Bringing About Change: Assessing the Barriers Preventing the Eradication of Female Genital Mutilation in Kenya within an International, Regional and Kenyan Legal Framework

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List of abbreviations

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ARP	Alternative Rite of Passage
AYC	African Youth Charter
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CSO's	Civil Society Organizations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DCS	Department of Children's Services
DEVAW	Declaration on the Elimination of Violence Against Women
FGM	Female Genital Mutilation
FGM Act 2011	The Prohibition of Female Genital Mutilation Act 2011
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD25	International Conference on Population and Development at 25
MAPUTO	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
PADV Act 2015	The Protection Against Domestic Violence Act 2015
SDG	Sustainable Development Goals
UN	United Nations
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
VAW	Violence Against Women
WHO	World Health Organization

Chapter 1: Introduction

1.1 Background and problem analysis

Each year an accumulated amount of 4 million girls and women are at risk of undergoing Female Genital Mutilation (FGM), before the age of 15.[1] FGM refers to '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'.[2]

FGM is a violation of a women's and girls' human rights. 'It reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against girls and women.'[3] It is often carried out on children, which makes it a violation of the rights of children. The practice is a violation of the children's right to health, security and physical integrity, as well as the right to be free from torture and cruel, inhuman or degrading treatment and it is a violation of the right to life. [4]

By performing FGM on women and girls it can cause severe health issues. It causes short term effects, as well as long term effects. These health issues can cause: infections, miscarriages, menstrual problems, infertility, chronic pain, psychological suffering and in severe cases even death.[5]

The WHO classifies female genital mutilation into 4 major types:

> **Type 1:** This is the partial or total removal of the clitoral glans (the external and visible part of the clitoris, which is a sensitive part of the female genitala), and/or the prepuce/clitoral hood (the fold of skin surrounding the clitoral glans).
>
> **Type 2:** This is the partial or total removal of the clitoral glans and the labia minora (the inner folds of the vulva), with or without removal of the labia majora (the outer folds of skin of the vulva).
>
> **Type 3:** Also known as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and

[1] Beth D Williams-Breault, 'Eradicating Female Genital Mutilation/Cutting: Human Rights-Based Approaches of Legislation, Education, and Community Empowerment' [2018] 20(2) Health and Human Rights Journal 226.

[2] World Health Organization, 'Female genital mutilation' (*Who.int*, 31 January 2023) <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed 22 May 2023.
[3] World Health Organization, 'Female genital mutilation' (*Who.int*, 31 January 2023) <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed 20 May 2023.
[4] World Health Organization, 'Female genital mutilation' (*Who.int*, 31 January 2023) <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed 20 May 2023.
[5] Beth D Williams-Breault, 'Eradicating Female Genital Mutilation/Cutting: Human Rights-Based Approaches of Legislation, Education, and Community Empowerment' [2018] 20(2) Health and Human Rights Journal 8.

repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoral prepuce/clitoral hood and glans.

Type 4: This includes all other harmful procedures to the female genitalia for non-medical purposes, for example; pricking, piercing, incising, scraping and cauterizing the genital area. [6]

There have been many initiatives and organizations concerning the eradication of FGM. While there is not an exact number of how many girls and women worldwide have undergone FGM, it is estimated that at least 200 million girls and women in 31 countries have suffered from the effects of FGM.[7] However, most girls and women in these countries agree that FGM should be eradicated in their communities.[8] There has been a gradient decline in prevalence over the past 30 years, yet not every country has made progress.[9]

FGM is the most commonly practiced in the sub-Saharan Africa and the Middle East, but it also occurs in other regions of the world, like Europe and North America. The practice mostly occurs, in Somalia, Guinea and Djibouti, where the percentage of FGM is over 90%.[10] By contrast, in Cameroon and Uganda, the percentage is no more than 1%.[11] Studies have shown that there has been a decline in the prevalence of FGM over the last decades, however not every country has made progress and the pace of decline has been unpredictable and inconsistent.[12]

The latest Kenya Demographic and Health Survey from 2022, show that between the age of 15-49 15 % of women are effected by FGM.[13] There is a deep decline in prevalence, from 38% in 1998 to 15% in 2022.[14] The prevalence rate of girls between the age of 15-19 was 9%.[15] A report from UNICEF in 2020, showed that 3% of girls

[6] World Health Organization, 'Female genital mutilation' (*Who.int*, 31 January 2023) <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed 20 May 2023.
[7] Beth D Williams-Breault, 'Eradicating Female Genital Mutilation/Cutting: Human Rights-Based Approaches of Legislation, Education, and Community Empowerment' [2018] 20(2) Health and Human Rights Journal 8.
[8] UNICEF, 'Female genital mutilation (FGM)' (*Data.unicef.org*, February 2023) <https://data.unicef.org/topic/child-protection/female-genital-mutilation/> accessed 20 May 2023.
[9] UNICEF, 'Female genital mutilation (FGM)' (*Data.unicef.org*, February 2023) <https://data.unicef.org/topic/child-protection/female-genital-mutilation/> accessed 20 May 2023.
[10] UNICEF, 'Female genital mutilation (FGM)' (*Data.unicef.org*, February 2023) <https://data.unicef.org/topic/child-protection/female-genital-mutilation/> accessed 20 May 2023.
[11] Ibid.
[12] Ibid.
[13] Kenya National Bureau of Statistics and ICF, *Kenya Demographic and Health Survey 2022: Key Indicators Report* (January 2023), 93.
[14] Ibid.
[15] Ibid.

under the age of 15 have undergone FGM in Kenya.[16] However, this rate is not completely representable. The girls might still be at risk of being cut, once they reach the traditional cutting age. This means that the number of girls who are at risk of FGM is higher than what is shown in the data.[17]

Although the state of Kenya has shown great improvement in getting rid of the practice, there are major concerns for UNICEF and UNFPA and other agencies, regarding for example the medicalization of FGM. They consider this to be one of the biggest threats to the elimination of FGM.[18]

In this research a focus on FGM related to girls under the age of 18, within the country of Kenya is performed. Within this research a state perspective is chosen, which means that I will examine how Kenya has approached its human rights obligations under international human rights law. FGM is prohibited in Kenya under a strong legal system, which will be covered in more detail in paragraph 2.3. Regardless of the law FGM is still practiced in Kenya and this forms a major issue for the government since the elimination of FGM calls for a united collaborative effort from all state and non-state actors.

1.2 Research question

The main question my research focusses on is:

What have been the barriers that have prevented the eradication of FGM in Kenya and how successful have international, regional and Kenyan laws been in addressing this issue?

