

## Helpdesk Research Report: International Instruments and Female Genital Mutilation/Cutting

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**Query:** What international instruments exist to combat FGM/C?

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### 1. Overview

FGM/C is a violation of the human rights of women and girls and is recognised as such in a number of international legal instruments as well as in national legislation. While some of the earlier human rights instruments do not specifically refer to FGM/C, they present a platform for women's freedom from various forms of violence, including FGM/C.

This report outlines the main international instruments, including some of the specific articles from each, which can be used to combat FGM/C. It also covers some of the regional instruments. The last two sections of the report look briefly at how international instruments are implemented and the challenges that need to be overcome for FGM/C to be effectively eradicated. In addition to legislation and effective mechanisms to uphold the law, challenges remain in many countries to change social acceptance of the practice. This needs to be addressed by increasing information about the harmful effects of FGM/C and to address the underlying discriminatory norms that underlie harmful traditional practices, which aim to control women and girls.

This report is to be read in conjunction with Helpdesk Research Report: Female Genital Mutilation/Cutting (19/08/2011).

## 2. International instruments that address FGM/C<sup>1</sup>

### International instruments

This section outlines the international instruments that relate to FGM/C, presenting a selection of the relevant articles.

- The Universal Declaration of Human Rights (1948)
  - i) Article 1 all individuals enjoy the same rights
  - ii) Article 2 non-discrimination and entitlement to freedom and rights for everyone
  - iii) Article 3 the right to life, liberty and security
  - iv) Article 5 prohibition of torture or inhuman or degrading treatment
  
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
  - i) Article 2(2) non-discrimination in access to rights
  - ii) Article 3 equal right of men and women to the enjoyment of all economic, social and cultural rights
  - iii) Article 12 highest attainable standard of physical and mental health
  
- International Covenant on Civil and Political Rights (ICCPR) (1966)
  - i) Article 2(1) non-discrimination in access to rights
  - ii) Article 7 no one shall be subjected to torture or to cruel, inhuman or degrading treatment
  - iii) Article 18 the right to freedom of belief
  - iv) Article 24 every child has the right to protection as required by his/her status as a minor
  
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
  - i) Article 1 the right to freedom from discrimination against women and girls
  - ii) Article 5 state parties to CEDAW are required to: 'modify the social and cultural patterns of conduct ... 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'
  - iii) Article 7 protects individuals from torture or cruel, inhuman or degrading treatment
  - iv) Article 9(1) right to liberty and security of person
  - v) Article 17 prohibition of arbitrary or unlawful interference with an individual's privacy
  - vi) General Comment 19 defines violence against women as a form of discrimination.
  
- Optional Protocol to CEDAW
  - i. The protocol allows for the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals or groups within its jurisdiction

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<sup>1</sup> This section draws heavily on: The Global Virtual Knowledge Centre to End Violence against Women and Girls, 2011; Rahman, A. and Toubia, N., 2000; Foundation for Women's Health Research and Development (FORWARD).

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
  - i) The Special Rapporteur has stated that ‘it is clear that even if a law authorizes the practice, any act of FGM would amount to torture and the existence of the law by itself would constitute consent or acquiescence by the State’ and that ‘the Special Rapporteur on torture considers FGM a violation falling within his mandate’ (Nowak, 2008, p. 18).
  - ii) Article 1 defines torture as ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person... for any reason based on discrimination of any kind’. In conjunction with General Comment 19, as FGM/C constitutes an act of gender-based discrimination, action or inaction by state agents that results in or fails to prevent FGM/C may constitute an act of torture.<sup>2</sup>
  
- Convention on the Rights of the Child (CRC) (1990)
  - i) Article 1 on the definition of a child
  - ii) Article 2 on gender equality
  - iii) Article 3 on the best interests of the child
  - iv) Article 5 and 19 state that while the state must respect the responsibilities, rights and duties of parents or legal guardian, the state must also ensure the child is protected from any abuse or neglect while in the care of parents or guardians.
  - v) ultimate responsibility for child protection lies with the state
  - vi) Article 16 protect a child’s right to privacy
  - vii) Article 18(1) the primary responsibility for the upbringing and development of a child lies with the parents or legal guardians. They must act in the best interests of the child.
  - viii) Article 24(1) on the right to the highest attainable standard of health
  - ix) Article 24(3) abolish traditional practices prejudicial to the health of children
  - x) Article 37(1) states must take effective and appropriate measures to abolish traditional practices prejudicial to the health of children
  
- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
  - i) Though this has not been attempted yet, this Convention could potentially be used in places like eastern DRC where there are indications that rape and female genital mutilation is used as a weapon of war (Reproductive Health Response in Crisis Consortium (2007).
  
