analyse some relevant international and regional legislative provisions that address FGM/C, using country examples when available. It will also present recommendations for law, policy and programme reform. Two types of recommendation will be presented: (1) those pertaining specifically to the content of legislation on FGM/C, and (2) those that are necessary for the diffusion and implementation of the law. Annex II provides a list of the most featured national legislations discussed in this section and Annex III presents details of the international and regional legislative provisions presented thereafter.

### **3.1. Definitions**

#### **3.1.1. Definition of FGM/C**

FGM/C is widely recognised as a harmful practice and a violation of the human rights of girls and women. While being perpetrated without a primary intention of causing harm, it is violent in nature and can lead to dire consequences. It includes “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons”.<sup>56</sup>

The procedures are referred to as “female circumcision”, “female genital mutilation”, “female genital mutilation/cutting” or “female genital cutting”. The terminology applied to this practice has undergone many developments.<sup>57</sup> The practice was initially referred to as “female circumcision”, which drew a direct parallel with male circumcision and as a result, created confusion about the two practices. The term “female genital mutilation” was used to highlight the fact that there are important differences between male circumcision and the procedure that is practiced on women. Use of the term “mutilation” emphasises that this practice is a violation of girls’ and women’s human rights. The less judgmental term “cutting” was added to call attention to the importance of using non-judgmental, culturally sensitive approaches to promote the abandonment of the practice. Different laws use different terminologies, mostly “circumcision” or “mutilation”, depending on their individual contexts.

Legislation addressing FGM/C has tended to broadly define the practice. As the international community has deepened its understanding of the practice, a number of countries have recognised the different types of FGM/C in their laws and, as a result, use language that is more in line with the WHO definition. Eritrea’s *A Proclamation to Abolish Female Circumcision – 158/2007*, for example, provides a comprehensive definition in Article 2 as follows: “(1) the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy); (2) the partial or total excision of the labia minora; (3) the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching; (4) the stitching with thorns, straw, thread or by other means in order to connect the excision of the labia and the

cutting of the vagina and the introduction of corrosive substances or herbs into the vagina for the purpose of narrowing it; (5) symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or (6) engaging in any other form of female genital mutilation and/or cutting”.

Laws and other measures adopted by countries have mostly either listed all the various types of FGM/C that are prohibited or they have prohibited all forms of FGM/C. For example, the *Children’s Act, 2001* (No.8 of 2001, Section 18) of Kenya “prohibits female circumcision as a cultural rite, custom or traditional practice that negatively affects the life, health, social welfare, dignity or physical or psychological development of a child”. It defines female circumcision as “the cutting and removal of part or all of the female genitalia and includes the practices of clitoridectomy, excision, infibulation or other practice involving the removal of part, or of the entire clitoris or labia minora of a female person”. Benin’s *Law No.2003-3 on the Repression of Female Genital Mutilation* outlaws “all types of female genital mutilation performed by anyone, in whatever capacity” (Article 2) and FGM/C is specifically defined as the “partial or total ablation of the external genital organs of persons of the female gender and/or all other surgery performed on these organs. Surgery on these organs that has been medically prescribed is excluded from this category” (Article 3). Burkina Faso’s *Law No.43/96/ADP of 1996 on the Penal Code* mentions total ablation, excision, infibulation, desensitisation or any other means (Article 380). France’s *Penal Code* punishes FGM/C under “acts of violence causing mutilation or permanent disability” (Article 222-9).

Specific laws generally fail to deal with the issue of re-infibulation, which is often attempted following childbirth. Laws also fail to address the issue of cosmetic genital surgery, which in certain contexts is performed for non-medical reasons. In Italy, Canada and Benin, for example, medical and therapeutic surgeries are specifically excluded. In Canada, the law excludes procedures that are performed “by a person duly qualified by provincial law to practise medicine, for the benefit of the physical health of the person or the purpose of that person having normal reproductive functions or normal sexual appearance or function”. In practice, prohibiting all forms of FGM/C without defining them may create disagreement over which practices constitute FGM/C, while listing the various types of FGM/C may not include all forms.

### **Recommendations regarding the legislation:**

- The law should make reference to the widely used WHO definition in defining the different forms of FGM/C that are prohibited.
- The law should define FGM/C in a culturally appropriate manner within the context to which it is applied. The law should also clearly describe the practice as a violation of women’s and girls’ rights that is incompatible with international and regional standards.

#### **3.1.2. Scope of Legislation**

The opening text of any legislation should have a clear preamble that states the goal and scope of the legislation. It is necessary to address the universality, indivisibility, interdependency and interconnectedness of human rights in the preamble.

A growing number of countries have adopted specific legislation on FGM/C, modified/added legislative provisions to address FGM/C or used general penal legislation applicable to FGM/C. Most of these enactments have focused on criminalising FGM/C. As has been discussed earlier, it is important that legislative reforms move beyond this approach and address additional areas:

the prevention of the practice, the provision of support and assistance to girls and women who have been cut, as well as the means to make the legislation effective.

Some legislation addressing FGM/C has clearly defined the areas that it is intended to cover, the nature of the legislation and its measures, its goals and whom it intends to protect. For example, the preamble of Italy's *Law no.7 of 2006 Provisions concerning the prevention and prohibition of the practice of female genital mutilation* states that this law sets out to prevent, fight and repress the practice of FGM/C as it represents a violation to the rights of women and children. *The Children Act 2001 (No. 8 of 2001)* of Kenya, which addresses FGM/C, defines its scope of work on the basis of the CRC and the African Charter on the Rights and Welfare of the Child.

### **Recommendations regarding the legislation:**

- Specific legislation on FGM/C should include a preamble that clearly defines the goals of the law, the areas it covers, nature of the legislation and whom it intends to protect. The goal of legislation addressing FGM/C should be to protect and promote girls' and women's rights and promote the abandonment of the practice. It should ensure that measures are in place to investigate, prosecute and punish perpetrators, but also offer preventative measures and support for "victims".

### **To ensure the implementation of the law:**

- Policies and programmes should also adopt an approach that is comprehensive and multi-disciplinary, encompassing prevention, support for women and girls who have been cut, empowerment of girls and women, remedies for claimants, and criminalisation.

## **3.2. Guiding Principles**

### **3.2.1. Non-Discrimination**

The equal rights of all human beings are explicitly enshrined in several instruments. The Universal Declaration on Human Rights (UNHDR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Racial Discrimination all recognise that all members of the society enjoy equal rights, and prohibit any form of discrimination.

International and regional instruments – CEDAW, CRC, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child, the European Convention on Human Rights and its five Protocols, the American Convention on Human Rights and its Protocol of San Salvador – have specifically protected the rights of women and children, including girls, from all forms of discrimination (see Annex III). FGM/C represents an act of discrimination against girls and women by controlling women's sexuality and impairing their equal enjoyment of rights.<sup>58</sup> It is a means by which the role of girls and women is defined in society and unequal power relations are maintained.

Most national laws express the principle of non-discrimination specifically within their constitutions by upholding the equal rights of all citizens and the rights to life and physical integrity. Few laws address FGM/C based on discrimination against women and girls, which would require several comprehensive measures that address the underlying power relations in

communities and that ensure their access to and enjoyment of their rights. An exception is the *Constitution of the Republic of Uganda 1995* (Article 33.6) which states that “laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution”.<sup>59</sup> Another is Italy’s *Law no.7 of 2006 Provisions concerning the prevention and prohibition of the practice of female genital mutilation*, which defines the purpose of the law as setting “measures necessary to prevent, fight and repress the practices of female genital mutilation as violations of the basic rights of the integrity of the person and the health of women and children”.

### **Recommendations regarding the legislation:**

- The law should address FGM/C as a form of gender-based discrimination and a violation of women’s and girls’ human rights.
- The law should include a strong anti-discrimination clause reflecting international standards that no woman or child shall be discriminated against due to origin, sex, language, religion, race, colour, fortune, national and social origin, or any other status.

### **3.2.2. Best Interests of the Child**

Taking into consideration the best interests of the child is one of the core principles of both the CRC and the African Charter on the Rights and Welfare of the Child. Article 3 of the CRC and Article 4 of the African Charter on the Rights and Welfare of the Child make the interests of the child “a/the primary consideration” (see Annex III).

The Committee on the Rights of the Child has highlighted that the best interests of the child must be of primary consideration in all actions concerning children “including those which are not directly concerned with children, but indirectly affect” them.<sup>60</sup> This is one of the cornerstone principles of the CRC. It requires that “every legislative, administrative and judicial body or institution” apply the principle “by systematically considering how children’s rights and interests are or will be affected by their decisions and actions”.<sup>61</sup>

The CRC further asserts that children should have the opportunity to develop physically in a healthy way, receive adequate medical attention and be protected from all forms of violence, injury or abuse, and especially that “traditional practices prejudicial to the health of children” must be abolished (Article 24). The African Charter on the Rights and Welfare of the Child obliges the elimination of “harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child” (Article 21.1). Since FGM/C is an irreparable, irreversible practice that violates girls’ rights, it is beyond doubt against the principle of the best interests of the child.

Parents and guardians submit their daughter to FGM/C despite knowing the negative physical and psychological harms associated with it. They believe that they are ensuring their daughters’ social status and acceptance within the community. It is therefore of utmost importance that the legislation as well as accompanying policies and programmes include measures that increase collective awareness that not cutting is a possible and better alternative to cutting, and thus enable communities to make this choice collectively.

The issue of best interest of the child is also relevant to measures that criminalise parents. Most laws allow for the prosecution of parents who submit their daughters to FGM/C. Experience has shown that parents who have been convicted, for example in France and Burkina Faso, have

often received lowered or suspended sentences, decided by judges who exercised their discretion to not impose penalties on parents during sentencing (see Section 3.5.4). Legislation that protects children from abuse can be invoked in several countries to address FGM/C. However, compulsory measures, such as removing a child from the family, withdrawal of travel or suspending parental authority need to be weighed against the child's best interests.

**Recommendations regarding the legislation:**

- Review a country's legislation and other measures to ensure they consider the best interests of the child.
- Except in extreme cases, legal measures that do not separate a child from her parents or guardians will be the most appropriate tools for changing the family's behaviour and encouraging FGM/C abandonment.

**To ensure the diffusion and implementation of the law:**

- Policies and programmes should include support for relevant education and communication measures to increase collective awareness that not cutting is a possible and better alternative.

**3.2.3. Right to Life, Survival and Development**

The right to life is a widely recognised human right in international and regional human rights instruments (see Annex III). FGM/C may violate a girl's or women's right to life at the time of the procedure or because of complications later in life. It also increases the chance of neo-natal deaths among the children of women who have been subjected to the practice.<sup>62</sup>

FGM/C is also a violation of the right to survival and development (physical, mental, spiritual or social). These rights are recognised by both the CRC and the African Charter on the Rights and Welfare of the Child (Articles 6.1. and 5.2).

Because of its harmful physical and psychological consequences, FGM/C is a violation of the rights to health and development. Immediate consequences of the practice can result in severe pain, bleeding, infection, urine retention and in some cases trauma that can lead to medical shock.<sup>63</sup> The removal of bodily tissue also compromises a woman's right to the full enjoyment of her sexual life.

The ICESCR recognises that individuals are entitled to the "highest attainable standard of physical and mental health" (Article 12). The CRC recognises the rights of children to "the enjoyment of the highest attainable standard of health" (Article 24.1). Finally, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa describes all harmful practices as those that negatively affect the right to life, health, dignity, education and physical integrity (Article 1g).

Some national constitutions make linkages between harmful customary practices and the right to life, survival and development. For example, the *Constitution of the Republic of Ghana 1992* prohibits all customary practices which "dehumanise or are injurious to the physical and mental well-being of a person" (Chapter 5, Article 26.2).<sup>64</sup> The *Constitution of the Federal Democratic Republic of Ethiopia* also upholds this principle, stating that "the State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited" (Part two, Article 35.4).<sup>65</sup>

Some national legislation addressing FGM/C upholds this principle. For example, Italy's *Law no.7 of 2006 Provisions concerning the prevention and prohibition of the practice of female genital mutilation* frames FGM/C as a violation of the rights to the integrity of the person and the health of women and children (Article 1). The preamble to Eritrea's *A Proclamation to Abolish Female Circumcision – 158/2007* discusses FGM/C as a procedure that risks the health of women and violates their basic human rights by depriving them of their physical and mental integrity, their right to freedom from violence and discrimination, and sometimes life. *The Children Act 2001 (No. 8 of 2001)* of Kenya stresses that subjecting a child to FGM/C, amongst other harmful practices, is “likely to negatively affect the child’s life, health, social welfare, dignity or physical or psychological development” (Article 14).

Some medical professionals practice FGM/C in hospitals and other medical facilities, arguing that some of the immediate risks from the procedure may be reduced and that they are therefore protecting girls’ and women’s health. However, the medicalisation of the practice does not make the procedure less severe nor does it eliminate the long-term obstetric complications associated with FGM/C. Furthermore, acceptance and performance of the practice by medical professionals legitimises it and makes it harder to eliminate. Therefore, medicalisation should not be institutionalised nor should it be considered as a temporary solution before reaching total abandonment of FGM/C. Some countries have legislated against this phenomenon. For example, in June 2007, the Egyptian Ministry of Health and Population closed a loophole in a previously issued decree by banning everyone, including health professionals, from performing FGM/C in governmental or non-governmental hospitals and clinics.

#### **Recommendations regarding the legislation:**

- Review legislation to determine the extent to which it upholds the right to life, survival and development in accordance with international and regional instruments, and ensure a clear prohibition of FGM/C.
- Legislation should reflect the principle of the right to life, survival and development.
- Legislation should clearly ban the medicalisation of FGM/C and should include measures that punish all categories of medical staff that practice it.

#### **3.2.4. Right to be Heard and Issue of Consent**

As Annex III highlights, children’s right to express their views is enshrined in the CRC (Article 12.1) and the African Charter on the Rights and Welfare of the Child (Article 7). The CRC focuses on the ability of the child to form an opinion, while the African Charter on the Rights and Welfare of the Child focuses on a child’s right to express an opinion. The CRC goes further to specify that the views of a child must be measured against his/her age and maturity and that simply listening to the child is insufficient; the views of the child have to be seriously considered<sup>66</sup>; whereas the African Charter on the Rights and Welfare of the Child specifies that views of the child must be taken into consideration in accordance with provisions of appropriate law.