The **sub questions** regarding the main question is:

- What is Female Genital Mutilation?
- What is the legal framework of FGM within international law, regional law and Kenyan law, and what has the law achieved?
- What are the barriers to ending FGM in Kenya and how has the state approached the issue?

[16] UNICEF, *A Profile of Female Genital Mutilation in Kenya* (March 2020), 7.
[17] Ibid.
[18] UNICEF, *The medicalization of FGM in Kenya, Somalia, Ethiopia and Eritrea* (February 2021), 3.

- What types of pragmatic measures could supplement the abolitionist approach in the current legislation and in what ways?

1.3 State of the art – academic relevance

The academic relevance of this research is of great importance and it intersects with different disciplines. First of all, FGM is a huge worldwide problem concerning multiple human rights issues.[19] It is therefore important that knowledge is spread across the world, but especially within communities, so that girls, women and men may be informed on the practice. Talking about FGM opens up doors to further discussions and it can be used as a catalyst for change.

Legislation on its own is often unable to influence social actions, this includes the practice of FGM.[20] FGM will persist when laws prohibiting it are adopted in settings where individuals are obligated to participate in the practice and fear social penalty.[21] Legal structures are crucial for creating an atmosphere that is supportive to change[22], but it needs to be complemented with additional approaches, that promote positive change in local communities.[23] Ending FGM demands a diversified strategy.[24] The difficulty is in creating, introducing, and carrying out laws in such a manner that promotes a shift in society and leads eventually to the eradication of FGM within the communities. [25]

Within the existing body of knowledge about FGM, a lot has already been said and researched, also within the context of FGM in Kenya. Despite all the governmental and non-governmental efforts, FGM is still a big problem in the everyday lives of the girls in Kenya. The contribution I make within this field of research about FGM in Kenya, is that I will discuss that in order to bring about change and eradicate FGM, a different approach has to be implemented. Merely focussing on creating legislation

[19] Population Reference Bureau, *Ending Female Genital Mutilation/Cutting: Lessons from a decade of progress* (3 February 2014), 2.
[20] UNFPA Regional Office for West and Central Africa, *Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa* (January 2018), 19.
[21] Ibid.
[22] Bettina Shell-duncan and others, 'Legislating Change? Responses to Criminalizing Female Genital Cutting in Senegal' [2013] 47(4) Law & Society Review 17.
[23] United Nations Population Fund, 'Driving forces in outlawing the practice of female genital mutilation/cutting in Kenya, Uganda and Guinea-Bissau' (2013), 22.
[24] UNFPA Regional Office for West and Central Africa, *Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa* (January 2018), 19.
[25] Ibid.

and focusing on an abolitionist approach, is not going to impact the lives of the girls. A more pragmatic and social focus is needed to cause change.

1.4 Methodology

The research question is multi-faceted, it seeks to analyse FGM in Kenya using a doctrinal, social-legal, and African feminist approach.

A doctrinal approach is used to describe the applicable legal framework on international, regional and state level. Analysis of current legislation and related case law is necessary to shape the legal structure surrounding the eradication of FGM in Kenya. However, this research goes beyond a legal analysis and draws on interdisciplinary research in order to assess the real cultural and societal dimensions of FGM. This is why I have adopted a feminist legal perspective and socio-legal approach. According to Schiff, socio-legal theory means 'analysis of law is dire to the analysis of the social situation to which the law applies, and should be put into the perspective of that situation by seeing the part the law plays in the creation, maintenance and/or change of the situation'.[26] As part of the socio-legal approach, the social problems, norms and beliefs that contribute to the continuation of the practice are reviewed, as well as the more pragmatic measures to eradicate FGM in Kenya. The feminist approach can also help to understand the relationship between the harsh realities that African women face on a daily basis, including FGM, and the law. Bartlett argues that feminist legal perspectives can analyse how 'existing rules overrepresent existing power structures, value rule-flexibility and the ability to identify missing points of view', with a focus on gender.[27] Finally, in section 2.4, cultural psychological theory is also used to provide more insight on how to understand the psychological problems of prohibiting FGM in Kenya.[28] Together, these approaches help to demonstrate the context as to why FGM is still carried out in Kenya, which is important for effective eradication.[29]

For this purpose, an extensive literature research is carried out. The sources of information that are used, are: international, regional and national legal texts, UN Treaties and Conventions, reports and evaluations about FGM by for example the UN

[26] David N. Schiff, 'Socio-Legal Theory: Social Structure and Law' (May 1976) 39 The Modern Law Review, 287.
[27] Katharine T. Bartlett, 'Feminist Legal Methods' (February 1990) 103 Harvard Law Review, 832.
[28] Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health Matters.
[29] Ibid.

and UNICEF, scholarly articles from different academics and a search on the internet was carried out for the latest news on FGM in Kenya.

The structure of the thesis is as follows. Chapter 2 examines the international, regional, and national legal frameworks concerning FGM, analysing relevant laws and conventions. Furthermore, this chapter ends with a cultural psychological perspective on the legal framework, which explains the notion that in order to bring about change it requires more than merely enforcing the law. So relying solely on legal prohibitions and a rights-based framework is insufficient to address the issue of FGM. Chapter 3 provides an overview of why the practice of FGM continues, despite the implementation of aforementioned legal frameworks. I will analyse the reasoning of FGM in general, but I will also give an overview of the challenges within the national context of Kenya. The focus in chapter 4, builds on the idea that was outlined in chapter 2. Focussing the problem of FGM merely on the prohibition with laws is not going to solve the problem. Instead, a more pragmatic approach that focusses on other measures like for example educational initiatives for girls and the promotion of social awareness is promoted, in order to eradicate FGM.

Chapter 2: Legal framework

In this chapter the legal framework concerning the eradication of FGM is outlined. This chapter is divided into three parts. The first part talks about the international framework, consisting of a historical background and the international laws and conventions. In order to prevent confusion, in this international part referencing will be made on how and when Kenya has implemented the international legal framework. The second part consists of the African legal framework and then lastly the Kenyan legal framework is discussed.