- Rome Statute of the International Criminal Court (2002)
  - i) FGM/C could be included as a crime against humanity (Article 5) when committed as part of a widespread or systematic attack directed against any civilian population and Article 7 states that is immaterial whether the perpetrator is a state agent or otherwise
  
- UN Security Council Resolutions on Women, Peace and Security (1325 (2000), 1820 (2008))

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<sup>2</sup> This was clarified by the European Court of Human Rights in the case *Opuz v Turkey*. Information on the case is available at <http://www.interights.org/opuz>

- i) Condemns violence against women and children in situations of armed conflict and post-conflict, including sexual violence

### Regional instruments

- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
  - i) Article 9 Freedom of thought, conscience and religion
  - ii) Article 14 enjoyment of rights without discrimination
- American Convention (1969)
  - i) Article 1 the state shall respect rights and freedoms regardless of race, colour and sex
- The African Charter on Human and People's Rights (the Banjul Charter) (1981)
  - i) Article 16 ensures the right of every individual to enjoy the best attainable state of physical and mental health
  - ii) Article 18(3) protection of the rights of women and girls
  - iii) Article 28 the individual shall not be subject to discrimination
- The African Charter on the Rights and Welfare of the Child (African Charter) (1990)
  - i) Article 4(1) best interests of the child shall be the primary consideration
  - ii) Article 5(1) every child has an inherent right to life
  - iii) Article 14(1) the right to enjoy the best attainable state of physical, mental and spiritual health
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (The Maputo Protocol)
  - i) Article 4 ensure the prevention, punishment and eradication of all forms of violence against women
  - ii) Article 5 prohibit and condemn all forms of harmful practices which negatively affect the human rights of women

### Declarations and resolutions

- **UN General Assembly Declaration on the Elimination of Violence Against Women** (1993): defines violence against women in Article 1 as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'. The declaration also explicitly identifies FGM as such a form of violence against women.
- **Banjul Declaration on Violence against Women** (1998): organised by the Inter-African Committee on Traditional Practices and the Gambia Committee on Traditional Practices Affecting the Health of Women and Children (GAMCOTRAP), the declaration condemns

FGM/C, other harmful traditional practices and the misuse of religious argument to promote the practice and demands their eradication.

- **Ouagadougou Declaration** of the Regional Workshop on the Fight against Female Genital Mutilation (1999): three recommendations were made at the workshop: 1) the preparation of an African charter on FGM/C; 2) the adoption of specific legislation against FGM/C in all West African Economic and Monetary Union States (UEMOA) and ratification by these of regional and international instruments relating to the protection of women and girls; and 3) the establishment of sub-regional networks of traditional and religious leaders as well as modern and traditional communicators to support national committees in their campaign against FGM/C.
- **Council of Europe Resolution 1247 on Female Genital Mutilation** (2001): calls on member states to enact legislation prohibiting FGM/C, to make it a human rights violation, prosecute perpetrators and be more flexible in granting asylum to mothers and children who fear being subjected to FGM.
- **European Parliament Resolution A5-0285/2001 on Female Genital Mutilation** (2001): condemns FGM/C as a fundamental human rights violation, urges states to enact anti-FGM/C legislation and recommends educational programs and publicity campaigns highlighting the harmful nature of the practice.
- **The Cairo Declaration for the Elimination of FGM** (2003): Called on states to, in addition to enacting legislation, increase efforts aimed at changing perceptions and attitudes regarding FGM.
- **European Parliament Resolution on Combating Female Genital Mutilation in the EU** (2008/2071(INI)) (2009): calls for an overall strategy and action plans aimed at banishing FGM from the EU including laws, prevention systems and wider dissemination about existing protection systems.
- **Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence** (2011): states that 'Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised' i) performing FGM/C; ii) 'coercing or procuring a woman to undergo' FGM/C; and iii) 'inciting, coercing or procuring a girl to undergo' FGM/C.