The decision to practice FGM/C is sometimes undertaken by the girl’s family or guardian. Often, and especially in communities of high prevalence, the girls themselves agree to be cut or even demand that they be cut. It has been argued that such consent is a result of societal pressure, including in some cases coercion, persuasion by adults, lack of access to credible information or disempowerment to act upon it, and lack of comprehension of the consequences and potential

complications of FGM/C.<sup>67</sup> On the issue of consenting women, some have argued that the consent of an adult that is based on an informed decision should be respected, while others have argued that consent on FGM/C is often attached to several social pressures and deeply rooted inequalities that make it difficult to create the “right” conditions for consent.<sup>68</sup> Indeed, where the issue of consent arises, it may be an indicator of the degree of social acceptance of the practice.

A clear statement on the issue of consent, which stresses that FGM/C should be considered a crime regardless of a girl or women’s consent or age, is absent in many laws and variations exist. Some laws on FGM/C recognise informed consent on FGM/C of adult women above the age of 18 and as such, do not prohibit FGM/C beyond that age. Examples are Canada’s *Criminal Code (R.S., 1985, c. C-46)*, Mauritania’s *Ordinance no. 2005-015* (Chapter II Article 12 of the penal code) and Tanzania’s *Sexual Offences Special Provisions Act 1998*. In contrast, Sweden’s *Prohibiting Female Genital Mutilation Act* of 1982 criminalises FGM/C regardless of whether consent has been given for the procedure or not (Section 1).

#### **Recommendations regarding the legislation:**

- The law should clearly prohibit FGM/C, regardless of whether women or girls have consented to being cut, because the practice is a violation of human rights.

#### **To ensure the diffusion and implementation of the law:**

- Programmes should create appropriate child-friendly institutional settings, with trained staff, that allow for children, including girls, to express their views freely. Children should also share their views in the planning and implementation of any programmes that address their rights.

### **3.3. Preventive Measures against FGM/C**

A State Party to the CRC, the African Charter on the Rights and Welfare of the Child, the CEDAW, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa is under obligation to take all appropriate measures to eliminate FGM/C, including through prevention measures (see Annex III). The CEDAW and provisions of the Protocol to the African Charter on the Rights of Women in Africa require States Parties to address social and cultural patterns that lead to discrimination. States Parties should therefore take all legal and other measures that are necessary to provide effective protection of women against violence, including preventive measures, such as public information and education programmes to change attitudes concerning the roles and status of men and women. The CRC obliges States Parties to take protective measures that include “effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement” (Article 19.2).

Prevention measures help to protect girls and women who are at risk of being cut. Their design should be rooted in an understanding of FGM/C as a social norm kept in place by social rewards and punishments. FGM/C defines a girl’s and a woman’s social standing in the community and how a community defines itself. Demand-side factors may include respect for culture and tradition, hygiene, religious obligation, ensuring a girl’s chastity and increasing her marriage

prospects. Supply-side factors include holding similar beliefs to those requesting the service and also providing a source of income for practitioners. Prevention, therefore, requires a change in attitude by individuals as well as a collective decision to abandon the practice.

Since risk factors occur at several levels, preventive measures – such as awareness-raising, education and protection orders – and support services need to reach individuals, children, families and society as a whole.

### **3.3.1. Awareness-Raising and Education**

The right to education and to be informed is enshrined in several international and regional treaties (see Annex III). Awareness-raising and education can serve to trigger a “critical consciousness” of FGM/C and decrease social acceptance of the practice. Experiences from Egypt and Burkina Faso indicate that legislation prohibiting the practice may be more effective if preceded by years of sensitisation and advocacy to build popular support for the legislation. Awareness-raising and education should be undertaken within an integrated framework that addresses a community’s needs and should: promote a culture of respect for human rights locally rooted in the community’s realities; address gender-based discriminatory attitudes; provide information on the harmfulness of the practice; provide legal awareness and skills for girls and women to claim rights; and involve the entire community, including perpetrators of the practice and girls and women, using a participatory approach that encourages debate and community dialogue in ways that reinforce positive values and lead to questioning of harmful practices.

Legislation on FGM/C has tended to be brief and in most cases, does not address the complexity of the prevention of the practice through non-punitive measures. Very few laws include preventive measures that protect girls and women from being cut. For example, Italy’s *Law No.7 2006*, Article 3, provides for non-penal measures, including awareness-raising and the provision of information, amongst others. Various ministries and layers of government, as well as non-governmental organisations coordinate together to undertake awareness-raising campaigns that target communities with immigrants from countries where FGM/C is prevalent. The campaigns promote integration, increase the knowledge of rights, and raise awareness about laws that prohibit the practice in Italy. The law promotes the integration of FGM/C and the rights of women and children in schools, as well as the involvement of parents.

In practice, awareness-raising and education can be promoted at different levels. At the community level, education programmes can increase participants’ awareness of human rights and women’s health. Communities are then empowered to review, deliberate and change existing discriminatory practices to make them more consistent with the fulfilment of human rights. A long-term retrospective evaluation of the UNICEF-supported Community Empowerment Programme implemented by the NGO Tostan in Senegal provides solid evidence of the validity of the community-level educational approach. The evaluation showed that the programme led to a dramatic decrease in prevalence of FGM/C among villages that participated in a public declaration of abandonment, whether as a result of participating directly in the Community Empowerment Programme or as a result of the systematic outreach to other villages carried out by the programme’s participants. The qualitative component of the evaluation also showed that there had been significant changes in the recognition of the human rights of women and girls as well as of men and boys and a corresponding greater respect for women manifested, for example, by decreases in child marriage and domestic violence, and by the women’s greater role within households and in the community.<sup>69</sup>

Education for parents provided through home visits and counselling services can also be key to the abandonment of the practice. Home-visitation by community workers and volunteers provides an opportunity for raising awareness on FGM/C and for the early identification of girls and women at risk of being cut. Personalised home visits have provided tailored support to address parental knowledge, skills and behaviour in Egypt. In some countries like Burkina Faso, a one-stop centre serves to provide information on the human and legal rights of women, and on reproductive health, FGM/C and general hygiene. In the Gambia, the NGO Foundation for Research on Women's Health, Productivity and Development (BAFROW) uses community awareness-raising and mobilisation to target men and boys in a clinic that seeks to end reproductive health-related problems. BAFROW also uses radio programmes to mobilise communities and has invited husbands to discuss the harmful effects of FGM/C.<sup>70</sup>

Life-skills-based education provided for children and youth in school and other community settings is essential to change attitudes and behaviours. Outreach activities have included formal and informal education programmes. In Burkina Faso, for example, some modules on FGM/C have been integrated in primary and secondary school curricula in the East and South West regions of the country.<sup>71</sup> In the West Darfur region of Sudan, workshops have been conducted in secondary schools, sensitising boys and girls on various topics pertaining to harmful practices, including FGM/C.<sup>72</sup> In Kenya, FGM/C has been integrated into extracurricular activities including the development of dramas to support girls' rights, as well as songs and poems with FGM/C abandonment messages.<sup>73</sup> In Meru in Kenya, as part of the "alternative rite initiations," girls were trained in decision-making, hygiene, relationships (with parents, the opposite sex, peers and elders), dating, courtship, peer pressure, reproductive anatomy, sexually transmitted infections and their prevention, harmful practices, and myths about FGM/C.<sup>74</sup>

Education for the broader public, provided through the media, is critical in shaping public opinion and changing society's perception towards FGM/C abandonment. In Egypt, journalists were trained and sensitised to report on FGM/C and popular media was used to reach wider audiences at a community level. To promote enactment of the law that criminalises FGM/C, a media campaign in 2008 used television programmes, features and information kits to reach the community.

Economic empowerment services targeting circumcisers have enabled some to abandon FGM/C. Such efforts have been made in Burkina Faso, Ethiopia, Ghana, Kenya, Mali, Senegal and Uganda to educate circumcisers about the health risks associated with FGM/C, train them as agents of change that will inform the community and families who request FGM/C about its harmfulness, and provide them with alternative sources of income, by giving them resources, equipment and skills with which to earn a living.<sup>75</sup> In Ghana circumcisers, for example, have been trained to become traditional birth attendants. In Ethiopia, circumcisers received instruction in sandal-making and bread-baking.<sup>76</sup> To be effective, such initiatives need to be accompanied by broader efforts to promote a community consensus to abandon the practice. Research has shown that relying on monetary incentives to convert circumcisers is not an effective measure for promoting abandonment of the practice since, if the demand for FGM/C persists, new circumcisers will take the place of those who left the practice.

It is likely that the most successful of these programmes have addressed intra-household family dynamics and broad information and developmental needs, as well as the family's ability to deal

with external societal pressure. The method of education and sensitisation is likely to have been more participatory, learner-centred and non-directive.

Successful efforts involve a participatory process and engage a range of community stakeholders – women and men, government officials, religious leaders, children and youth, professionals, traditional circumcisers and the media – to foster informed discussions, influence power relations and promote community mobilisation for social change. Collective declarations of abandonment are essential so that every family can abandon the practice without risking their daughter's status. Monitoring and follow-up are required to ensure that agreements are implemented.

Such educational efforts work best as part of a more comprehensive strategy, rather than as stand-alone activities. Community-based activities must be complemented by multi-faceted efforts at the national level. In Egypt, for example, under the national programme FGM-Free Village Project, which began in 2003, partners worked together to reform the legal, judicial and health systems in order to better respond to the issue of FGM/C.

#### **Recommendations regarding the legislation:**

- The law should provide for the participation of the practicing population (including men, women and children) in the process of review, law-making and the development of strategies.
- The law should prioritise prevention measures to protect girl and women from FGM/C, based on an understanding of the root causes behind the practice and the demand- and supply-side factors.
- The law should support the funding and provision of long-term, accessible, integrated, comprehensive, child-friendly and gender-based interventions that protect girls and women from FGM/C. These interventions should include broad campaigns for raising awareness about gender-based discrimination and violations of children's and women's human rights and specific awareness-raising about the FGM/C laws. They should also provide girls and women with the skills to claim their rights. Peer groups can have a major role to play in identifying girls at risk and in undertaking proactive initiatives.
- The law should facilitate dialogue by making institutions responsible for the incorporation of appropriate information on FGM/C in spaces where children, women, men, parents and others convene (such as in youth centres, schools, health clinics, etc.). Curricula should be developed in cooperation with civil society and in consultation with children and women.
- The text of the law should be made widely available, child-friendly and translated in the appropriate local languages. Specific strategies for disseminating it amongst the illiterate people and children need to be devised.

#### **To ensure the diffusion and implementation of the law:**

- Policies and programmes should ensure that awareness-raising and education engage parents, children and youth, and the broader public, including men and boys.
- Policies and programmes should ensure that awareness-raising and debate about FGM/C and legislation precede the adoption of legislation prohibiting FGM/C in order to build the necessary social acceptance for it, otherwise enforcement of the law is likely to be highly problematic.
- Policies and programmes should include the sensitisation of the media so that they regard FGM/C as a form of violence and a violation of the rights of girls and women.

### **3.3.2. Protection Orders and Child Protection Laws**

In the event that a girl or a woman is suspected to be at risk of FGM/C, protection systems that help with identification, reporting, referral and support should work together to prevent her from being cut. Protection orders, which are often part of Child Protection laws, can be used to prevent FGM/C by considering FGM/C as a form of violence against children. They include measures like removing the girl at risk from her parent or guardian and in extreme cases, suspending parental authority when there is reason to believe that violence will occur. The CRC and the African Charter on the Rights and Welfare of the Child (in Articles 9.1 and 19.1 respectively) provide that unless necessary for the best interests of the child and determined by competent authorities according to the law, a child should not be separated from his or her parents. Only when the girl appears to be at high risk, and if the parent after multiple warnings is assessed as not responding to other interventions, should long-term alternative care options be considered.

Legislative measures on child protection services vary according to different country contexts and often include mechanisms for reporting, referral, investigation and follow-up. Egypt's *Amended Child Law no.126 of 2008*, even though not directly addressing FGM/C in its provisions, establishes Child Protection Committees in all governorates mandated to develop the general policy for childhood protection and its follow-up. Moreover, sub-committees for childhood protection are required to monitor all cases of children at risk and take the necessary preventive and therapeutic measures (Article 97). *The Children Act 2001* of Kenya considers a girl to be subjected to FGM/C as a child in need of care and protection, which makes her entitled to protection orders, if deemed necessary. *Sudan's State of South Kordofan Prevention of Female Genital Mutilation Act 2008* provides for preventive orders. Legislation protecting children from abuse, such as Sweden's *The Care of Young Persons Act 1990* and the United Kingdom's *Children's Act 1989*, are both applicable to FGM/C.<sup>77</sup> They provide for both voluntary (counselling, information and warning) and compulsory (removing a child from the home, suspension of parental authority) child protection measures.<sup>78</sup>

#### **Recommendations regarding the legislation:**

- The law should provide for coordinated action through protection systems for the identification, reporting, referral and support of girls and women at risk.
- The law should ensure that protection orders are not applied in ways that reflect discrimination against immigrants and are only applied, if necessary, in the best interests of the child and as determined by a competent authority according to the law.

### **3.4. Measures for the Support and Assistance of the “Victim”/Right Holder**

Legal measures should also address the needs and rights of girls and women who were cut. They often need access to specific services that provide medical, psychological and legal assistance and legal protection, as set out in a number of international and regional instruments and policies, including the Beijing Declaration and Platform for Action (see Annex III). The instruments have emphasised the States Parties' obligations to ensure that girls and women who are victims of violence have access to services such as shelters, medical facilities, counselling, and rehabilitation services. In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa obliges States Parties to ensure women's access to judicial and legal services, which include the provision of legal aid, and support to initiatives increasing women's access to legal services (Article 8). The CEDAW and Protocol to

the African Charter on Human and Peoples' Rights on the Rights of Women in Africa both stress that measures need to be taken to ensure that services are accessible to women living in rural areas (Articles 14.2 b and 14.2.a respectively).

### **3.4.1. Support Services**

Girls and women who have undergone FGM/C need timely access to different forms of services, such as health and psychosocial support services (including counselling) and shelters, that are comprehensive and integrated in order to address the physical, emotional and psychological consequences of the practice. The services are typically provided through a combination of governmental and non-governmental agencies.