2.1 International legal framework

2.1.1 Historical background

It is uncertain where FGM first appeared, some academics claim that its origin are from Ancient Egypt, other academics claim that the practice expanded along the routes of the slave trade.[30] Originally, FGM was seen as a practice that was in the private and communal scope, performed by private people or family within the community.[31] FGM was positioned outside the spheres of the international human rights context.[32] Furthermore, the international states and organizations believed that FGM was part of the African customs and traditions and thought that they should respect the practice rather than engage in the problem. [33]

The practice of FGM has been subject to a variety of names over time. The United Nations (UN) used an anthropological perspective, and labelled the practice as "female circumcision," this term was also adopted by the World Health Organization (WHO).[34] Nevertheless, many people felt that this name "normalised" the practice, equating it to the frequently used male circumcision. In the mid 1970's, feminist activists emphasised the negative effects this custom has on the girls and women.[35] These feminists started using the term "mutilation" instead of "circumcision." "Female genital mutilation" has gained widespread acceptance during the 1990s.[36]

[30] Llamas J, 'Female Circumcision: The History, the Current Prevalence and the Approach to a Patient' (2017) Paper 4/2017, 2.
[31] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016) 5.
[32] Ibid.
[33] Ibid.
[34] Llamas J, 'Female Circumcision: The History, the Current Prevalence and the Approach to a Patient' (2017) Paper 4/2017, 1
[35] Ibid.
[36] Ibid.

In the 1990s came a paradigm shift with the emergence of a worldwide campaign combating Violence Against Women (VAW).[37] The UN labelled FGM as VAW with the ratification of the Declaration on the Elimination of Violence Against Women (DEVAW). Article 2(a) DEVAW describes the VAW as the physical, sexual and psychological violence against women. FGM is seen as one of the examples of VAW.[38] Despite the fact that this Declaration was not legally binding, it helped form a general agreement that FGM is a direct violation of human rights and it needed to be eradicated.[39]

In 1990, the Committee on the Elimination of Discrimination against Women (CEDAW) released General Recommendation No. 14 on the Female Circumcision.[40] In this Recommendation it is stated that FGM brings serious health issues and other consequences for women and girls and that the states should take appropriate and effective measures to eradicate the practice.[41]

In 1997, a Joint WHO/UNICEF/UNFPA Statement regarding FGM was released.[42] They state that FGM is 'universally unacceptable because it is an infringement on the physical and psychosexual integrity of women and girls and is a form of violence against them'.[43] The goal of these joint organizations was to support the global, national and community efforts for the elimination of FGM and to support the health and well-being of the women and girls.[44]

[37] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016) 5.
[38] Declaration on the Elimination of Violence against Women, UNGA Res 48/104 (20 December 1993), UN Doc A/RES/48/104, art. 2a.
[39] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016) 5.
[40] United Nations Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No. 14: Female Circumcision' in 'Official Records of the General Assembly, Forty-fifth Session, Supplement No. 38 and corrigendum' (5 June 1990) UN Doc A/45/38.
[41] United Nations Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No. 14: Female Circumcision' in 'Official Records of the General Assembly, Forty-fifth Session, Supplement No. 38 and corrigendum' (5 June 1990) UN Doc A/45/38.
[42] A Joint WHO/UNICEF/UNFPA Statement, *Female genital mutilation* (1997).
[43] A Joint WHO/UNICEF/UNFPA Statement, *Female genital mutilation* (1997), 1.
[44] A Joint WHO/UNICEF/UNFPA Statement, *Female genital mutilation* (1997), 2.

2.1.2 International conventions and instruments

FGM is recognized as a harmful practice[45] for both women and girls and is in violation of a number of international human rights treaties, conventions and fundamental freedoms.[46]

A few international treaties that are important for the eradication of FGM are, among others: Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)[47], Covenant on Civil and Political Rights (ICCPR)[48] and the Covenant on Economic, Social and Cultural Rights (ICESCR).[49]

The focus in this research is on FGM in relation to girls under the age of 18. Considering the vulnerability and protection of the children, additional Conventions have to be invoked. There are two international Conventions that are particularly important regarding FGM and girls: the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Specific articles within these Conventions are mentioned and discussed. Also an overview is given of CEDAW's concluding observations of Kenya's periodic report. Lastly, it is also noteworthy to mention what impact the Sustainable Development Goals have on FGM, especially in this changing world of sustainability.

2.1.2.1 Convention on the Rights of the Child

The UN Convention on the Rights of the Child establishes international standards, to ensure the rights and to meet the needs for children under the age of 18. Children are

[45] Harmful practices are described as: "persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering. The harm that such practices cause to the victims surpasses the immediate physical and mental consequences and often has the purpose or effect of impairing the recognition, enjoyment and exercise of the human rights and fundamental freedoms of women and children. There is also a negative impact on their dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status". "While the nature and prevalence of the practices vary by region and culture, the most prevalent and well documented are female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour and dowry-related violence." UN Committee on the Elimination of Discrimination against Women and UN Committee on the Rights of the Child, 'Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices' (8 May 2019) CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, para. 15.

[46] UNFPA Regional Office for West and Central Africa, *Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa* (January 2018), 21.

[47] United Nations Committee Against Torture (CAT), 'General Comment No. 2: Implementation of Article 2 by States Parties' (24 January 2008) UN Doc CAT/C/GC/2, para. 18.

[48] United Nations Human Rights Committee, 'General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)' (29 March 2000) UN Doc CCPR/C/21/Rev.1/Add.10, para. 11.

[49] United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights' (11 August 2005) UN Doc E/C.12/2005/4, para. 29; UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 22: on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (1 May 2016) UN Doc E/C.12/GC/22, para. 29, 49(d), 59.

given special care and assistance under human rights law.[50] The essential focus on "the best interests of the child" is one of the key elements of the CRC.[51] FGM is an option that some parents choose for their daughters because they believe the advantages exceed the dangers associated with the practice.[52] This understanding cannot legitimize a permanent and possibly life-altering practice that infringes the fundamental human rights of girls.[53]

Article 19(1) CRC recognizes that states should take the 'appropriate legislative, administrative, social and educational measures to protect the child from *all forms of* physical or mental violence'. [54] In the General comment No.13 from the CRC, they give a legal analysis of 'all forms of' and explain what is understood and included with this phrase.[55] In paragraph 29 of the General Comment No. 13 it is mentioned that harmful practices are also included in all forms of violence. Paragraph 29(b) mentions that female genital mutilation is a harmful practice and thus falls within the scope of article 19 CRC.[56]

The other article is article 24(1) CRC. This article recognizes that the child should have the highest attainable standard of health.[57] Article 24(3) CRC mentions that effective and appropriate measures have to be taken to abolish traditional practices that are prejudicial to the health of the children.[58] General comment No. 15 of the CRC[59] discusses article 24 of the CRC and makes a link to FGM in paragraph 9. In this paragraph it mentions that 'attention needs to be given to harmful gender based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health of girls and boys.'[60] This implies that in order to realize