### 3. Implementation of international instruments

Under international human rights law states are required to not only refrain from violating these rights, including FGM/C, but also to ensure that these rights are enjoyed universally within their jurisdiction (Rahman & Toubia 2000). States are thus required to change harmful domestic attitudes. In addition, they should, but are not obliged to, enact appropriate legislation to ensure the abandonment of FGM/C and prosecute and punish perpetrators of this practice. In 2007, 30 countries, including 18 African states, had national legislation in place to combat FGM/C (VNC 2011).

In countries where international law is directly applicable (i.e. where international law is enshrined in a state's constitution) it has proved easier to implement international instruments.

To ensure implementation of international laws several mechanisms have been established to facilitate the process and ensure adherence of signatory states.

### The role of committees

Each international human rights treaty provides for a monitoring body to oversee its implementation. All state parties are obliged to submit regular reports to the committee on how the rights are being implemented. The committee reviews each report and raises concerns and provides recommendations to the state party in the form of 'concluding observations'. When particular problems are highlighted in a number of these reports, the committees provide 'general comments' on that cause of concern. NGOs may provide 'shadow reports' on how the country is complying with its obligations.

### The role of special procedures

In addition to the Treaty Monitoring Bodies, 'special procedures' exist to promote and to protect human rights and to prevent violations in relation to specific themes or issues covered in international law. These 'special procedures' are either an individual (termed "Special Rapporteur", "Special Representative of the Secretary-General" or "Independent Expert") or a working group. Special Rapporteurs exist for violence against women, its causes and consequences and for torture; both of which cover FGM/C. The mandates of the special procedures are established and defined by the resolution creating them, but generally include the following:

- 'analyze the relevant thematic issue or country situation, including undertaking on-site missions;
- advise on the measures which should be taken by the Government(s) concerned and other relevant actors;
- alert United Nations organs and agencies, in particular the international Human Rights Committee, and the international community in general to the need to address specific situations and issues. In this regard they have a role in providing "early warning" and encouraging preventive measures;
- advocate on behalf of the victims of violations through measures such as requesting urgent action by relevant States and calling upon Governments to respond to specific allegations of human rights violations and provide redress;
- activate and mobilize the international and national communities, and the HRC to address particular human rights issues and to encourage cooperation among Governments, civil society and inter-governmental organizations;
- Follow-up to recommendations' (United Nations, 2008, p. 5).

#### 4. Challenges in utilising the law to combat FGM/C

Despite the ratification of many of the international instruments and the adoption of national legislation, the practice and social acceptance of FGM/C persists. Two issues in particular stand out for effective abandonment of FGM: lack of commitment at governmental level, and difficulties in changing attitudes among communities. The eradication of FGM/C thus requires a simultaneous bottom-up and top-down approach.

##### Lack of government commitment

One of the issues associated with eradicating FGM/C in national contexts is the lack of commitment at the highest level of government. This is a particular problem in Sierra Leone, where, despite having ratified both CRC and CEDAW amongst others, the government and elected politicians are reluctant to publicly take a stance against FGM/C (Mgbako et al 2010). According to Mgbako et al (2010) this is closely related to the issue of democratic election, where politicians are reluctant to alienate *bondo*<sup>3</sup> voters by coming out against FGM/C. However, they conclude that the refusal of the government to take a stance against FGM/C makes the issue particularly difficult to deal with at the community level. This has also led the Special Rapporteur on violence against women to state that it is 'essential that the Government of Sierra Leone take effective action against this practice' (Coomaraswamy, 2002, p. 14). The Committee on the Rights of the Child has continued to call for increased national commitment towards FGM/C eradication in Sierra Leone, including enacting legislation and strengthening strategies for awareness-raising and sensitisation for practitioners, families, traditional and religious leaders and the general public, amidst persistently high rates (Committee on the Rights of the Child, 2009).

Without political commitment to eradicate FGM/C it is also likely that effective mechanisms are not promoted, even if the constitution upholds rights that anti-FGM/C legislation could draw upon.

However, Mgbako et al (2010) argue that governments are often reluctant to ban traditional practices if they do not feel they have the support of the general population and will only feel compelled to act if they receive political pressure from the citizens.