Very few anti-FGM/C laws mandate such services. One example is Togo's *Law no. 98-016*, which requires public and private hospitals to assist victims of FGM/C (Article 7). Benin's *Law no. 2003-03 on the Repression of the Practice of FGM* obliges medical staff to assist the FGM/C "victim" as well as inform the authorities (Article 10). Italy's *Law No.7 2006* provides information courses for pregnant infibulated women to prepare them for birth (Article 3), while Article 5 mandates the establishment of a toll-free number to provide information on available services, as well as for reporting cases of FGM/C. In France, the government supported the creation of a reception and counselling centre in six regions. Also, reconstruction surgeries that are covered by the French health care system are provided in certain health facilities by a multidisciplinary team.<sup>79</sup> In Burkina Faso, "one-stop service centres" offer medical, counselling and legal services for girls and women who have been cut. Clitoral restoration is also offered in one of these centres.<sup>80</sup> In Kenya, community-based organisations, such as the Tsaru Ntomonik Initiative, provide rescue shelters or temporary "safe houses" for girls who escaped from FGM/C and child marriage. These shelters include accommodation and services for counselling, family reunification and community reintegration. They also provide support to enable girls to continue their education.<sup>81</sup>

### **Recommendations regarding the legislation:**

- The law should provide funding to establish and support comprehensive, child-friendly and gender-balanced integrated support services to assist those who have been cut. It should ensure that these services include health care, psychosocial support, legal assistance and legal protection. The law should ensure that these services are integrated through the establishment of referral systems that link them to law enforcement, programmes for perpetrators and helplines.
- The law and other measures need to ensure that the services are known to the public and accessible to all women and children in need, particularly in rural and remote areas. Helplines provide important support to girls and women who have undergone FGM/C. Therefore, the law should encourage the establishment of a 24-hour helpline that provides confidential information and counselling, by trained professionals, to women and girls who have been cut.

### **To ensure the diffusion and implementation of the law:**

- Policies and programmes should ensure that the helpline is widely publicised.

### **3.4.2. Legal Services**

The availability of legal services to claimant girls and women who have undergone FGM/C is critical and requires that claimants understand the justice system and their entitlements. The

provision of free legal aid may allow them to secure a more positive legal outcome. Laws addressing FGM/C generally do not provide for free legal aid and independent legal counsel and as such, these are more likely to be provided by non-governmental organisations. Independent legal counsel is sometimes provided as an integrated service, by legal aid organisations or lawyers on a pro bono basis.

#### **Recommendations regarding the legislation:**

- The law should ensure the provision of free legal assistance for all proceedings, especially criminal proceedings. Wherever needed, it should ensure free court support and representation in court free of charge.

#### **To ensure the diffusion and implementation of the law:**

- Policies and programmes should include measures to ensure claimants are provided with sufficient information during all stages of the legal process in order to allow for their meaningful participation in the justice process.

### **3.5. Measures for the Punishment of Perpetrators and Accomplices**

Measures that set out punishment of perpetrators and accomplices are important components of legislation aimed at the elimination of the practice. Such measures make it clear that the practice is unacceptable and that those who engage in it risk negative consequences. There is evidence that measures of this type have contributed to people's decision to stop the practice. Moreover, the evidence indicates that changes in attitudes took place with people only being aware of the existence of the law, and not because they knew of any cases where the law had been implemented.<sup>82</sup>

#### **3.5.1. Criminalisation of FGM/C**

As mentioned previously, FGM/C is subject to prosecution in several countries. Criminalisation is an important element of international and regional treaties and observations, particularly the CEDAW (Article 2b) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Article 5b). Punitive measures should not be the only response to end the practice. They can, however, help support the abandonment of FGM/C through the threat of punishment, thereby establishing a new legal norm that promotes the aspired new social norm. It is important to underline that criminalisation of FGM/C alone does not protect the girl from the practice. Criminalising laws can be particularly effective in environments of low social acceptance for the practice or where the community itself requests the law. Without these factors and where social acceptance of the practice is high, criminalisation can push the practice underground, lower the age of cutting, trigger cross-border migration to be cut and result in public resentment. This can make the law ineffective and discredit the legal system.

FGM/C has been criminalised in several ways. It has either been specifically incorporated in provisions of the penal code (e.g., Burkina Faso, Canada, Djibouti, Egypt, Ghana, Senegal and Zambia), certain acts (e.g., Kenya's Children Act, Ethiopia's Proclamation, Tanzania Sexual Offences Act), or through the adoption of specific legal provisions (e.g., Benin, Côte d'Ivoire, Eritrea, Italy, Sudan/South Kordofan, Sweden, Togo and the United Kingdom).

Existing penal code provisions have also been applied to FGM/C (e.g., France, Germany, Kenya, Mali, the Netherlands and Switzerland). Penal code provisions are mostly brief, while other

special laws may contain provisions that are more comprehensive. In some cases, a combination of a penal code and a Children's act has been used. Under general penal code provisions, FGM/C can be considered as an offence causing a "serious bodily injury". FGM/C is prohibited in France under its *Penal Code provisions (Articles 222-9 and 222-10)*. France was the first European country to institute legal proceedings, in 1979 under article 222-9 of the French penal code covering acts of violence "causing mutilation or permanent disability". The *Netherlands Penal Code Article 300-304* specifies bodily injury or serious bodily injury with currently one case in court.<sup>83</sup> *Kenya's Chapter XXIV on Assaults in the Penal Code*<sup>84</sup> under its articles 250 and 251 describes acts of "grievous harm" and has allowed for several prosecutions of FGM/C circumcisers to take place.<sup>85</sup>

Various experiences of enforcement show that when it comes to bringing perpetrators to justice, the type of law used to criminalise FGM/C does not matter. For example, in France, a general law that has been used to address FGM/C has, since 1979, resulted in at least 37 cases where providers of FGM/C and parents of girls who were cut were put on trial.<sup>86</sup> Burkina Faso, where the penal code specifically addresses FGM/C, convicted an estimated total of close to 100 individuals between 1997 and 2005.<sup>87</sup>

#### **Recommendations regarding the legislation:**

- The type of law that criminalises the practice, whether through a general or specific provision, should not matter.
- Laws on FGM/C should criminalise the practice but not, however, in the absence of preventive and protective measures. The balance between the different measures, including ones to enforce and implement the law, needs to be defined based on the acceptance of the practice.

#### **3.5.2. Defining Perpetrators and Accomplices**

In most countries, specific FGM/C laws consider performing and participating in, or even attempting to subject a girl or a woman to FGM/C a criminal offense. Most laws penalise both accomplices, such as family members, and principal perpetrators. Failure to report a case of FGM/C to the authorities is also a criminal offence (e.g., Benin, Burkina Faso, Côte d'Ivoire, Eritrea, Sudan's State of South Kordofan, Sweden and Togo). In Nigeria, in two states where FGM/C is criminalised, the "victim" herself can be prosecuted for offering consent.<sup>88</sup> Laws should generally not hold "victims" responsible, as often a deep process of socialisation and social pressure resulted in their consent.

Most laws provide criminal sanctions for parents or family members as accomplices and for circumcisers as perpetrators. Where accomplices are not mentioned in certain legislation, this may be to avoid penalising family members. However, family members could still be prosecuted under principles of accomplice liability.<sup>89</sup> As has been discussed above, laws that criminalise parents for procuring FGM/C for their daughters may result in additional undue hardship for the girls who have undergone the procedures.

Most enforcement efforts have in reality assigned criminal sanctions to practitioners alone. However, evidence exists of parents and family members also being sentenced. For example, in Denmark, a mother was sentenced to two years in prison for cutting her two daughters.<sup>90</sup> In Switzerland, in 2008, a court sentenced a 50-year-old woman to a six-month suspended prison sentence for allowing the cutting of her half-sister in Somalia.<sup>91</sup> That same year, in Switzerland,

two parents who had their daughter cut in 1996 were handed suspended prison sentences of two years. They had been charged with grievous bodily harm, which is punishable by up to 10 years in prison.<sup>92</sup> In Senegal, the court in Matam, north of Dakar, sentenced a circumciser and a grandmother for cutting a 16-month-old girl in May 2009, while her parents received six-month suspended sentences. The grandmother's sentence was harsher than that of the parents because she was the one who brought the girl to the traditional cutter.<sup>93</sup> In 2006, a father received a prison sentence of 10 years in Georgia, United States for cutting his two-year-old daughter. He was found guilty of using scissors to remove his daughter's clitoris in 2001.<sup>94</sup>

Some laws, (e.g., Burkina Faso, Côte d'Ivoire, Eritrea, Italy and Senegal) specifically address the case of medical practitioners acting as perpetrators. *Sudan's State of South Kordofan Prevention of Female Genital Mutilation Act of 2008* defines those committing, attempting to commit, agreeing to commit, abetting, cooperating, propagating and operating an FGM/C place as perpetrators or accomplices.

#### **Recommendation regarding the legislation:**

- The law should take into account the hardship inflicted on families when parents are penalised and should consider the best interests of the child. Preventive and protective measures should be prioritised and punishment should be a last resort.

#### **3.5.3. Investigation and Legal Proceedings**

In criminal cases, finding evidence in order to establish proof that is beyond reasonable doubt is crucial, which makes investigation and evidence-gathering especially important. As experiences with law enforcement have shown in various contexts in Africa and Europe, establishing evidence that an act of FGM/C was practiced is often very difficult.<sup>95</sup> This has often been due to the lack of knowledge about FGM/C and to the privacy surrounding the practice. There are also difficulties in accessing some locations, and in assessing whether and when a girl or a woman was cut. Even where it is well known that the practice is performed, law enforcement may be severely impaired by society's support for the practice. This is manifested by resistance to the law and low reporting of FGM/C cases by the "victims" or the families themselves. It is important to note that the attitudes of practicing communities as well as those of law enforcement officials themselves play a role in the effectiveness of the investigation and the evidence-gathering process. When an immigrant family cuts their daughter abroad, evidence gathering is further complicated by issues of integration and may require coordination amongst different countries.<sup>96</sup>

Some countries have introduced mandatory reporting requirements by professionals who come in contact with children, such as medical personnel. For example, under *Law no. 2003-03 on the Repression of the Practice of FGM in the Republic of Benin* medical personnel who provide care to women who have undergone FGM/C are required to report FGM/C cases to law enforcement authorities (Article 10). *Sweden's Social Services Act of 2001* is applicable to FGM/C and requires all professionals who work with children and adolescents to report to the social welfare committee any matter that implies a need for intervention to protect a child.<sup>97</sup> According to the Swedish Board of Health and Welfare, while social welfare and health professionals are bound to observe secrecy in their work, some crimes involving children – such as FGM/C – negate the duty to observe secrecy.<sup>98</sup> In France, as in some other European countries, health professionals have received instructions to perform examinations on girls under six years old during medical

checkups.<sup>99</sup> Opponents of compulsory gynaecological testing consider it a violation of an individual's rights to freedom.

Several laws have established helplines to facilitate the reporting of FGM/C cases. As already mentioned, the Italian *Law No.7 2006* prohibiting FGM/C created a toll-free number that is supported by an annual budget of €0.5 million. The helpline provides information on available services and enables callers to report FGM/C cases (Article 5). Article 97 of Egypt's *Amended Child Law no. 126 of 2008* established the General Department for Child Helpline. It is responsible for providing information and also for receiving any complaints from children or adults, which are forwarded to relevant authorities.

Experience has shown that local law enforcement officials can be key in educating practicing communities, improving their knowledge about FGM/C and changing attitudes so that they realise that FGM/C should constitute a crime. "Victims" of FGM/C may often hesitate to call the police, fearing social disapproval from their community. In Burkina Faso, in an effort to address the complexity of reporting and evidence-gathering, the police established community patrols in some provinces. Their role included not only punishing but also educating, which built trust within the communities. The police worked with informants within the community who reported cases of FGM/C. Medical practitioners also alerted the police to cases that came to their attention. Anyone could report cases through the national helpline "SOS Excision".<sup>100</sup> The police carried out their investigations in a serious manner and acted on reports they received. Some reports suggest that the attitude and approach taken by the police played an important role in demonstrating that the law would indeed be enforced.<sup>101</sup>

Legal proceedings are sometimes difficult and entail social pressure for "victims" of FGM/C. For example, in Sierra Leone, several cases of FGM/C were brought to court under *Section 18 of the Offences Against the Person's Act*. When the case of a Krio woman forcefully cut when she joined a "Secret Society" was discussed in court, the judge prevented the lawyer from asking the claimant to describe the act and the case was closed. The claimant and her lawyer were both mocked in the courtroom.<sup>102</sup> Such an experience highlights that societal norms condition the court's treatment of children's and women's human rights.

### **Recommendations regarding the legislation:**

- The law should establish effective child- and gender-sensitive systems and procedures for reporting and investigation of FGM/C cases that provide: rapid response to reported cases, methodologies for interviewing "victims", procedures for recording and filing cases, legal advice to "victims", support services for "victims" and evidence-gathering procedures. Clear guidelines and procedures that define the role and responsibilities of all the entities involved need to be developed.
- The law should establish investigation units that are child- and gender-sensitive within the police. These should be provided with sufficient training and resources. These units should coordinate with the departments tasked to identify children and women at risk of FGM/C. Complainants should be able to communicate with female police officers or law enforcement officials.
- The law should encourage the establishment of a complaint mechanism, such as a helpline that facilitates the anonymous reporting of FGM/C cases practiced or planned. This system should be designed in consultation with women and children and should be accessible to them.

- The law should allow the “victim” to attend all legal proceedings and limit public access to the courtroom. Measures to protect the complainant and supporters of FGM/C, such as restricting the publication of the complainant’s identity and ensuring her privacy, need to be put in place.

**To ensure the diffusion and implementation of the law:**

- Policy and programme measures should be put in place to offer legal assistance to claimants at all stages of the legal process. Claimants need to be informed of all the support services, protective measures, opportunities for compensation and legal proceedings.