[50] United Nations General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) United Nations, Treaty Series, vol. 1577, p. 3, preamble.
[51] United Nations General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) United Nations, Treaty Series, vol. 1577, p. 3, art. 3.
[52] WHO on behalf of OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, *Eliminating Female genital mutilation: An interagency statement* (2008), 9.
[53] Ibid.
[54] United Nations General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) United Nations, Treaty Series, vol. 1577, p. 3, art. 19(1).
[55] United Nations Committee on the Rights of the Child, 'General comment No. 13 (2011): The right of the child to freedom from all forms of violence' (18 April 2011) UN Doc CRC/C/GC/13.
[56] United Nations Committee on the Rights of the Child, 'General comment No. 13 (2011): The right of the child to freedom from all forms of violence' (18 April 2011) UN Doc CRC/C/GC/13, art. 29(b).
[57] United Nations General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) United Nations, Treaty Series, vol. 1577, p. 3, art. 24(1).
[58] United Nations General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) United Nations, Treaty Series, vol. 1577, p. 3, art. 24(3).
[59] United Nations Committee on the Rights of the Child, 'General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)' (17 April 2013) UN Doc CRC/C/GC/15.
[60] United Nations Committee on the Rights of the Child, 'General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)' (17 April 2013) UN Doc CRC/C/GC/15, para. 9.

children's health, it is important to take into account the harmful practices that happen in communities, like FGM.

Lastly, in the Joint General recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and general comment No. 18 of the Committee on the Rights of the Child on harmful practices, FGM is mentioned as a harmful practice.[61] The goal of this General recommendation, is to provide authoritative guidance for states, in order for the parties to comply with the obligations under the Conventions[62] and for states 'to prevent, respond and eliminate harmful practices', like FGM. [63]

2.1.2.2 Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a global legal framework that mandates states to end all forms of discrimination against women and girls and advances their equal rights.[64] The government of Kenya ratified CEDAW on March 9, 1984.[65]

In CEDAW there is no article that specifically refers to FGM. However, an important article that needs to be discussed is article 5(a) CEDAW.[66] States need to take appropriate measures to tackle customs that are discriminatory. [67] States need to: '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'.[68]

CEDAW General Recommendation No. 19 on Violence Against Women, is also relevant to FGM. [69] This Recommendation states that 'gender based-violence is a form

[61] United Nations Committee on the Elimination of Discrimination against Women and UN Committee on the Rights of the Child, 'Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices' (8 May 2019) CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, para. 7.
[62] Ibid, para 2.
[63] Ibid, para. 1.
[64] Pooja Khanna, Zachary Kimmel, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth* (2016), 1.
[65] United Nations Human Rights Treaty Bodies, 'UN Treaty Body Database' (*Tbinternet.ohchr.org*) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN> accessed 21 May 2023.
[66] United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) United Nations, Treaty Series, vol. 1249, p. 13, art. 5(a).
[67] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016) 175.
[68] United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) United Nations, Treaty Series, vol. 1249, p. 13, art. 5(a).
[69] United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 19: Violence against women' (1992).

of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality to men'. [70] FGM is according to the DEDAW[71] seen as violence against women, or how this recommendation uses it, gender-based violence. States should take positive measures to eliminate all forms of VAW. [72] In paragraph 11 of this General Recommendation article 5 of the CEDAW is further examined. [73] It says that those 'traditional attitudes by which women are seen as subordinate to men perpetuate practices like FGM'. [74] This form of violence 'deprives women of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms'. [75] It is acknowledged in this General Recommendation that states should take measures to overcome practices, like FGM.[76]

CEDAW - Concluding observations on the eighth periodic report of Kenya

Besides the more general laws and recommendations from CEDAW, the Committee also wants reports from states on how they have been implementing the Convention. Kenya fulfils its reporting requirement by submitting periodic reports to the CEDAW Committee every four years to inform on the implementation of the Convention.[77] In November 2021, Kenya had to submit its ninth periodic report.[78] There is no specific data on this report yet. Previously, in February 2015, Kenya submitted its 8th periodic report on CEDAW.[79] This was reviewed by the Committee in November 2017.[80] The concluding observations were given by the Committee on their 8th periodic report. In this report, positive aspects were presented as well as areas of concern with recommendations.

The positive aspects concerning FGM, was the fact that the Committee was pleased to see the progress that was achieved by the Kenyan state in regards to legislative reforms. Specifically with the Prohibition of Female Genital Mutilation Act that was

[70] Ibid, para. 1.
[71] Declaration on the Elimination of Violence against Women, UNGA Res 48/104 (20 December 1993), UN Doc A/RES/48/104, art. 2a.
[72] United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 19: Violence against women' (1992), para. 4.
[73] Ibid, para. 11.
[74] Ibid, para. 11.
[75] Ibid, para. 11.
[76] Ibid, para. 24(l).
[77] United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) United Nations, Treaty Series, vol. 1249, p. 13, art.18(1)b.
[78] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 59.
[79] CEDAW, 'Concluding observations of the Committee on the Elimination of Discrimination against Women' (5 April 2011), UN Doc CEDAW/C/KEN/CO/7. para. 56.
[80] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8.

implemented in 2011.[81] However, in the report the Committee also mentioned areas of concern on themes as 'harmful practices', 'Female Genital Mutilation' and 'education'.

Firstly, the Committee acknowledges the measures undertaken by the state to combat harmful practices and discriminatory gender stereotypes against women and girls.[82] These efforts include better awareness-raising, especially among men, and the eradication of such discriminatory gender stereotypes in school.[83] Despite these actions, the Committee expresses apprehension over the continued prevalence of these stereotypes about the obligations of men and women in the home and in society.[84] Additionally, the Committee is worried about the continuation of harmful customs like child marriage, forced marriage, and female genital mutilation.[85]

The Committee recalled earlier recommendations, like No. 31 on the Elimination of Discrimination against Women and also general comment No. 18 of the Committee on the Rights of the Child on harmful practices.[86] The Committee also recalled Sustainable Development Goal 5 target 5.3, which is about the elimination of all harmful practices.[87] The Committee recommends the State party to provide systematic training for judges, prosecutors, legal professionals, law enforcement officials and medical personnel on the strict application of criminal law provisions to punish female genital mutilation and to raise awareness about the criminal nature of this practice and its adverse effect on women's rights[88]

The second area of concern the Committee mentioned was specifically directed towards FGM in general. [89] The Committee expresses its appreciation to the Kenyan state for the implementation of the Prohibition of FGM Act 2011.[90] Nevertheless, it continues to be worried that certain groups still tolerate FGM. Furthermore, the Committee acknowledges the inadequacy of reliable data, the low number of

[81] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 4(b).
[82] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 18.
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 19.
[87] Ibid.
[88] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 19(c).
[89] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 20.
[90] Ibid.