##### The difficulty of changing attitudes

Even where states have enacted national legislation prohibiting FGM/C, this is no guarantee that the practice will be eliminated. Rather, social acceptance of FGM/C may continue and consequently the practice may continue, either openly or in secret. The Special Rapporteur on Violence against Women has found that for example in Ghana where FGM/C was criminalised in 1994, and where the law has successfully been used to prosecute offenders, the practice continues (Ertürk, 2008). She also notes that FGM/C is increasingly performed on younger girls, who are less likely to resist or report the crime and that there is anecdotal evidence that families are sending their daughters abroad to have the procedure carried out (Ertürk, 2008). As the Ghanaian law does not apply extraterritorially, these latter cases cannot be prosecuted. The

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<sup>3</sup> The *bondo* secret society is a women's group in northern Sierra Leone. It initiates girls into womanhood with the purpose of making them eligible for marriage. One of these secret rites of passage is FGM/C.

Special Rapporteur on Torture found similar social acceptance of FGM/C in Togo and Nigeria in 2007, countries that also have some national legislation in place to combat FGM/C (VNC 2011).

Awareness raising campaign are thus required to complement other legal provisions criminalising FGM/C. The Committee on the Rights of the Child, in its 2009 report, highlighted this issue with regards to all country reports reviewed where FGM/C is prevalent. The report stated that ‘the negative effects [of FGM/C] on the health of children, especially girls, should systematically and consistently be mainstreamed, targeting all segments of the society including the general public as well as community, traditional and religious leaders (Committee on the Rights of the Child 2009, p.118). However, this approach will have a limited affect unless it is coupled with efforts to increase women’s position in society.

## 5. References

Committee on the Rights of the Child, 2009, ‘Report on the Forty-eighth Session’, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/463/51/PDF/G0946351.pdf?OpenElement>

Coomaraswamy, 2002, ‘Integration of the Human Rights of Women and the Gender Perspective’ Report of the Special Rapporteur on violence against women, its causes and consequences, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/107/32/PDF/G0210732.pdf?OpenElement>

Ertürk, 2008, ‘Promotion and Protection of all human Rights, Civil, political, Economic, Social and Cultural, including the Right to Development: Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to Ghana’, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/106/90/PDF/G0810690.pdf?OpenElement>

Foundation for Women's Health Research and Development (FORWARD), ‘Female Genital Mutilation: Human Rights and Cultural Relativity’, available at: <http://www.forwarduk.org.uk/key-issues/fgm/human-rights>

The Global Virtual Knowledge Centre to End Violence against Women and Girls, 2011 ‘Sources of international human rights law on Female Genital Mutilation’, available at: <http://www.endvawnow.org/en/articles/645-sources-of-international-human-rights-law-on-female-genital-mutilation.html>

Violence is Not our Culture (VNC), 2011, ‘UN: Special Rapporteur Juan E. Méndez Reiterates FGM as a Form of Torture’, Statement by Juan E. Méndez, Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, <http://www.stop-stoning.org/node/1853>

Mgbako, C., Saxena, M., Cave, A., Farjad, N. and Shin, H., 2010, ‘Penetrating the Silence in Sierra Leone: A Blueprint for the Eradication of Female Genital Mutilation’, available at: <http://harvardhrj.com/wp-content/uploads/2010/10/111-140.pdf>



Nowak, M., 2008, 'Promotion and Protection of All Human Rights, Civil, political, Economic, Social and Cultural Rights, Including the Right to Development', Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

<http://www.unhcr.org/refworld/docid/47c2c5452.html>

Rahman, A. and Toubia, N., 2000, 'Female Genital Mutilation: A Guide to Laws and Policies Worldwide' Center for Reproductive Law & Policy, RAINBO (Organization), A preview is available at:

<http://books.google.co.uk/books?id=kEG6GaudxQEC&printsec=frontcover&dq=inauthor:%22Anika+Rahman%22+inauthor:%22Nahid+Toubia%22+inauthor:%22Center+for+Reproductive+Law+%26+Policy%22&hl=en#v=onepage&q&f=false>

Reproductive Health Response in Crises Consortium, 2007, 'Gender-based Violence'

[http://www.rhrc.org/rhr\\_basics/gbv.html#\\_edn19](http://www.rhrc.org/rhr_basics/gbv.html#_edn19)

United Nations, August 2008, 'Manual of Operations of the Special Procedures of the Human Rights Council', Available at: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

## 6. Additional information

### Experts consulted

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