**3.5.4. Penalties, Aggravating Penalties and Sentences**

Punitive penalties associated with FGM/C vary in different countries. Penalties in most countries involve a prison sentence and the payment of a fine by the perpetrator to the State for a breach of the law, although some legislation criminalising FGM/C restricts the penalty to only a prison sentence (Italy and Senegal). Prison sentences vary considerably: from one month and one day to two years in Central African Republic (Ordinance No. 66/16 of 1966); from one year (Children’s Act 2001) to life (Penal Code) in Kenya; from five years to 10 years to life (FGM/C bill) in Uganda; and from five years to 15 years in Tanzania (Penal Code). All of these sentences depend on the gravity of the act and the degree of involvement. In general, most laws provide for a minimum of a few months to five years maximum with or without a fine. Medical practitioners are punished with the suspension of their licenses in, for example, Burkina Faso, Côte d’Ivoire, Eritrea and Niger. In Egypt, under Ministerial Decree 271 (2007), any doctor, nurse or other medical service provider performing FGM/C is liable and subject to administrative and criminal penalties.

Most countries provide for aggravated penalties in certain circumstances if the practice: results in the death of the girl or the woman, is performed on a minor or is performed by a medical practitioner. In some extreme cases, when a girl or women dies, the offender can be subjected to up to 20 years of forced labour and a fine (e.g., Benin), to hard labour with life imprisonment (e.g., Senegal) and to imprisonment for life (e.g., Zambia). In other circumstances, aggravated penalties apply when FGM/C is performed for profit (e.g., Italy), causes a serious illness or corporal lesions (e.g., Sweden and the Netherlands) or is conducted in a ruthless fashion (e.g., Sweden). In France and the Netherlands, aggravating circumstances apply when parents or persons having custody perform the practice.

In reality, the application of criminal sentences has varied. For example, in Burkina Faso, where it is estimated that close to 100 FGM/C cases have been prosecuted, the highest number in the world, both FGM/C practitioners and accomplices were convicted between 1997 and 2005.<sup>103</sup> The punishment for FGM/C under Burkina Faso’s anti-FGM/C law (1996) is six months to three years imprisonment and a fine of approximately US\$ 375 to US\$ 2,250. Where death occurs, the penalty is imprisonment for five to 10 years (Article 380). A total of 27 practitioners and accomplices were sentenced to prison terms of less than six months, 11 received sentences from six months to a year, nine were sentenced to more than one year and three cases were dismissed. There is missing data for 44 cases.<sup>104</sup> In a number of cases suspended sentences were reported, for example for practitioners who were of an advanced age or who were mothers of infants.<sup>105</sup> There are also some cases where convictions and sentencing are avoided and accomplices and practitioners are released due to patronage or to kinship ties.<sup>106</sup> In France, a practitioner was

sentenced to an eight-year prison term for cutting 48 girls. Acts of FGM/C are punishable under France's penal legislation by 10 years imprisonment and a fine of €150,000, and by 15 years criminal imprisonment where the offence is against a child under 15 years of age (Article 222-9). The case was brought to the authorities by one of three girls who were cut in the 1980s. Her mother received a two-year sentence. Twenty-five other defendants received suspended sentences from three to five years for abetting the cutting. The 48 "victims" received compensation of €13,000 each. Five parents were also condemned for sending their children abroad to be cut.<sup>107</sup> In 2009 in Senegal, a traditional cutter and grandmother were sentenced to six months in jail for cutting a baby girl in Matam. Senegal's Penal Code specifies a punishment with imprisonment from six months to five years, and hard labour for life if the result is death (Article 299). In other cases, doctors' clinics were closed in Egypt for submitting girls to FGM/C.

Measures that provide for mandatory educational activities for perpetrators or accomplices are not found in FGM/C legislation. However, these exist in legislation of some countries pertaining to other forms of violence against girls and women.

#### **Recommendations regarding the legislation:**

- The law should prescribe that fines and sentences should take into account the capacity to enforce them, which is directly related to the degree of social support for the practice.
- The law should consider the possibility of progressive application of fines and sentences, in line with the internalisation of the law.
- The law should consider measures to educate the perpetrators and accomplices, especially by providing opportunities to dialogue with individuals and groups who abandoned the practice.

#### **3.5.5. Compensation**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa obliges States Parties to provide appropriate remedies for the violation of women's rights and to ensure that the remedies are determined by a competent authority (Article 25).

The provision of compensation by the perpetrator to the "victim" as a form of sentencing has not been widely used. Very few countries have legislation that includes the award of compensation in criminal cases. Examples include the *Tanzania Sexual Offences Special Provisions Act, 1998 of Tanzania*, which specifies that the perpetrator has to pay a compensation determined by the court. *Sudan's State of South Kordofan Prevention of Female Genital Mutilation Act (2008)* provides compensation for "victims" of FGM/C. Even though *Djibouti's Article 7 of the Criminal Procedure Code* includes compensation, very few cases have been brought to court.<sup>108</sup> In 1999, a French court allowed compensation of up to €25,000 for a girl who was cut.<sup>109</sup> As noted above, in France 48 FGM/C "victims" received €13,000 each.<sup>110</sup>

#### **Recommendation regarding the legislation:**

- The law should consider entitling FGM/C "victims" to compensation from the perpetrator as a complementary measure, and not a substitution, to his/her imprisonment.

#### **3.5.6. Civil Lawsuits**

The potential of civil lawsuits to complement criminal measures in FGM/C cases have so far been under-explored.<sup>111</sup> Using civil actions to address FGM/C may have some potential

advantages over criminal ones: civil lawsuits can avoid the hardship that a family may face under criminal law through imprisonment; they can be brought by the claimant herself (or a person authorised by the complainant); a lower threshold of evidence is usually accepted in civil cases, compared to criminal cases; and complainants may find that receiving compensation is more helpful than imprisonment of the perpetrator. In *Civil suit No.12 of 2000 in Kenya*, the Kandie sisters sued their father, who cited ignorance of the dangers of the practice, for conspiring to undergo FGM/C. Other lawsuits followed, whereby several girls sued different members of their family (parents, grandmother and mother).<sup>112</sup>

For civil lawsuits to be effective, girls and women seeking redress need to be empowered to speak out, have access to resources and be aware of their rights and of how the legal system functions. Most cases involve adolescent girls, who need to authorise a willing adult or an organisation to represent them in court. Civil lawsuits also need to be followed up and monitored to ensure that court decisions are upheld and that reconciliatory meetings between girls and parents are set up.

#### **Recommendations regarding the legislation:**

- Explore the potential of bringing civil lawsuits against perpetrators as a complementary measure to criminal law on a case-by-case scenario.

#### **To ensure the diffusion and implementation of the law:**

- Programmes and policies should empower girls and women to speak out and seek redress through civil lawsuits.

### **3.6. Measures for the Implementation and Evaluation of the Law**

Under international and regional human rights law, governments are responsible to ensure the rights stipulated under the human rights instruments are universally enjoyed. As such, governments are accountable for failing to take steps to prevent FGM/C. As Annex III shows, such action entails taking all “appropriate”, “effective” and “necessary” measures including legislative, administrative, institutional and other measures.

This paper argues that addressing FGM/C requires many different interventions: preventive, protective, supportive, legal and administrative. This section will tackle the administrative measures required.

#### **3.6.1. Institutional Mechanism**

Many different governmental institutions are often involved in addressing FGM/C, due to the multiplicity of responses required. Effective coordination between these different entities is crucial. Often an institution – ministerial department, council, committee, commission or an independent entity – is established to coordinate action addressing FGM/C amongst the different stakeholders. This institution also facilitates the development, implementation and monitoring of the legislation and action on FGM/C. How the institution is organised will often be determined by the specific needs of the country.

The mandate of the coordinating institution is usually broad. Typically, its responsibilities include the dissemination, publication, implementation and monitoring of the law and the coordination of all responses addressing FGM/C between the different governmental and non-

governmental actors. The careful and regular monitoring function is critical to ensure that legislation is implemented effectively and does not have any adverse unanticipated effects. This monitoring, as will be discussed below, is best achieved in participation with the children and women the services seek to serve. Sometimes the responsibility of the coordinating institution covers multiple issues that concern the welfare of children, allowing for a greater integration. Other main areas of activity for such institutions are: development and monitoring of a comprehensive set of policies, undertaking research activities and data collection, training and capacity-building for law enforcement officials and other professionals and stakeholders, and fostering cooperation with other international and regional counterparts.

For example, in Kenya, the National Council on Children's Services under the Children's Act is responsible for general supervision and control of children's rights and welfare activities. It advises the government in this regard, and is specifically tasked with ensuring the full implementation of Kenya's treaty obligations under the CRC and African Charter. In Italy, Article 2 of the *Law No.7 2006* provides that the Department for Equal Opportunity of the Presidency of the Council of Ministers shall coordinate activities carried out by the different ministries involved in the prevention of FGM/C and the assistance to "victims" of the practice. The Department will also collect data and information at the national and international level. A regular budget allocation is provided for the activities.

As already mentioned, in Burkina Faso, the National Committee to the Campaign against Excision (CNLPE) was established in 1990 by a presidential decree and is part of the Ministry of Social Action and National Solidarity.<sup>113</sup> It is composed of a general assembly of 60 representatives appointed by a presidential decree, including 13 ministries, several NGOs and associations (women's, professional and human rights), religious and traditional leaders, and resource persons. Established in 1997, a Permanent Secretariat is supported by a decentralised structure of 13 regional coordination cells and 45 provincial committees of 30 members each. The role of the CNLPE includes the implementation of studies and research, the development of national action plans and the implementation, monitoring and evaluation of strategies for the abandonment of FGM/C, the provision of educational services and training, the coordination with the other line ministries (such as the Ministry of Health, Ministry of Information, and the Police/Justice), the coordination of the activities of the decentralised structures, and the mobilisation of resources to address FGM/C. The government supports the running costs funded by the national budget.

In Mali, based on a 2002 presidential regulation, the National Programme for Campaign against Excision (PNLE) was established under the Ministry of Women, Children and Family Affairs and is responsible for the coordination, implementation and evaluation of policies and strategies on FGM/C.<sup>114</sup>

In Egypt, the National Council for Childhood and Motherhood (NCCM) was established in 1988 through Presidential Decree No. 54 and is responsible for policymaking, planning, coordinating, monitoring and evaluation of activities pertaining to child protection and development. NCCM is the main entity responsible for the national response and coordination on FGM/C.

### **Recommendations regarding the legislation:**

- The law should prescribe the creation of a multisectoral entity that is responsible, in partnership with all relevant stakeholders, for overseeing implementation and monitoring

of the legislation and coordinating all responses on FGM/C. Specific functions could include: coordination with different line ministries for the integration of FGM/C in their action plans, information gathering and analysis, including on the ability of the “victim” to access the justice system and the effectiveness of the process.

**To ensure the implementation of the law:**

- Adequate resources should be provided for the institution to be effective. Accountability mechanisms should be established.

**3.6.2. Budgetary and Non-Financial Resources**

Sufficient human and financial resources should be allotted to help ensure legislation addressing FGM/C is effective and to enable the coordinating institution to achieve its goals. Various treaty bodies include provisions addressing the allocation of resources. For example, both the ICESCR and the CRC oblige States Parties to undertake the measures “to the maximum extent of their available resources and, where needed, within the framework of international co-operation” (CRC, Article 4). The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa specifies that State Parties “adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognized” (Article 26.2).

Adequate resources need to be made available to implement the prevention, support and punishment measures described above. Therefore, the various responsible governmental entities will need to allocate a proportion of their resources to address FGM/C. In Burkina Faso, the government allocates funding to the National Committee against FGM/C in addition to donor funding in support of the Committee’s activities. Few legislative documents contain provisions requiring budgetary allocation for their implementation. One example is the Italian *law No.7 2006*, which specifies the budget allocations to the different entities that implement the different measures prescribed by the law.

**Recommendation regarding the legislation:**

- The law should mandate the allocation of budgetary and non-financial resources for its implementation, on the basis of an analysis of resource requirements, in order to implement all measures contained in the legislation. Different entities involved can be obliged to provide a budget for the implementation of the relevant activities or funding can be pooled within a designated institution.

**3.6.3. Training and Capacity Development**

Tailored and culturally appropriate training and capacity development are important for those responsible for the enforcement of the legislation on FGM/C, as well as for the effective implementation of the legislative measures. Quality training should be provided to all those coming into contact with girls and women at risk of FGM/C, with girls who have already been cut, and with their families. The training should reach all levels and should provide those trained with an in-depth understanding of the nature of FGM/C as it relates to the rights of children and women and with the skills to address the issue in a culturally sensitive and participatory manner with practicing communities.

These groups should be trained through sensitisation campaigns and through more specific trainings addressing their areas of expertise. For example, members of the administration

involved in refugee status determination need specialised training pertaining to the issue as it relates to asylum claim. Social workers and teachers should be trained to identify girls at risk and protect them. Health practitioners must be trained to identify the medical problems resulting from FGM/C and offer referral services. Such trainings and capacity-development efforts may be more effective when they are mandated by the law and developed in partnership with specialised institutions and NGOs.

The continued practice among medical professionals and the condoning of FGM/C in several countries suggests that regulations and guidelines alone are not enough. In addition to training to change the attitudes of service providers, there is a need for professionals to understand and discuss FGM/C, promote its abandonment and support those who oppose it. Legislation can be helpful in promoting the inclusion of FGM/C in several curricula and resource packages addressed to service providers. In Mali, in collaboration with the Ministry of Health and a local NGO, a national FGM/C curriculum was developed, tested and used to train reproductive health care providers in various districts to help them understand and identify complications from FGM/C.<sup>115</sup> A similar effort is being implemented in Egypt, including guidelines on counselling communities on FGM/C. In Kenya, a FGM/C curriculum for teachers, trainers and adult educators was developed. It helps teachers to address FGM/C in the classroom and teaches students ways to communicate with parents on the issue.<sup>116</sup>

#### **Recommendation regarding the legislation:**

- The law should ensure that programmes and policies set up training and capacity development for all relevant actors coming in contact with practicing communities to enable them to address FGM/C. The training should increase understanding of FGM/C as a human rights violation while linking it to the realities of women and children. Training to ensure all services are gender- and child-sensitive should also be made available to specialists who work in monitoring, are involved in the investigation of cases, trials or processing asylum claims and who provide counselling or educational services to women and girls at risk or who are already cut.