prosecutions and the impunity of the offenders.[91] In addition, the Committee notices with concern that FGM is now being carried out by medical professionals, a phenomenon referred to as the "medicalization" of FGM.[92]

The Committee has three recommendations for the Kenyan state, namely that the state has to ensure that the Prohibition of FGM Act 2011 is widely known and implemented, and that perpetrators of female genital mutilation, including medical practitioners, are prosecuted and adequately punished.[93] The state also has to update the FGM policy of 2010.[94] Lastly, the state has to take measures to eradicate FGM, including through increased awareness-raising among religious and traditional leaders and the general public.[95] They do this in cooperation with civil society, to raise awareness about the criminal nature of the procedure and its adverse effect on the human rights of women. Besides that they have to raise awareness about the underlying cultural justification and the need to eradicate the practice. [96]

The last recommendation the Committee gave related to FGM, was for the purpose of education.[97] Even though the Kenyan state has made improvements regarding the access of girls to education, there are still a few problems that remain. There is a gender disparity within the schools between boys and girls. There are fewer girls who complete school, compared to boys. One of the causes for this occurrence is FGM.[98] The state has to implement measures that increase the number of girls and women in secondary and higher education, also within the rural, semi-arid and informal areas.[99] The state has to collect and publish data on the dropout rate for girls and the reasons behind it. They have to address its root causes by facilitating the return to education of victims of gender-based violence, female genital mutilation and child marriage.[100]

[91] Ibid.
[92] Ibid.
[93] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 21(a).
[94] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 21(c).
[95] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 21(b).
[96] Ibid.
[97] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 34.
[98] Ibid.
[99] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 35(a), 35(b).
[100] CEDAW, 'Concluding observations on the eighth periodic report of Kenya' (22 November 2017), UN Doc CEDAW/C/KEN/CO/8. para. 35(c).

2.1.2.3 Sustainable Development Goal 5: Achieve gender equality and empower all women and girls

'The Sustainable Development Goals (SDG) are a universal call to action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere'.[101] The United Nations adopted 17 goals and targets which UN member states want to achieve by 2030. One of these goals is SDG 5, which is about achieving gender equality and empowering all women and girls.[102] Target 5.3 talks about the elimination of all harmful practices, such as female genital mutilation.[103] With this goal UN member states hope to achieve 'gender equality, improved health and well-being of the women and girls, safe motherhood, quality education, inclusive societies and economic growth'.[104]

The SDGs lack legal enforceability, however, it is required that states take charge of the process and create a national (legal) structure to carry out these goals.[105] The realization of the SDG's will depend on the implementation of policies, strategies, and programmes developed by individual states. States are mainly accountable for monitoring and reviewing the progress they make in accomplishing the goals and targets by 2030.[106]

Kenya implemented the SDG's in 2016.[107] Via advisory and participatory mechanisms, significant advancement has been made in integrating the SDGs at both the national and sub-national development frameworks. SDGs have been integrated into sector plans, strategic plans, and yearly performance agreements.[108]

The government has initiated action to combat FGM by passing legislation, implementing programs and measures and creating the Anti-FGM Board, tasked with

[101] United nations, 'The Sustainable Development Agenda' (*Un.org*) <https://www.un.org/sustainabledevelopment/development-agenda/> accessed 20 May 2023.
[102] United Nations Department of Economic and Social Affairs, 'Achieve gender equality and empower all women and girls' (*Sdgs.un.org*) <https://sdgs.un.org/goals/goal5> accessed 27 May 2023.
[103] United Nations Department of Economic and Social Affairs, 'Achieve gender equality and empower all women and girls' (*Sdgs.un.org*) <https://sdgs.un.org/goals/goal5> accessed 20 May 2023.
[104] UNICEF, 'Vision 2030 won't be achieved unless we address cross-border female genital mutilation in Eastern and Southern Africa' (6 February 2022) <https://www.unicef.org/esa/press-releases/vision-2030-wont-be-achieved-unless-we-address-cross-border-female-genital> accessed 22 May 2023.
[105] United Nations, 'The Sustainable Development Agenda' (*Un.org*) <https://www.un.org/sustainabledevelopment/development-agenda/> accessed 25 May 2023.
[106] United Nations, 'The Sustainable Development Agenda' (*Un.org*) <https://www.un.org/sustainabledevelopment/development-agenda/> accessed 20 May 2023.
[107] Ministry of Public Service and Gender of Republic of Kenya, *Achieving sustainable development goal no. 5 on gender equality & empowerment of all women and girls strategy 2020-2025* (June 2021), vii.
[108] Ministry of Public Service and Gender of Republic of Kenya, *Achieving sustainable development goal no. 5 on gender equality & empowerment of all women and girls strategy 2020-2025* (June 2021), vii.

planning, directing, and coordinating all activities targeted towards eliminating FGM within the country.[109]

The most important of these is raising awareness of the practices throughout the nation; enhancing the skills of community leaders and duty bearers (chiefs, religious leaders), including those responsible for enforcing the law; incorporating anti-FGM lessons into the curriculum of Kenyan schools; developing a curriculum on violence extremism in partnership with relevant stakeholders; and establishing a special division at the Directorate of Public Prosecution to handle FGM cases.[110]

In their strategy report of 2021, the Ministry of Public Service and Gender in Kenya came up with the following list, with strategic actions points to eliminate FGM, including:

b) Ensure implementation and enforcement of FGM related laws and policies;
c) Promote the development and strengthening of the capacity of institutions to prevent and respond to FGM;
d) Promote the establishment of temporary rescue centres for girls at risk of FGM;
e) Support the establishment and strengthening of the Anti- FGM multi-sectoral working groups;
f) Support the inclusion of Anti-FGM content in the curriculum of learning institutions;
g) Strengthen community engagement in the eradication of FGM;
h) Support the strengthening and development of Anti-FGM networks using existing community structures.[111]

2.2 Legal framework of Africa

Besides the international legal framework, there are also African Conventions regarding FGM. The first legally binding instrument is the African Charter on Human and Peoples Rights (ACHPR), also called the Banjul Charter.[112] This Charter protects the human rights and basic freedoms of the African people. Specifically in article 18(3) of this Charter the State 'shall eliminate every discrimination against women and