#### **3.6.4. National Policies**

Legislation and other measures are most likely to be implemented effectively when accompanied by a comprehensive policy framework that includes national action plans, guidelines and protocols. These policies should help ensure that information about legislative reform reaches all citizens, including girls.

Based on its mandate, the coordinating institution should develop a comprehensive and integrated national policy framework to address FGM/C, which encompasses preventive and supportive measures to enforce the FGM/C legislation. Several African countries have national action plans addressing FGM/C (e.g., Cameroon, Guinea, Kenya, Mali and Senegal).<sup>117</sup> However, these need to be reviewed to ensure a comprehensive framework for the support of the abandonment of FGM/C.

The Kenyan Ministry of Health initially launched a National Plan of Action for the elimination of FGM (1999-2019). With the new appointment (2005) of the Ministry of Gender, Children and Social Development as coordinator of FGM/C activities in Kenya, the plan was reviewed to deal with FGM/C from a broader rights-based perspective. A National Plan of Action for Accelerating the Abandonment of FGM/C in Kenya (2008-2012) was launched, setting goals,

objectives, strategies and indicators for accelerating the abandonment of FGM/C. In Senegal, the Ministry of Family, Social Affairs and National Solidarity developed the National Action Plan for the abandonment of female genital mutilation in 1999 with the goal of eliminating FGM/C in Senegal by the year 2015.<sup>118</sup> The Plan includes four main components: (1) formal and non-formal education, (2) social mobilisation, (3) accompanying measures and (4) institutional framework. The plan includes measures for the prevention of FGM/C, support to “victims” of FGM/C, punishment of perpetrators and implementation/enforcement. The second iteration of the National Action Plan launched in 2010 reinforces three key components: implementing empowering education programs in national languages, engaging extended social networks through an “organised diffusion” model of communication, and supporting public declarations for the abandonment of FGM/C.

As part of a pan-European effort, 15 European countries also launched their action plans to address FGM/C in their respective countries.

The *Norwegian Action Plan against FGM* (2008-2011) is coordinated by the Ministry of Children and Equality and was devised jointly with seven ministries. It is structured around seven components that include effective law enforcement, competence and knowledge building, prevention and opinion building, available health care services, stronger availability around holiday times, stronger international efforts and evaluation.<sup>119</sup> It is based on cross-sectoral cooperation within government and with non-governmental institutions and involving all relevant actors including religious leaders, and on wide dissemination of knowledge. It includes setting up a national advisory group to give representatives of affected groups the opportunity to provide input during the drafting and implementation of the Plan. The Plan does not have a clearly defined objective and does not specify indicators for monitoring achievements.

In Ireland, a National Steering Committee composed of different members of affected communities, youth groups and governmental and non-governmental organisations developed a *National Plan of Action to Address Female Genital Mutilation* (2008-2011). Its goals are to prevent FGM/C, provide high quality, appropriate health care and support for women and girls who were cut, and contribute to the worldwide campaign to end FGM/C. This is to be achieved through legal, asylum, health, community and development aid efforts. The plan is coordinated by the National Office for Prevention of Domestic and Gender-based Violence with the support of the Department of Health.<sup>120</sup> The Plan focuses on the prevention of FGM/C and support to girls and women who have been cut. It also seeks to enact legislation prohibiting FGM/C.

Few countries have FGM/C legislation that calls for the development of regulations and guidelines. Italy’s *Law No.7 2006* states that guidelines for health care professionals, as well as other professionals working with immigrant communities, will be developed to implement activities of prevention, assistance and rehabilitation for women and girls (Article 4). Some countries issued decrees and regulations to prohibit FGM/C by health and medical personnel. In Kenya, the Ministry of Health in 2001 circulated a policy directive making FGM/C illegal in all health facilities.<sup>121</sup> Egypt’s Ministry of Health issued its Ministerial Decree 271 in 2007 prohibiting doctors, nurses or others from cutting/modifying/excising the female genital organs in any location, making them liable to administrative and criminal penalties.<sup>122</sup>

Guidelines on the protection of girls from FGM/C were issued by many countries, such as France, Sweden and the United Kingdom.<sup>123</sup> The guidelines issued by the United Kingdom’s

Department for Education and Skills in 2006 outline how professionals should work together, and define different actors' roles and responsibilities to ensure the promotion of children's welfare.<sup>124</sup> In 2009, a fact sheet was distributed to all school and local authorities ahead of the school holidays (season of high risk) on safeguarding children from FGM/C.<sup>125</sup> Such guidelines are crucial to ensure that professionals are aware of and able to meet their responsibilities prescribed by the law.

#### **Recommendations regarding the legislation:**

- The law should specify that national policies or action plans should be revised or drafted with provisions for monitoring and evaluation to ensure that legislation is implemented in a comprehensive and coordinated way and within a broader framework of measures supporting the abandonment of FGM/C. Policies or action plans should be developed in a participatory manner.
- The law should encourage the development of guidelines, protocols and regulations to enable professionals to prevent, support and punish within their roles and responsibilities.

#### **To ensure the diffusion and implementation of the law:**

- Programmes and policies should devise a plan for the wide dissemination of the action plan.
- Policies should include advocacy campaigns and other mechanisms that can help ensure all citizens, including girls, are made aware of new legislation.

#### **3.6.5. Accountability and Complaint Mechanisms**

Accountability is one of the core human rights principles. It means that States and other duty-bearers are answerable for the observance of human rights. In this regard they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicators in accordance with the rules and procedures provided by law.

Governments are required to show "due diligence"<sup>126</sup> in investigating, punishing and preventing human rights violations such as FGM/C. Each treaty has a monitoring system established to monitor States' compliance and requiring them to submit periodic reports indicating actions undertaken for the realisation of the different treaties.

Nationally, all actors involved in the implementation of the different measures addressing FGM/C should be accountable and their actions should be monitored. Accountability can be achieved through both horizontal (institutional oversight internal to the State) and vertical mechanisms (external mechanisms by non-state actors). Usually, accountability means that responsible institutions are required to report to the parliament and/or government, highlighting activities undertaken and results achieved. Increasingly, committed civil societies are taking action to improve States' response to citizens. Goetz and Gaventa (2001) suggest that the extent to which citizens can influence State actions depends on the nature and power of the State, the nature of the political system, the extent of engagement permitted to citizens and the power of the citizens' groups themselves.<sup>127</sup>

One example of a vertical accountability mechanism is the ombudsperson. Such an independent human rights institution – with a mandate to receive complaints from aggrieved persons against

government agencies, officials and employees – has many potential benefits. It increases the overall effectiveness of public administration, holds government officials accountable, allows complaint and improves the participation of the most vulnerable members of society. The role of an ombudsperson for children, for example, relates to the protection of children’s rights, their improvement, and the advocacy for human rights not yet embodied in legislation or in practice. The ombudsperson needs to be independent from the government both administratively and financially and mandated with broad powers to investigate abuse, such as shadow reporting.

**Recommendation regarding the legislation:**

- The law should ensure that the coordinating institution responsible for the implementation of the legislation and policy be independent from executive and political authorities.
- The law could establish an independent structure such as an ombudsperson with a mandate to receive complaints from aggrieved persons and to hold officials accountable.

**3.6.6. Monitoring and Data Collection**

A comprehensive monitoring system needs to be established for tracking the implementation of the law and the protection of girls and women from FGM/C or lack thereof. This would complement the growing body of data on prevalence and attitudes collected through DHS, MICS and other national surveys. Depending on the needs of the country, monitoring systems have often been either part of a broader child protection monitoring system or undertaken independently. Stakeholders, including women, children, civil society organisations and advocates, should be involved in the monitoring process. For example, in Mali, the National Committee for the Abandonment of Harmful Practices (CNAPN) and partners used participatory monitoring and evaluation methods to understand, define and translate the complex process required to end FGM/C.<sup>128</sup> Evidence generated from these processes should then inform policies and programmes on FGM/C and be used to implement national legislation. In recent years, particularly in Africa, progress has been made in research on FGM/C and the evaluation of various community-based interventions intended to change the practice. However, research has been scarce on how laws on FGM/C are implemented on the ground.

With respect to receiving countries, the European Parliament Resolution of 2009 calls on Member States to address the need for data collection, especially regarding the prevalence of FGM/C.<sup>129</sup> Some countries have addressed the need for data collection in their legislation. For example, Italy’s *Law No.7 2006* prohibiting FGM/C mandates the Presidency of the Council of Ministers–Department for Equal Opportunities to compile data on the activities to prevent FGM/C nationally and internationally (Article 2.2).

**Recommendations regarding the legislation:**

- The law should set up a monitoring system, which involves the participation of stakeholders, to assess the implementation of and compliance with the legislation.

**To ensure the diffusion and implementation of the law:**

- Policies and programmes on FGM/C should establish participatory monitoring and oversight systems (either independently or as part of broader child protection monitoring mechanisms) at various levels of the government, the parliament and national independent institutions such as the ombudsperson to ensure their participation in

qualitative and quantitative baseline research, monitoring of the activities, and evaluation of results against baseline indicators.

- Policies and programmes on FGM/C should ensure the provision of training on situation analysis, investigation, monitoring and reporting.

### **3.6.7. Cross-border Migration and Its Implications**

Data confirm that there is a close link between ethnicity and the practice of FGM/C, closer than for any other social or demographic variables. National efforts and strategy should take into account the fact that ethnic groups are not confined by national boundaries. People belonging to the same ethnic group may live in neighbouring countries or even migrate much further away.

International and regional cooperation is therefore needed, particularly to address the issue of cross-border practices of FGM/C, as well as granting asylum based on FGM/C in countries of immigration.

Cross-border migration of people practicing FGM/C is not well documented. However, some studies noted that the travel of individuals and families practicing FGM/C – those who supply the service and those who demand it – across national boundaries to more lenient countries is a direct result of the criminal sanctions imposed on those who practice it.<sup>130</sup> In Burkina Faso, NGOs created networks with other neighbouring countries in order to provide information on the prevalence of such activities and consolidate efforts.<sup>131</sup> Coordinated efforts between French officials and the Health Ministry in Mauritania helped a girl at risk of FGM/C to return to France without being cut.<sup>132</sup>

The principle of extraterritorial jurisdiction, which makes FGM/C punishable even if committed by a citizen outside the borders of his country, is applicable in anti-FGM/C legislation in a number of European countries such as France, Italy, Denmark, the United Kingdom, Belgium, Austria, Sweden, the Netherlands and Germany.<sup>133</sup> In France, any act of FGM/C committed by a French national outside its boundaries is prosecutable according to *France's Penal Code*. A European Parliament Resolution on FGM/C (24 March 2009) calls on Member States to “pursue, prosecute and punish any resident who has committed the crime of FGM, even if the offence was committed outside their borders”.<sup>134</sup>

The United Nations High Commissioner for Refugees (UNHCR) affirmed that the 1951 Geneva Convention on the status of refugees is applicable to women and girls who fear being subjected to FGM/C, and furthermore that the Convention can apply also to their parents in case they can establish a well-founded fear of persecution for opposing the practice.<sup>135</sup> The European Parliament's resolution of 2009, acknowledging this variation, called on Member States to recognise asylum rights of women and girls at risk on grounds of FGM/C.<sup>136</sup>

Since the 1990s, a few cases of asylum have been granted on grounds of FGM/C as a form of persecution, but with inconsistencies. For example, in 2006 the UK House of Lords, in the widely known case of *Fornah (FC) (Appellant) v. SSHD (Respondent)*, decided in favour of a claim of asylum by an 18-year-old girl from Sierra Leone on the grounds of FGM/C.<sup>137</sup> In the Matter of *Fauziya Kasinga (1996)*, the United States Board of Immigration Appeals granted asylum to a 19-year-old woman who fled from Togo to avoid being subjected to FGM/C.<sup>138</sup> In 2003, the Immigration and Refugee Board of Canada granted asylum to a 23-year-old Ugandan

woman fleeing her father who wanted her to be cut; her mother was attacked, and the aunt with whom she was living was killed for opposing the practice.<sup>139</sup>

**Recommendations regarding the legislation:**

- The law should encourage coordinated collection of data on migration of people practicing FGM/C.
- The law should provide for assessing asylum claims.
- The law should ensure that asylum seekers are provided with information on the refugee status determination process and their rights in a language that they can understand.
- The law should introduce measures to protect girls from FGM/C after being granted asylum.
- Countries should review the coherence of legislation with neighbouring countries to decrease border crossing for the purpose of FGM/C.

**4. CHECKLIST FOR THE DEVELOPMENT OF LAWS ON FGM/C**

The purpose of this checklist is to suggest issues to consider while drafting laws on FGM/C. It is intended to be used by policy makers, lawmakers, development practitioners and others responsible for legislative reform in relation to FGM/C. Not all aspects below are appropriate for all contexts, other issues may be considered as well and the issues described could follow another sequence. This checklist is to be used in conjunction with the rest of this paper.

Chapter Reference	Checklist Component	✓
<b>2. CONTEXTUAL ANALYSIS: UNDERSTANDING FGM/C AND COUNTRY SYSTEM</b>		
2.1. & 2.2.	Provide an overview of the nature and prevalence of FGM/C (including an analysis of supply-side and demand-side factors)	<input type="checkbox"/>
2.3.	Analyse the existing applicable laws and policies to determine the existing gaps. The following areas may be reviewed: <ul style="list-style-type: none"> <li>- Status of ratification/accession of international and regional treaties (CEDAW, CRC, ICCPR, ICESCR, African Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa) and reservations entered (if any)</li> <li>- How national law has been harmonised with ratified/accessed national and regional human rights treaties</li> <li>- Observations pertaining to FGM/C (if any) in country reports submitted to treaty monitoring committees</li> <li>- UN General Assembly resolutions and general comments/recommendations and concluding observations issued by treaty monitoring bodies</li> <li>- Relationship between the constitution, customary law (if available) and laws addressing FGM/C</li> <li>- The political system and accountability mechanisms</li> </ul>	<input type="checkbox"/>
2.3.	Explore whether to enact or modify existing legislation and policy to address FGM/C through: a single comprehensive act, standalone legislation or a combination of both	<input type="checkbox"/>

<b>Chapter Reference</b>	<b>Checklist Component</b>	<b>✓</b>
2.4.	Ensure the participation of people affected by the legislation in the process of planning, reviewing, lawmaking, strategy development, implementation and monitoring	<input type="checkbox"/>
<b>3.1. &amp; 3.2. DEFINITIONS AND GUIDING PRINCIPLES</b>		
3.1.1.	Refer to the widely used WHO definition in defining the several different forms of FGM/C	<input type="checkbox"/>
3.1.1.	Define FGM/C in a culturally appropriate manner that considers the context where it is practiced	<input type="checkbox"/>
3.1.2.	Define the scope of the legislation based on the contextual analysis	<input type="checkbox"/>
3.1.2.	Include a preamble in the legislation that clearly defines the goals, areas that it covers, the nature of the legislation and whom it wants to protect	<input type="checkbox"/>
3.2.1.	Address FGM/C as a form of gender-based discrimination and a violation of women's and girls' human rights	<input type="checkbox"/>
3.2.1.	Include a strong anti-discrimination clause in legislation, ensuring that no woman or child shall be discriminated against due to origin, sex, language, religion, race, colour, fortune, national and social origin or any other status	<input type="checkbox"/>
3.2.2.	Review the extent to which the law upholds the principle of the best interests of the child	<input type="checkbox"/>
3.2.2.	Ensure that legislation and other measures consider the best interests of the child	<input type="checkbox"/>
3.2.2.	Ensure, except in extreme cases, that a child not be separated from her parents or guardians	<input type="checkbox"/>
3.2.3.	Review the extent to which the law upholds the principle of the right to life, survival and development	<input type="checkbox"/>
3.2.3.	Ensure that legislation and other measures are taken to ensure the right to life, survival and development through a clear prohibition of FGM/C	<input type="checkbox"/>
3.2.4.	Clearly prohibit FGM/C, regardless of the consent of girls or women	<input type="checkbox"/>
<b>3.3. PREVENTION OF FGM/C</b>		
3.3.1.	Prioritise prevention measures based on an understanding of the underlying causes and risk factors	<input type="checkbox"/>
3.3.1.	Support long-term sustained funding of accessible and integrated, child-friendly and gender-based interventions protecting girls and women from FGM/C, such as awareness-raising and education	<input type="checkbox"/>
3.3.1.	Facilitate discourse on the rights of girls and on FGM/C within and among social networks by making available appropriate information in spaces where children and young people, women, men and parents gather, such as youth centres, health clinics, schools	<input type="checkbox"/>
3.3.1.	Disseminate widely a user-friendly text of the law and translate it into appropriate languages	<input type="checkbox"/>
3.3.2.	Establish a protection mechanism for the identification, reporting, referral and support of girls and women at risk	<input type="checkbox"/>
3.3.2.	Ensure that protection orders are not applied in ways that reflect discrimination against immigrants and are only applied the best interests of the child	<input type="checkbox"/>
<b>3.4. SUPPORT AND ASSISTANCE FOR THE CLAIMANT/RIGHT HOLDER</b>		
3.4.1.	Fund and establish comprehensive, child-friendly and gender-balanced integrated support services by trained professionals to assist those who have been cut	<input type="checkbox"/>

<b>Chapter Reference</b>	<b>Checklist Component</b>	<b>✓</b>
3.4.1.	Provide services that include information, health care, psychosocial support and legal assistance, and integrate them through referral systems that link them to law enforcement, programmes for perpetrators and helplines	<input type="checkbox"/>
3.4.1.	Publicise services and ensure their accessibility to all women and children in need of them, particularly in rural and remote areas	<input type="checkbox"/>
3.4.2.	Provide free legal assistance, such as legal aid, for all proceedings, especially criminal proceedings. Wherever needed, ensure free court support and free representation in court	<input type="checkbox"/>
<b>3.5. PUNISHMENT OF PERPETRATOR/ACCOMPLICES</b>		
3.5.1.	Criminalise the practice through legal provisions taking into account the degree of social acceptance of the practice and the need to find the appropriate balance between preventive and punitive measures	<input type="checkbox"/>
3.5.2.	Take into account the best interests of the child, including in decisions that may separate the child from her parents	<input type="checkbox"/>
3.5.3.	Develop specific child- and gender-sensitive guidelines and procedures that enable the police, prosecutors, judges and social workers to properly interview, assess, investigate and adjudicate FGM/C cases	<input type="checkbox"/>
3.5.3.	Improve the knowledge, attitudes and skills of law enforcement officials with regard to FGM/C and its criminalisation, as well as with regard to their duties to enforce the law	<input type="checkbox"/>
3.5.3.	Establish effective systems and procedures for reporting and investigation of FGM/C cases, possibly including a helpline that facilitates the anonymous reporting of FGM/C cases practiced or planned	<input type="checkbox"/>
3.5.3.	Develop guidelines and procedures on the role and responsibilities of all the entities involved in the reporting and investigation of FGM/C cases	<input type="checkbox"/>
3.5.3.	Create options for the participation of the “victim” in legal proceedings and limit public access to the courtroom	<input type="checkbox"/>
3.5.3.	Establish measures that protect complainant and supporters of FGM/C from intimidation	<input type="checkbox"/>
3.5.4.	Establish fines and sentences that take into account the capacity to enforce them. This is directly related to the degree of social support for the practice	<input type="checkbox"/>
3.5.4.	Consider the possibility of progressive application of fines and sentences in line with the internalisation of the law	<input type="checkbox"/>
3.5.5.	Entitle FGM/C “victims”/claimants to compensation from perpetrators as a complementary measure to punishment	<input type="checkbox"/>
3.5.6.	Complement criminal law measures with civil lawsuits against perpetrators on a case-by-case scenario	<input type="checkbox"/>
<b>3.6. IMPLEMENTATION AND EVALUATION</b>		
3.6.1.	Establish or select an institutional mechanism endowed with a clear mandate to oversee the development, implementation, monitoring and evaluation of legislation addressing FGM/C and to coordinate the overall FGM/C response	<input type="checkbox"/>
3.6.1.	Appoint a multi-disciplinary team and involve stakeholders in the development, implementation and monitoring of the law	<input type="checkbox"/>
3.6.2.	Allocate budgetary as well as non-financial resources, on the basis of an analysis of resource requirements, to implement all measures contained in the legislation	<input type="checkbox"/>
3.6.3.	Provide training and capacity development for all relevant actors coming into contact with practicing communities, so they are prepared and enabled	<input type="checkbox"/>

Chapter Reference	Checklist Component	✓
	to address the newly enacted legislation	
3.6.4.	Revise or draft comprehensive and well-coordinated national policies/strategies or action plans for the implementation of the legislation (prevention, support, punishment and implementation)	<input type="checkbox"/>
3.6.4.	Develop guidelines, protocols and regulations to enable professionals to prevent, support and punish within their roles and responsibilities	<input type="checkbox"/>
3.6.5.	Establish enforcement practices and clarify consequences for violations	<input type="checkbox"/>
3.6.5.	Ensure the independence and operational autonomy of the coordinating institution from the executive and political authorities	<input type="checkbox"/>
3.6.5.	Establish an independent structure – such as an ombudsperson – with the mandate to receive complaints from aggrieved persons and to hold government officials accountable	<input type="checkbox"/>
3.6.6.	Establish a monitoring system for the systematic collection of data on the nature and prevalence of FGM/C and the continued monitoring of: <ul style="list-style-type: none"> <li>- the effectiveness of measures to prevent and criminalise FGM/C, as well as the services provided to “victims” of the practice and the measures to implement the law</li> <li>- the implementation and compliance with the law</li> </ul>	<input type="checkbox"/>
3.6.6.	Establish participatory monitoring mechanisms for the participation of stakeholders	<input type="checkbox"/>
3.6.7.	Coordinate with relevant countries legislation, programmes and policies to address the migration and mobility of individuals practicing FGM/C	<input type="checkbox"/>
3.6.7.	Coordinate with other countries on specific trainings for members of the administration/border officers responsible for asylum seeking/refugee status determination	<input type="checkbox"/>
3.6.7.	Introduce measures that ensure the protection of girls after being granted asylum	<input type="checkbox"/>

## ANNEX I: International and Regional Legally and Non-Legally Binding Instruments Applicable to FGM/C

Legally binding instruments	Non- legally binding Instruments
International Covenant on Civil and Political Rights (1966)	Universal Declaration of Human Rights (1948)
International Covenant on Economic, Social and Cultural Rights (1966)	General Recommendations: 14 (1990), 19 (1992) , 24 (1999) of the Committee on the Elimination of Discrimination against Women
Convention on the Elimination of All Forms of Discrimination Against Women (1979)	Committee on Economic, Social and Cultural Rights, General Comments 14 and 16
Convention on the Rights of the Child (1989)	Human Rights Committee General Comment 28
European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)	Committee on the Rights of the Child General Comments 4, 5
American Convention on Human Rights (1978)	Declaration on the Elimination of Violence against Women (1993)
African Charter on Human and Peoples' Rights (Banjul Charter) (1981)	General Assembly Resolutions: 56/128 of 2002, 61/143 of 2006, 62/133 of 2007, 63/155 of 2009
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)	
African Charter on the Rights and Welfare of the Child (1990)	

## ANNEX II: Most-Featured National Laws

- **Benin:** *Loi No. 2003-03 portant répression de la pratique des mutilations génitales féminines en République du Bénin* [Law on the Repression of Female Genital Mutilation]: <http://www.stopfgmc.org/upload/docs/en/37.pdf>
- **Burkina Faso:** *Extrait Du Code Penal* [Excerpts of the Penal Code] 1996: <http://www.sp-cnlpe.gov.bf/orientation.htm>
- **Canada:** *Criminal Code (R.S., 1985, c. C-46)*: <http://laws.justice.gc.ca/PDF/Statute/C/C-46.pdf>
- **Central African Republic:** *Ordinance No.66/16 of 1966*, see Rahman, A. and Toubia, N. (2000), p.125
- **Côte d’Ivoire:** *Loi no.98-757, 1998*, on the prohibition of various forms of violence against women, see Rahman, A. and Toubia, N. (2000), p.131
- **Djibouti:** *Penal Code, Law 59/AN/94, 1995*, see Rahman, A. and Toubia, N. (2000), p.139
- **Egypt:** *Amended Child Law no.126 of 2008*, unofficial translation.
- **Eritrea:** *Proclamation 158/2007* [A Proclamation to Abolish Female Circumcision], 20 March 2007: <http://www.unhcr.org/refworld/docid/48578c812.html>
- **France:** *Penal Code (Article 222-9 and 222-10)*: [http://www.legifrance.gouv.fr/html/codes\\_traduits/code\\_penal\\_textan.htm](http://www.legifrance.gouv.fr/html/codes_traduits/code_penal_textan.htm)
- **Italy:** *Legge 9 gennaio 2006, n. 7, Disposizioni concernenti la prevenzione e il divieto delle pratiche di mutilazione genitale femminile* [Law 9 January 2006, no 7, Provisions concerning the prevention and prohibition of the practice of female genital mutilation]: <http://www.camera.it/parlam/leggi/060071.htm>
- **Kenya:** *The Children Act, 2001*, No. 8 of 2001, 31 December 2001: <http://www.unhcr.org/refworld/docid/47975f332.html>
- **Mauritania:** *Ordonnance n°2005-015 portant protection pénale de l’enfant* [Ordinance no.2005-015]: <http://www.hsph.harvard.edu/population/fgm/mauritania.fgm.05.htm>
- **The Netherlands:** *Wetboek van Strafrecht* [Article 300-304 of the Penal Code]: <http://www.wetboek-online.nl/wet/Sr/300.html> (Dutch); unofficial translation, see Poldermans, S. (2006) Combating Female Genital Mutilation in Europe: A Comparative Analysis of Legislative and Preventative Tools in the Netherlands, France, The United Kingdom and Austria. Submitted in part for a European Masters Degree in Human Rights and Democratization: University of Vienna, Austria.
- **Niger:** *Law No 2003-025 of 2003*: <http://www.unhcr.org/refworld/country,,IRBC,,NER,456d621e2,403dd20714,0.html>
- **Senegal:** *Amended Penal Code 1999*, see Rahman, A. and Toubia, N. (2000), p.207
- **Sudan, State of South Kordofan:** *State of South Kordofan Prevention of Female Genital Mutilation Act 2008* (unofficial translation).
- **Sweden:** *Prohibiting Female Genital Mutilation Act 1982* (Unofficial translation: 316): <http://www.sweden.gov.se/content/1/c6/02/56/50/57ffc446.pdf>
- **Tanzania:** *Sexual Offences Special Provisions Act 1998*: <http://www.parliament.go.tz/Polis/PAMS/Docs/4-1998.pdf>
- **Togo:** *Law no. 98-016*: <http://www.stopfgmc.org/client/sheet.aspx?root=141&sheet=1452&lang=en-US>
- **Zambia:** *Penal Code Act, Chapter XV, 157*: [http://www.chr.up.ac.za/undp/domestic/docs/legislation\\_10.pdf](http://www.chr.up.ac.za/undp/domestic/docs/legislation_10.pdf)

## ANNEX III: International and Regional Normative Frameworks and FGM/C

REF	ELEMENT OF THE FRAMEWORK	ARTICLE/DESCRIPTION APPLICABLE TO FGM/C & SOURCE
3.1.1	<b>Definition of FGM/C</b>	<p>FGM/C is defined as comprising “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons” (WHO 2008b). The practice is classified according to four types as follows:</p> <p>Type I refers to excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);</p> <p>Type II refers to partial or total excision of the labia minora, including the stitching or sealing of it, with or without the excision of part or all of the clitoris;</p> <p>Type III indicates excision of part or most of the external genitalia and stitching/ narrowing or sealing of the labia majora (infibulations);</p> <p>Type IV includes all other harmful procedures to the female genitalia for non-medical purposes, for example, piercing, incising, scraping, pricking, and cauterizing the genital area. (WHO, 2008a,b)</p>
3.2.1	<b>Right to Non-Discrimination</b>	<p><b>CEDAW:</b> The term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field.... (1)</p> <p>State Parties....agree to pursue by all appropriate means and without delay a policy of discrimination against women...(2)</p> <p>State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes (5.a)</p> <p><b>CRC:</b> States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language (2.1)</p> <p>States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination (2.2)</p> <p><b>Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa:</b> Discrimination against women means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life (1f)</p> <p>States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures....(2.1)</p> <p><b>African Charter on the Rights and Welfare of the Child:</b> Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status (3)</p>
3.2.2	<b>Best Interests of the Child</b>	<p><b>CRC:</b> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration (3.1)</p> <p>States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents....(9.1)</p> <p><b>African Charter on the Rights and Welfare of the Child:</b> In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration (4.1)</p> <p>Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child (19.1)</p>