[109] Ministry of Public Service and Gender of Republic of Kenya, *Achieving sustainable development goal no. 5 on gender equality & empowerment of all women and girls strategy 2020-2025* (June 2021), 6.
[110] Ministry of Public Service and Gender of Republic of Kenya, *Achieving sustainable development goal no. 5 on gender equality & empowerment of all women and girls strategy 2020-2025* (June 2021), 6-7.
[111] Ministry of Public Service and Gender of Republic of Kenya, *Achieving sustainable development goal no. 5 on gender equality & empowerment of all women and girls strategy 2020-2025* (June 2021), 19.
[112] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

ensure the rights of the women and the child defined in the international declarations and conventions'.[113] This protocol was ratified by Kenya in 1992.[114]

Another important protocol is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (Maputo Protocol).[115] An article in this protocol specifically dedicated to FGM is article 5, the Elimination of Harmful Practices. States have 'the obligation to prohibit all forms of female genital mutilation and take legislative measures in order to eradicate them'. [116] Kenya signed this charter in 2003 and ratified this charter in 2010.[117]

Another relevant charter is the African Charter on the Rights and Welfare of the Child (ACRWC).[118] Article 21 of this charter is relevant since it requires States to eradicate harmful social and cultural practices that impact children, notably those practices that are prejudicial to the health of the child and practices that are discriminatory against children based on their gender.[119] Kenya acceded this charter in 2000.[120]

In 2016, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) implemented the Africa's Agenda for Children (2040).[121] This Agenda elaborates on the African Unions Agenda from 2063. Aspiration 7 of the 2040 Agenda aspires that every child is protected against violence, exploitation, neglect and abuse. The aspiration mentions that by 2020 states, should have prohibited all forms of physical abuse, including FGM. States have to ensure the effective implementation of the laws. [122] Furthermore, states should have adopted legislation abolishing FGM, sensitised and trained health care workers to refrain from conducting medicalised forms of FGM and to educate the community.[123]

[113] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 18(3).
[114] 28TOOMANY, *Kenya: The Law and FGM* (May 2018), 12.
[115] Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005).
[116] Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005), art. 5.
[117] 28TOOMANY, *Kenya: The Law and FGM* (May 2018), 12.
[118] African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999), CAB/LEG/24.9/49 (1990).
[119] African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999), CAB/LEG/24.9/49 (1990), art. 21.
[120] 28TOOMANY, *Kenya: The Law and FGM* (May 2018), 12.
[121] African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Africa's Agenda for Children 2040: Fostering an Africa fit for Children* (November 2016).
[122] African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Africa's Agenda for Children 2040: Fostering an Africa fit for Children* (November 2016), 97.
[123] African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Africa's Agenda for Children 2040: Fostering an Africa fit for Children* (November 2016), 99.

Lastly, the African Youth Charter (AYC)[124] has a specific article about FGM. Article 23 of the African Youth Charter is specifically about girls and young women. In art. 23(l) it acknowledges that States should 'enact and enforce legislation that protect girls and young women from all forms of (…) genital mutilation'.[125]

Lastly, in 2020 the 33rd Ordinary Session of the Assembly of the Union the Assembly commits to implementing recommendations from the report of the African Union on the elimination of FGM.[126] They commit to: take action on political and community level; to strengthen the legislative frameworks and with that encourage community engagement; to have sufficient funding to drive action; to strengthen partnership, information and knowledge between states and to report to regularly to the African Union.[127]

2.3 Legal framework of Kenya

2.3.1 Legislation and conventions

Kenya has created a strong legislative framework concerning the eradication of FGM. The country outlawed FGM in 2011, yet the practice still continues.[128] Kenya has ratified a number of international treaties that are now incorporated into Kenyan legislation.

In accordance with the Constitution of Kenya (2010)[129] there are several basic rights concerning the protection of women and children. Despite the fact that FGM is not mentioned in the Constitution directly, three articles are in relation to the practice. Firstly, article 29(c) and (f) on the freedom and security of a person.[130] In sub (c) of this article it says that every person has 'the right not to be subjected to any form of violence'.[131] Sub (f) provides the right not to be 'treated or punished in a cruel, inhuman or degrading manner'. [132] Since FGM is seen as a form of violence[133] by the UN and an inhuman matter, these articles of the Convention also apply to FGM. Furthermore, article 53 of this Convention is about the rights of children. Sub (d) states that: 'every

[124] African Youth Charter (adopted 2 July 2006).
[125] African Youth Charter (adopted 2 July 2006), Art. 23(l).
[126] African Union, 'Assembly/AU/Dec.749-795(XXXIII) Thirthy-Third Ordinary Session' (9-10 February 2020), 77
[127] African Union, 'Assembly/AU/Dec.749-795(XXXIII) Thirthy-Third Ordinary Session' (9-10 February 2020), 77.
[128] Ministry of Public Service and Gender of Republic of Kenya, *Achieving sustainable development goal no. 5 on gender equality & empowerment of all women and girls strategy 2020-2025* (June 2021), 6.
[129] Constitution of the Republic of Kenya (entered into force 27 Augustus 2010).
[130] Constitution of the Republic of Kenya (entered into force 27 Augustus 2010), art. 29(c) (f).
[131] Ibid.
[132] Ibid.
[133] Rajat Khosla and others, 'Gender equality and human rights approaches to female genital mutilation: a review of international human rights norms and standards' [2017] 14(59) Reproductive Health 5.

child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment (…)'.[134]

Besides the articles in the Constitution of Kenya regarding FGM, there is also a specific Act in Kenya on the prohibition and criminalization of FGM. This Act is called 'The Prohibition of Female Genital Mutilation Act 2011' (FGM Act 2011).[135] This is: 'An Act of Parliament to prohibit the practice of female genital mutilation, to safeguard against violation of a person's mental or physical integrity through the practice of female genital mutilation and for connected purposes'.[136] In article 19 of the FGM Act 2011 it states that a person 'who performs FGM on another person commits an offence'.[137] Article 29 of this Act, gives the penalty for anyone who offences the Act. A person has to be imprisoned 'for a term of not less than three years, or to a fine of not less than two hundred thousand shillings, or both'.[138] As a consequence of the inadequate public knowledge regarding the legislation of FGM and the absence of motivation and resources on the side of the police and judiciary, the FGM Act 2011 has been implemented insignificantly.[139]

The 'Protection Against Domestic Violence Act 2015' (PADV Act 2015) also describes FGM as a form of violence according to article 3(a)(ii).[140] Article 19(1)(g) PADV Act 2015 decides that a person is protected against the engagement or the threat of engagement, 'in cultural or customary rites or practices that abuse the protected person'.[141] This refers to FGM as a cultural rite of passage. Article 22 PADV Act 2015, mentions that a person not respecting these laws, 'commits an offence and is liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a period not exceeding twelve months, or both'.[142]