3.2.3	<b>Rights to Life, Survival and Development</b>	<p><b>UDHR:</b> Everyone has the right to life, liberty and security of the person (3) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family....(25.1)</p> <p><b>ICCPR:</b> Every human being has the inherent right to life (6)</p> <p><b>ICESCR:</b> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (12)</p> <p><b>CRC:</b> States Parties recognize that every child has the inherent right to life (6.1) States Parties shall ensure to the maximum extent possible the survival and development of the child (6.2) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health (24.1) States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (24.3)</p> <p><b>African Charter on Human and Peoples' Rights:</b> ....Every human being shall be entitled to respect for his life and the integrity of his person (4) Every individual shall have the right to enjoy the best attainable state of physical and mental health (16.1)</p> <p><b>African Charter on the Rights and Welfare of the Child:</b> Every child has an inherent right to life. This right shall be protected by law (5.1) States Parties....shall ensure, to the maximum extent possible, the survival, protection and development of the child (5.2) Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health (14.1)</p> <p><b>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:</b> Harmful Practices means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity (1g)</p>
3.2.4	<b>Right to be Heard and Issue of Consent</b>	<p><b>CRC:</b> States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child (12.1)</p> <p><b>African Charter on the Rights and Welfare of the Child:</b> Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws (7)</p>
3.3	<b>Measures for the Prevention of FGM/C</b>	<p><b>UDHR:</b> Everyone has the right to education (26.1); Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms (26.2)</p> <p><b>ICCPR:</b> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (19.2)</p> <p><b>ICESCR:</b> The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. .... (13.1)</p> <p><b>CRC:</b> States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation (4) States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike. (42) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse... (19.1) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of</p>

the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement (19.2)

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health (17)

States Parties recognize the right of the child to education (28.1)

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents....(9.1)

**African Charter on the Rights and Welfare of the Child:** Member States ...shall undertake to the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter (1.1)

States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child ... (21.1)

Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child (19.1)

**CEDAW:** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: ... (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (2)

States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (5.a)

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: the same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women (10.e); Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning (10.h).

**Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:** States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.....(2.1)

States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men (2.2)

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including: a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes.....protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance....d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance (5)

States Parties shall take all appropriate measures to: (a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training... (e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training (12.1)

**Committee on the Elimination of Discrimination against Women, General Recommendation 19:**

		<p>States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia (t) .....(ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women...(24)</p>
3.4	<p><b>Measures for Support and Assistance of the Claimant/Right Holder</b></p>	<p><b>CRC:</b> States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation (4) States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child (39)</p> <p><b>African Charter on the Rights and Welfare of the Child:</b> Member States ...shall undertake to the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter (1.1)</p> <p><b>CEDAW:</b> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women ... (2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: .... To have access to adequate health care facilities, including information, counselling and services in family planning...(14.2.b)</p> <p><b>Committee on the Elimination of Discrimination against Women, General Recommendation 19:</b> States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims (par. 24 b)</p> <p><b>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:</b> States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.....(2.1) Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure: effective access by women to judicial and legal services, including legal aid; support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid.... (8) States Parties shall take all appropriate measures to: ...provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment (12.1.b) States Parties shall take all appropriate measures to: a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas (14.2)</p> <p><b>Beijing Declaration and Platform for Action:</b> Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence... (par. 125 a).....develop age-appropriate safe and confidential programmes and medical, social and psychological support services to assist girls who are subjected to violence (par. 283 d).</p>
3.5	<p><b>Measures for the Punishment of Perpetrators/ Accomplices</b></p>	<p><b>CRC:</b> States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.....(4)</p> <p><b>African Charter on the Rights and Welfare of the Child:</b> Member States ...shall undertake to the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter (1.1) States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child ... (21.1)</p>

		<p><b>CEDAW:</b> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:  ... (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (2)</p> <p><b>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:</b> States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:  ...b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.... (5)  States Parties shall undertake to: a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated; b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law (25)  Women and men are equal before the law and shall have the right to equal protection and benefit of the law....(8)</p> <p><b>ICCPR:</b> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children (14.1)  Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law (14.2)</p>
3.6	<b>Measures for the Implementation and Evaluation of the Law</b>	<p><b>UN Charter:</b> All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55 (Article 56, Chapter IX). With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: 1. higher standards of living, full employment, and conditions of economic and social progress and development; 2. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and 3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. (Article 55)</p> <p><b>ICESCR:</b> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures (2.1)</p> <p><b>ICCPR:</b> Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant (2.2)</p> <p><b>CEDAW:</b> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:  ... (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (2)</p>

**CRC:** States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation (4)  
States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (24.3)

**African Charter on the Rights and Welfare of the Child:**

States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child ..... (21.1)

States Parties to the present Charter shall take specific legislative, administrative, social and educational measures ..... (16.1)

**Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:**

States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. ... (2.1)

States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognized (26.2).

States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognized (26.1)

## NOTES AND REFERENCES

- <sup>1</sup> UNICEF (2005), *Changing a Harmful Social Convention: Female Genital Mutilation/Cutting*, Innocenti Digest, p.3, Florence, Italy: UNICEF Innocenti Research Centre.
- <sup>2</sup> United Nations Economic and Social Council (ECOSOC), Commission on the Status of Women. *Resolution on Ending Female Genital Mutilation*. March 2007: E/CN.6/2007/L.3/Rev.1, March 2008: E/CN.6/2008/L.2/Rev.1.
- WHO 61<sup>st</sup> World Health Assembly (20 March 2008a), *Female Genital Mutilation: Report by the Secretariat* (A61/11). United Nations General Assembly, 64<sup>th</sup> Session (21 August 2009), *Promotion and Protection of the Rights of Children. The Girl Child: Report of the Secretary-General* (A/64/315), par. 63.
- <sup>3</sup> United Nations General Assembly, 61<sup>st</sup> Session (6 July 2006), *In-Depth Study on All Forms of Violence Against Women*. Report of the Secretary General, (A/61/122/Add.1), par. 78. Pinheiro, P.S (2006) *World Report on Violence Against Children*, Secretary-General's Study on Violence Against Children, Ch.3, pp. 47-48, New York: United Nations.
- <sup>4</sup> UNICEF (2008a), *Handbook on Legislative Reform: Realizing Children's Rights* (vol1), p.v, New York: UNICEF.
- <sup>5</sup> WHO (2008b), *Eliminating Female Genital Mutilation: An Interagency Statement* (UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNHCR, UNICEF, UNIFEM, WHO), p.11. Geneva: World Health Organization.
- <sup>6</sup> UNICEF (2006), *Child Protection Information Sheets*, p.25. New York. Rahman, A., and Toubia, N. (2000), *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*, pp.20-28. London: Zed Books.
- <sup>7</sup> WHO (2008b), *op.cit.*
- <sup>8</sup> International Organization for Migration (n.d), *Supporting the Abandonment of Female Genital Mutilation in the Context of Migration*, p.2, Geneva: IOM.
- <sup>9</sup> *Ibid.*, p. 2.
- <sup>10</sup> *Idem.*
- <sup>11</sup> UNICEF (2009), *Progress for Children: A Report Card on Child Protection*, number 8, p.12. New York: UNICEF.
- <sup>12</sup> *Ibid.*, p. 12.
- <sup>13</sup> *Ibid.*, p.13.
- <sup>14</sup> UNICEF (2005), *op.cit.*
- <sup>15</sup> Mackie, Gerry (1996), "Ending Footbinding and Infibulation: A Convention Account." *American Sociological Review* 61:999-1017. Mackie, G., and LeJeune, J. (2009), *Social Dynamics of Abandonment of Harmful Practices: A New Look at the Theory*, Innocenti Working Paper 2009-06, Section 3, Florence, Italy: UNICEF Innocenti Research Centre.
- <sup>16</sup> United Nations (2009), *op.cit.*, par. 64, UNICEF (2005), *op.cit.*, pp.11-13.
- <sup>17</sup> Toubia, N. (2003), *Legislation as a Tool for Behavioural and Social Change. Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation*, Ch.V (2), p. 67.
- <sup>18</sup> Mackie, G., and LeJeune, J. (2009), *op.cit.*
- <sup>19</sup> For a review of different approaches, please see for example: Center for Reproductive Rights (2006), *Female Genital Mutilation: A Matter of Human Rights: An Advocate's Guide to Action*, New York: Center for Reproductive Rights. WHO (1999), *FGM Programmes to Date: What Works and What Doesn't. A Review*, Report No: WHO/CHS/WMH/99.5. Population Reference Bureau (2006), *Abandoning Female Genital Mutilation/Cutting: an In-depth Look at Promising Practices*, Washington DC, Population Reference Bureau.
- <sup>20</sup> Based on the following literature: UNICEF (2008b), *Long-Term Evaluation of the TOSTAN Programme in Senegal: Kolda, Thiès and Fatick Regions*, Working Paper, New York: UNICEF Section of Statistics and Monitoring, Division of Policy and Practice. Donors Working Group on Female Genital Mutilation/Cutting (2008), *Platform for Action: Towards the Abandonment of Female Genital Mutilation/Cutting (FGM/C). A Matter of Gender Equality*. UNICEF (2005), *op.cit.* UNICEF (2009), *op.cit.* WHO (2008b), *op.cit.*
- <sup>21</sup> Based on Figueroa, M.E, Kincaid, D.L, Rani, M., and Lewis, G. (2002), *Communication for Social Change: An Integrated Model for Measuring the Process and its Outcomes Communication for Social Change* (Working Paper Series no.1.), pp. 5-10, New York: The Rockefeller Foundation.
- <sup>22</sup> UNICEF (2005), *op.cit.* UNICEF (2008c), *Coordinated Strategy to Abandon Female Genital Mutilation/Cutting in One Generation, Technical Note*. Mackie, G., and LeJeune, J. (2009), *op.cit.*
- <sup>23</sup> *Idem.*
- <sup>24</sup> Gillespie, D. and Melching M., (2010), *The Transformative Power of Democracy and Human Rights in Nonformal Education: The Case of Tostan, Adult Education Quarterly*.
- <sup>25</sup> Mackie, G., and LeJeune, J. (2009), *op.cit.*, section 6. United Nations (2009), *op.cit.*, par. 69-70..
- <sup>26</sup> This social change approach has been adopted by several NGOs in Africa, such as TOSTAN in Senegal. See UNICEF (2008b), *op.cit.* This approach has been widely endorsed by the UN and donors agencies due to its proven success, see WHO (2008b), *op.cit.* and Donors Working Group on FGM/C (2008), *op.cit.*
- <sup>27</sup> United Nations (2009), *op.cit.*, par. 74.
- <sup>28</sup> Rahman, A., and Toubia, N. (2000), *op.cit.*, p.56.

- <sup>29</sup> Information on criminal legislation is compiled from: see Annex II, Leye, E. and Sabbe, A. (2009), *Overview of Legislation in the European Union to Address Female Genital Mutilation, Challenges and Recommendations for the Implementation of Laws*, Expert paper prepared for the Expert Group Meeting on good practices in legislation to address harmful practices against women in Addis Ababa. Equality Now and No Peace Without Justice (2009), *Study on Female Genital Mutilation-related Laws in Select African Union Member States*, report submitted to UNICEF. Rahman, A. and Toubia, N. (2000), *op.cit.*, pp.102-240.
- <sup>30</sup> Some anecdotal evidence is cited in Leye, E. and Sabbe, A. (2009), *op.cit.* Poldermans, S. (2006), *Combating Female Genital Mutilation in Europe: A Comparative Analysis of Legislative and Preventative Tools in the Netherlands, France, The United Kingdom and Austria*, Submitted in part for a European Masters Degree in Human Rights and Democratization: University of Vienna, Austria. Andro, A. and M. Lesclingand (2007), *Female Genital Mutilation: the Situation in Africa and in France*, Population and Societies, 438.
- <sup>31</sup> Leye, E. and Sabbe, A. (2009), *Ibid.*
- <sup>32</sup> Boyle, E. H., and Preves, S. (2000), *National Politics as International Process: The Case of Anti-Female-Genital-Cutting Laws*, Law & Society Review, 34, 703-737. Shell-Duncan, B. (2008), *From Health to Human Rights: Female Genital Cutting and the Politics of Intervention*, American Anthropologist, 110 (2), 225-236.
- <sup>33</sup> Shell-Duncan, B., and Hearnlund, Y. (2009), *Contingency and Change in the Practice of FGC: Dynamics of Decision-Making in Senegambia*, Summary Report, Chapter VI, Not yet published.
- <sup>34</sup> Hecht, D. (1999), *Senegal: Ban on female circumcision backfires*, Cited in: *Ibid.*, p.89.
- <sup>35</sup> *Ibid.*, pp.89-92.
- <sup>36</sup> Diop, N. et al (2008), *Analyse de l'évolution de la pratique de l'exision au Burkina*, FRONTIERS Final Report, Washington, DC: Population Council.
- <sup>37</sup> UNICEF (2008a), *op.cit.*, p. v, pp.2-3.
- <sup>38</sup> *Ibid.*, p. 2.
- <sup>39</sup> Only three countries have not ratified/accessed the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (the United States, Iran and Sudan), two countries have not ratified/accessed the Convention on the Rights of the Child (CRC) (the United States and Somalia), only Guinea Bissau did not ratify/access the International Covenant on the Civil and Political Rights (ICCPR), and four countries did not ratify/access the International Covenant on Economic, Social and Cultural Rights (ICESCR). All African countries ratified the African Charter on Human and Peoples' Rights, while a total of 11 countries did not ratify the African Charter on the Rights and Welfare of the Child, and 22 did not ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by all European countries.
- <sup>40</sup> UNICEF (2008a), *op.cit.* See the Glossary for a definition of the monist, dualist, and mixed systems.
- <sup>41</sup> See for example, ACPF (2007), *In the Best Interests of the Child: Harmonising Laws in Eastern and Southern Africa*, Addis Ababa, The African Child Policy Forum (ACPF). UNICEF (2008a), *op.cit.*
- <sup>42</sup> UN General Assembly, 56<sup>th</sup> session, *Traditional or customary practices affecting the health of women and girls*, A/RES/56/128 (2001).
- <sup>43</sup> UN General Assembly, 61<sup>st</sup> session, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/61/143 (2006).
- <sup>44</sup> UN General Assembly, 62<sup>nd</sup> session, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/62/133 (2007).
- <sup>45</sup> UN General Assembly, 63<sup>rd</sup> session, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155 (2008).
- <sup>46</sup> ACPF (2007), *op.cit.*, p.19.
- <sup>47</sup> *Ibid.*, p. 19.
- <sup>48</sup> See CRC Committee General Comment 2 (2002), *The role of independent national human rights institutions in the promotion and protection of the rights of the child*.
- <sup>49</sup> UNICEF (2008a), *op.cit.*, p.13.
- <sup>50</sup> Shell-Duncan, B. (2008), *op.cit.*, p.225.
- <sup>51</sup> Kambou, G. (2003), *The Law as an Instrument for Behavioral Change: the Case of Burkina Faso, Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation*, pp. 92-96. Diop, N. et al (2008), *op.cit.*
- <sup>52</sup> Kabeer, N (1999), *The Conditions and Consequences of Choice: Reflections on the Measurement of Women's Empowerment*. UNRISD Discussion Paper 108, p.2.
- <sup>53</sup> *Ibid.*, p. 9.
- <sup>54</sup> *Ibid.*, p. 10.
- <sup>55</sup> Bicchieri, Cristina (2005), *The Grammar of Society: The Nature and Dynamics of Social Norms*, p. 4, Cambridge: Cambridge University Press.
- <sup>56</sup> WHO (2008b), *The Interagency Statement on Eliminating Female Genital Mutilation classified female genital mutilation into four types: Type I: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy). Type II: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision). Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without*

excision of the clitoris (infibulation). Type IV: All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.

<sup>57</sup> UNICEF (2005), *op.cit.*, pp.1-2.

<sup>58</sup> Rahman, A., and Toubia, N. (2000), *op.cit.*, p.11.

<sup>59</sup> Constitution of the Republic of Uganda (1995).

<sup>60</sup> Committee on the Rights of the Child (27 November 2003), *General Comment no. 5*, UN Doc. CRC/GC/2003/5, para. 12.

<sup>61</sup> *Ibid.*

<sup>62</sup> The Lancet (2006), *Female Genital Mutilation and Obstetric Outcome: WHO Collaborative Prospective Study in Six African Countries*, 367: 1835-41.

<sup>63</sup> World Health Organization (2008b), *op.cit.*

<sup>64</sup> Constitution of the Republic of Ghana (1992).

<sup>65</sup> Constitution of the Federal Democratic Republic of Ethiopia (1994).

<sup>66</sup> Committee on the Rights of the Child (20 July 2009), *General Comment no. 12*, UN Doc. CRC/C/GC/12, para. 28

<sup>67</sup> Rahman, A., and Toubia, N. (2000), *op.cit.*, p.65. UNICEF (2005), *op.cit.*, pp.15-16.

<sup>68</sup> *Ibid.*

<sup>69</sup> UNICEF (2008b), *op.cit.*

<sup>70</sup> UNFPA (2007), *A Holistic Approach to the Abandonment of Female Genital Mutilation/Cutting*, New York: UNFPA, p.9.

<sup>71</sup> Diop, N. et al (2008), *op.cit.*, p.24.

<sup>72</sup> UNFPA (2007). *op.cit.*, p.9.

<sup>73</sup> Muteshi J, and Sass, J. (2005), *op.cit.*, p.35.

<sup>74</sup> *Ibid.*, p.27.

<sup>75</sup> *Ibid.*, pp.25-26.

<sup>76</sup> *Idem.*

<sup>77</sup> Sweden's *The Care of Young Persons Act 1990* and the United Kingdom's *Children's Act 1989*.

<sup>78</sup> Leye, E., Deblonde, J. García-Añón, J., Johnsdotter, S., Kwateng-Kluytse, A., Weil-Cruel, L., & Temmerman, M. (2007), *An Analysis of the Implementation of Laws with Regard to Female Genital Mutilation in Europe*, *Crime Law Social Change*, 47, 1-31, p.12.

<sup>79</sup> Andro, A. and M. Lesclingand (2007), *op.cit.*, p.3.

<sup>80</sup> Equality Now and No Peace Without Justice (2009), *Study on Female Genital Mutilation-related Laws in Select African Union Member States*, Report submitted to UNICEF.

<sup>81</sup> UNFPA (2007), *op.cit.*, p.8.

<sup>82</sup> Shell-Duncan, B., and Hernlund, Y. (2009), *op.cit.*

<sup>83</sup> Leye, E and Sabbe (2009), *Overview of legislation in the European Union to address female genital mutilation, challenges and recommendations for the implementation of laws*, Expert paper prepared for the Expert Group Meeting on good practices in legislation to address harmful practices against women in Addis Ababa, p. 6.

<sup>84</sup> Kenya's Penal Code, Chapter XXIV, Articles 250-251.

<sup>85</sup> The Children's Act 2001 protects those 18 and under. Ras-Work, B. (2009), *Legislation to address the issue of Female Genital Mutilation (FGM)*, p.11. UN.

<sup>86</sup> Leye, E and Sabbe (2009), *op.cit.*, p. 6.

<sup>87</sup> Equality Now and No Peace Without Justice (2009), *op.cit.*, See *Burkina Faso Case Study*. Diop, N. et al (2008), *op.cit.*, p.21

<sup>88</sup> Equality Now and No Peace Without Justice (2009), *op.cit.*

<sup>89</sup> *Ibid.*, See par. on anti-FGM/C laws in Africa.

<sup>90</sup> Dane guilty of genital mutilation (2009, 24 January), BBC News, Retrieved on 28 May 2010:

<http://news.bbc.co.uk/2/hi/europe/7848503.stm>

<sup>91</sup> 'Court rules in case of genital cutting', (2008, 11 June). Swissinfo, Retrieved on 28 May 2010:

<http://www.swissinfo.ch/eng/search/Result.html?siteSect=882&ty=nd&sid=9200904>

<sup>92</sup> 'Parents convicted of genital mutilation', (2008, 26 June). Swissinfo, Retrieved on 28 May 2010 :

<http://www.swissinfo.ch/eng/search/Result.html?siteSect=882&ty=nd&sid=9266892>

<sup>93</sup> 'Six months' jail for female circumcisers in Senegal', (2009, 28 May), AFP.

<sup>94</sup> 'Man gets 10-year sentence for circumcision of 2-year-old daughter', (2006, 1 November), USA Today. Retrieved on 28 May 2010: [http://www.usatoday.com/news/nation/2006-11-01-georgia\\_x.htm](http://www.usatoday.com/news/nation/2006-11-01-georgia_x.htm)

<sup>95</sup> See Equality Now and No Peace Without Justice (2009), *op.cit.*, Diop, N. et al (2008), *op.cit.*, Shell-Duncan, B., and Hernlund, Y. (2009), *op.cit.*, Leye, E., Deblonde, J. García-Añón, J., Johnsdotter, S., Kwateng-Kluytse, A., Weil-Cruel, L., & Temmerman, M. (2007), *op.cit.*

<sup>96</sup> *Ibid.*, pp. 17-18.

<sup>97</sup> Ministry of Health and Social Affairs Sweden. Social Services Act, 2001 [Translated], Chapter 14.

<sup>98</sup> Johnsdotter, S. (2003), *FGM in Sweden: Swedish Legislation Regarding Female Genital Mutilation and Implementation of the Law*, EC Daphne project, p.11.

<sup>99</sup> Leye, E and Sabbe (2009), *op.cit.*, p. 6.

<sup>100</sup> Diop, N. et al (2008), *op.cit.* Equality Now and No Peace Without Justice (2009), *op.cit.*, See *Burkina Faso Case Study*.

- <sup>101</sup> *Ibid.*, See Burkina Faso Case study.
- <sup>102</sup> *Ibid.*, See Sierra Leone Case Study.
- <sup>103</sup> *Ibid.*, See Burkina Faso Case Study. Diop, N. et al (2008), *op.cit.*, p.21.
- <sup>104</sup> *Ibid.*, p. 21.
- <sup>105</sup> Equality Now and No Peace Without Justice (2009), *op.cit.*, See Burkina Faso Case Study.
- <sup>106</sup> Diop, N. et al (2008), *op.cit.*, p.21.
- <sup>107</sup> Leye, E., Deblonde, J. García-Añón, J., Johnsdotter, S., Kwateng-Kluytse, A., Weil-Cruel, L. & Temmerman, M. (2007), *op.cit.*, p.17.
- <sup>108</sup> Equality Now and No Peace Without Justice (2009), *op.cit.*, See Djibouti Case Study.
- <sup>109</sup> Leye, E., Deblonde, J. García-Añón, J., Johnsdotter, S., Kwateng-Kluytse, A., Weil-Cruel, L. & Temmerman, M. (2007), *op.cit.*, p.17.
- <sup>110</sup> *Ibid.*, p. 17.
- <sup>111</sup> Katzive, L. (2003), *Considerations in Drafting and Implementing Legislation to Prevent FGM*, Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation, Ch.V (1), p. 63.
- <sup>112</sup> Wafula, K.W (2003), *Can the Law Stop FGM?* Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation, p. 85.
- <sup>113</sup> For more information about the CNLPE structure and function, See Diop, N. et al (2008), *op.cit.* and Equality Now and No Peace Without Justice (2009), *op.cit.*
- <sup>114</sup> Equality Now and No Peace Without Justice (2009), *op.cit.*, See Mali Case Study.
- <sup>115</sup> Muteshi J, and Sass, J. (2005), *op.cit.*, p.24.
- <sup>116</sup> *Ibid.*, p.35.
- <sup>117</sup> Equality Now and No Peace Without Justice (2009), *op.cit.*
- <sup>118</sup> Ministère de la Famille, de la Solidarité Nationale, de l'Entreprenariat Féminin (1999), *Plan d'Action National Pour L'Abandon De La Pratique des Mutilations Génitales Féminines Au Sénégal 2000-2015, Cadres Logiques Des Différentes Composantes.*
- <sup>119</sup> Norwegian Ministries (2008), *Action Plan for Combating Female Genital Mutilation.*
- <sup>120</sup> Ireland's National Steering Committee to Address FGM (2008), *Ireland's National Plan of Action to Address Female Genital Mutilation.*
- <sup>121</sup> Muteshi J, and Sass, J. (2005), *op.cit.*, p.25.
- <sup>122</sup> National Council for Childhood and Motherhood (2008), *Criminalization of FGM...Why.* Cairo: NCCM.
- <sup>123</sup> Leye, E., Deblonde, J. García-Añón, J., Johnsdotter, S., Kwateng-Kluytse, A., Weil-Cruel, L. & Temmerman, M. (2007), *op.cit.*, p.11.
- <sup>124</sup> Retrieved on 28 May 2010: [http://www.dcsf.gov.uk/everychildmatters/\\_download/?id=1313](http://www.dcsf.gov.uk/everychildmatters/_download/?id=1313)
- <sup>125</sup> Retrieved on 28 May 2010: [http://www.teachernet.gov.uk/\\_doc/13849/FGM-factsheet.pdf](http://www.teachernet.gov.uk/_doc/13849/FGM-factsheet.pdf)
- <sup>126</sup> The concept of "due diligence" in international human rights law has been defined by the Inter-American Court of Human Rights as follows: An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention", see Velasquez Rodriguez v Honduras, Judgement of 29 July 1988, Series C no. 4, par. 172.
- <sup>127</sup> Goetz, A.M., and Gaventa, J. (2001), *Bringing Citizens Voice and Client Focus into Service Delivery*, IDS Working Paper, 138, p.10. Brighton: Institute of Development Studies.
- <sup>128</sup> Muteshi J, and Sass, J. (2005), *op.cit.*, p.40.
- <sup>129</sup> European Parliament (24 March 2009), *Resolution on Combating Female Genital Mutilation in the EU*, (2008/2071(INI)), no.8.
- <sup>130</sup> Equality Now and No Peace Without Justice (2009), *op.cit.* Diop, N. et al (2008), *op.cit.* Leye, E., Deblonde, J. García-Añón, J., Johnsdotter, S., Kwateng-Kluytse, A., Weil-Cruel, L., & Temmerman, M. (2007), *op.cit.* Shell-Duncan, B., and Hernlund, Y. (2009), *op.cit.*
- <sup>131</sup> Equality Now and No Peace Without Justice (2009), *op.cit.*, See Burkina Faso Case Study.
- <sup>132</sup> Leye, E., Deblonde, J. García-Añón, J., Johnsdotter, S., Kwateng-Kluytse, A., Weil-Cruel, L., & Temmerman, M. (2007), *op.cit.*, p.17.
- <sup>133</sup> *Ibid.*, pp. 4-8.
- <sup>134</sup> European Parliament Resolution (2009), *op.cit.*, no. 28.
- <sup>135</sup> UN High Commissioner for Refugees (2009b), *Guidance Note on Refugee Claims Relating to Female Genital Mutilation*, Retrieved on 28 May 2010: <http://www.unhcr.org/refworld/docid/4a0c28492.html>
- <sup>136</sup> European Parliament Resolution (2009), *op.cit.*, no.v.
- <sup>137</sup> UK House of Lords (2006, 18 October).UKHL 46, Retrieved on 28 May 2010 : <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd061018/sshd-1.htm>. Sierra Leone anger at FGM asylum in UK (2006, 19 October). BBC News. Retrieved on 28 May 2010: <http://news.bbc.co.uk/2/hi/africa/6065682.stm>

<sup>138</sup> *In re Fauziya Kasinga*, 3278, United States Board of Immigration Appeals, 13 June 1996, Retrieved on 28 May 2010: <http://www.unhcr.org/refworld/docid/47bb00782.html>

<sup>139</sup> Immigration and Refugee Board of Canada, 3 January 2003, RPD File # / No. dossier SPR : MA2-04725, Retrieved on 28 May 2010: <http://www.iijcan.org/en/ca/irb/doc/2003/2003canlii55228/2003canlii55228.pdf>