[134] Constitution of the Republic of Kenya (entered into force 27 Augustus 2010), art. 53(d).
[135] Prohibition of Female genital mutilation Act (adopted 30 September 2011, entered into force 4 October 2011) No. 32 of 2011, Revised edition 2012.
[136] Prohibition of Female genital mutilation Act (adopted 30 September 2011, entered into force 4 October 2011) No. 32 of 2011, Revised edition 2012, 3.
[137] Prohibition of Female genital mutilation Act (adopted 30 September 2011, entered into force 4 October 2011) No. 32 of 2011, Revised edition 2012, art. 19(1).
[138] Prohibition of Female genital mutilation Act (adopted 30 September 2011, entered into force 4 October 2011) No. 32 of 2011, Revised edition 2012, art. 29.
[139] Karisa Cloward, 'Elites, Exit Options, and Social Barriers to Norm Change: The Complex Case of Female Genital Mutilation' (Thesis, Southern Methodist University 2015) 383.
[140] Protection against Domestic Violence Act (adopted 2015) No. 2 of 2015, art. 3(a)(ii).
[141] Protection against Domestic Violence Act (adopted 2015) No. 2 of 2015, art. 19(1)(g).
[142] Protection against Domestic Violence Act (adopted 2015) No. 2 of 2015, art. 22.

Another law in Kenya that addresses FGM is the new Children Act 2022.[143] This Act replaces The Children Act 2001 and offers improved legal protections for children's rights.[144] Article 23(1)(b) on the protection from harmful cultural practices states that: 'no person shall subject a child to female genital mutilation'.[145] Article 144(l) of this Act states: 'A child in need of care and protection includes a child who has been or is likely to be subjected to female genital mutilation'. [146]

The last policy that is discussed is 'The National Policy on the Eradication of Female Genital Mutilation 2019'.[147] This policy replaced the old 'National Policy on the Abandonment of Female Genital Mutilation 2010'.[148] The old policy did not meet the standards and was not consistent with the FGM Act 2011, other legislation and the SDG's.[149] The new National Policy of 2019 highlights major challenges and measures to combat FGM in important areas including health, education, security, access to justice, and public information.[150]

The Anti-FGM Board, under the direction of the Ministry of Public Service, Youth, and Gender, shall take the lead in carrying out, overseeing, evaluating, and reporting on this policy while also making sure that the dignity of girls and women is respected and protected. [151]

2.3.2 Case Law

On March 17, 2021, recent case law has been developed about FGM. In *Kamau v Attorney General & 2 others*, the High Court of Kenya rules that the Anti-FGM law is constitutional.[152] This was judged by a panel of three judges from the High Court in Nairobi. These judges affirmed the legality and the constitutionality of the Prohibition of FGM Act 2011. This has helped to promote the rights of women and girls, to provide

[143] The Children Act 2022 (adopted 6 July 2022, entered into force 26 July 2022) Kenya Gazette Supplement No. 119 (Acts No.29).
[144] Irene K Nyamu and Sheila P Wamahiu, 'What might a decolonial perspective on child protection look like? Lessons from Kenya' [2022] 29(3) SAGE Journals 430. End violence against children, 'Kenya's new children act takes effect' (*End-violence.org*, 29 July 2022) <https://www.end-violence.org/articles/kenyas-new-children-act-takes-effect
[145] The Children Act 2022 (adopted 6 July 2022, entered into force 26 July 2022) Kenya Gazette Supplement No. 119 (Acts No.29), art. 23(1)(b).
[146] The Children Act 2022 (adopted 6 July 2022, entered into force 26 July 2022) Kenya Gazette Supplement No. 119 (Acts No.29), art. 144(l).
[147] Prof. Margaret Kobia of the Cabinet Secretary for Public Service, Youth and Gender, *Sessional Paper No. 3 of 2019 on National Policy for the Eradication of Female Genital Mutilation* (January 2019).
[148] Prof. Margaret Kobia of the Cabinet Secretary for Public Service, Youth and Gender, *Sessional Paper No. 3 of 2019 on National Policy for the Eradication of Female Genital Mutilation* (January 2019), 2.
[149] Ibid.
[150] Ibid.
[151] Ibid.
[152] *Tatu Kamau v Attorney General & 2 others; Equality Now & 9 others,* Constitutional Petition 244 of 2019 (2021) KEHC 450 KLR, High Court at Nairobi, 2 and 12.

them with a safe and positive cultural environment as well as to protect them from harmful practices, like FGM.[153]

The facts of this judgement were[154]: The Prohibition of Female Genital Mutilation Act (No. 32 of 2011) and the Anti-Female Genital Mutilation Board created under it were both challenged as being unconstitutional by the petitioner. The petitioner argued that by restricting women's choice and right to uphold and respect their culture, ethnic identity, religion, and beliefs, and also by discriminating between men and women, sections 2, 5, 19, 20, and 21 of the contested Act violated articles 19, 27, 32, and 44 of the Constitution of Kenya 2010.[155] The petitioner argued that the impugned Act's section 19(1) specifically prohibited a licenced medical professional from conducting female circumcision, depriving adult women of the right to the highest attainable standard of health, including access to healthcare. Among other things, the petition asked for an order declaring that Sections 5, 19, 20, 21 and 24 of the contested Act were unconstitutional and consequently invalid.[156] According to her, the Act is an: *"imperialist imposition from another culture that holds a different set of beliefs or norms".* [157] The ruling of the High Court was that FGM was unlawful regardless of consent from the victim. [158]

2.4 Cultural psychological perspective on the legal framework

In chapters 2.1 until 2.3, a legal framework was outlined of the existing legislation and Conventions, regarding FGM on an international, regional and Kenyan level. In this paragraph researchers Graamans, Smet and ten Have present a cultural psychological perspective[159], to provide more insight on how to understand the psychological problems of prohibiting FGM in Kenya. This article provides reasoning why rules and legislation are not always followed as described in the previous chapters above. Lastly this cultural psychological perspective provides context for chapter 4, regarding the fact that focusing within legislation on only the abolitionist approach, will

[153] Equality Now, 'Kenya's High Court Rules Anti-FGM Law Is Constitutional: A Jubilant Day for Girls and Women in Kenya' (17 March 2021) <https://www.equalitynow.org/press_release/kenya_fgm_case_response_2021/> accessed 29 May 2023
[154] *Tatu Kamau v Attorney General & 2 others; Equality Now & 9 others,* Constitutional Petition 244 of 2019 (2021) KEHC 450 KLR, High Court at Nairobi, 3
[155] Ibid.
[156] Ibid.
[157] *Tatu Kamau v Attorney General & 2 others; Equality Now & 9 others,* Constitutional Petition 244 of 2019 (2021) KEHC 450 KLR, High Court at Nairobi, 12.
[158] *Tatu Kamau v Attorney General & 2 others; Equality Now & 9 others,* Constitutional Petition 244 of 2019 (2021) KEHC 450 KLR, High Court at Nairobi, 2.
[159] Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health Matters 307.

not bring the wished effect, the pragmatic more social aspects and measures have to be taken into account as well.

The justification for the eradication of FGM rests upon on a well-founded position supported by universal human rights principles and medical documentation.[160] From this standpoint, it is obvious to focus efforts on developing laws, provisions, and guidelines that prohibit the mutilation of girls, while simultaneously educate people about the harmful effects of this practice on their health. Nevertheless, bringing about change requires more than merely enforcing the law and making persuasive arguments.[161]

The researchers of this article refer to two cultural psychologists (Voestermans and Verheggen) and they say that rules and regulations are formal, precise, and simple to explain.[162] They clarify the opposite relationship between the parameters of articulation and involvement. Rules are mapped high on the articulation dimension but low on the involvement dimension due to their explicit and formal nature. The implication of this is that even while laws can get activated rather quickly, it fails to assume that individuals will be committed to comply with them.[163] Even though individuals are aware of the legislation and the justifications behind its implementation, they can have competing priorities.[164]

The authors expand upon the idea that individuals who live in closely knit groups not only have explicit regulations to guide their behaviour, but their behaviour is also modified with their social norms.[165] An arrangement in a social setting is concrete and emotive rather than abstract and formal.[166] It embodies a set of customs and traditions that do not necessarily require verbalization. As a result, rules, which are conceptual and abstract, are contrasted with social structures. Social arrangements are created over many years, sometimes even for generations. This is true for the social arrangements in which FGM is practiced, it can cause people to act and feel a certain way without even thinking about it.[167] In some communities, FGM is a part of their

[160] Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health Matters 307.
[161] Ibid.
[162] Ibid.
[163] Ibid.
[164] Ibid.
[165] Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health Matters 308.
[166] Ibid.
[167] Ibid.

traditions and culture, as it serves different purposes as will be discussed in chapter 3. So even if a law is passed against FGM, these purposes don't go away immediately.[168]

The authors say that in order to effectively eradicate FGM, it is essential to understand the context of the planning and implementation of change strategies rather than generalise and apply one-size-fits-all initiatives.[169] Development projects of any sort will not have the desired impact if the social contexts in which individuals develop their behaviour are not recognised and taken into account. One might look for other methods, such as the Alternatives Rite of Passage (ARP). However, studies have until now not shown enough evidence that ARPs have a positive effect on the practice of FGM. [170]

While making changes that take into account how individuals form their own lives is creditable, there are still issues with how secular, conventional, and religious values are balanced in daily lives.[171] The authors show that the Samburu and Maasai societies have shown that in order to bring about change, many issues need to be addressed and resolved.[172] For example, respectfully challenging superstitious beliefs about health and addressing the practice of fathers pricing their daughters for marriage are just a few of the issues that need to be resolved. Because they entail deeply rooted ideas and feelings that take time to alter, it is crucial to remember that these alterations cannot be enforced by strangers or be founded by foreign principles.[173]

In order to create lasting change, it is crucial to understand that changing people's beliefs and behaviours takes time because it is deeply ingrained in their being. Approaches that only focus on one aspect, be it from the aspect of law, policy, public, or community health perspective, will result in temporary effects and may even lead to unexpected effects.[174] For example people advocating for the medicalization of FGM or the development of secret methods to continue FGM in a way that avoids

[168] Ibid.
[169] Ibid.
[170] Laurence Droy, Lotte Hughes, Mark Lamont, Peter Nguura, Damaris Parsitau, Grace Wamue Ngare, 'Alternative Rites of Passage in FGM/C Abandonment Campaigns in Africa: A research opportunity' (LIAS Working paper, University of Leicester 2018), 19.
[171] Lotte Hughes, 'Alternative Rites of Passage: Faith, rights, and performance in FGM/C abandonment campaigns in Kenya' [2017] 77(2) Routledge Taylor & Francis Group 274, Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health Matters 308.
[172] Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health 308.
[173] Ibid.
[174] Ibid.

prosecution.[175] If we want change that persists, radical and all-encompassing strategies that take into consideration the whole societal structure in which FGM is conducted are necessary.[176]

The enactment of laws that expressly forbids FGM has resulted in progress around the world.[177] Governments and non-profit health groups have launched awareness efforts in conjunction with the introduction of new regulations in an effort to persuade communities that are currently engaging in this practise to stop. [178]The fact that this practice serves specific purposes within regional social structures on the basis of which local people form their lives is frequently neglected in the design and execution of programmes intended to eliminate FGM. [179] Legislation, law enforcement, and awareness efforts will stagnate, and there may even be unanticipated negative effects, if these roles and social structures are not taken into consideration.[180]

[175] Ibid.
[176] Ibid.
[177] Ibid.
[178] Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health Matters 309.
[179] Ibid.
[180] Ibid.

Chapter 3: What are the barriers to ending FGM in Kenya and how has the state approached the issue?

3.1 National context

3.1.1 Overview

In chapter 3 the reasoning will be given of why FGM has not been eradicated in Kenya, despite the legal framework that was outlined in chapter 2. Firstly a national context perspective is given, of what the state have done to eradicate FGM, what has worked and what needs more attention. Then in the second part of chapter 3, the overall reasoning is given of why FGM in Kenya persists.

With the aim of ensuring the efficacy of the anti-FGM law in Kenya, the law must be enforced by the government, upheld by the people, and the judiciary must apply the law in order to be properly enforced.[181] However, socio-cultural environments and attitudes towards these regulations might make it more difficult to implement the laws.[182]

Looking at the situation in Kenya, the majority of investigators and other people in the justice system, including healthcare experts, attorneys and judges, they still lack the necessary training to comprehend the intricacies of FGM. This lack of training hinders them from carrying out their duties effectively and guarantee that FGM victims have admittance to this justice system.[183]

FGM and child marriage are also commonly linked in certain cultures.[184] To be able to determine whether a girl has experienced sexual assault, healthcare workers evaluate the girl after she has been saved from child marriage.[185] Generally in a lot of instances, it is not documented that the girl suffered from FGM. Therefore, this failure to record FGM perpetuates impunity amongst those who force girls to undergo FGM, even in situations when a sexual abuse case including child marriage is brought to court.[186] The crucial role of healthcare professionals and law enforcement officials receiving

[181] Mario Krešić, 'Efficacy of law in theory and practice: the effectiveness of the adjudication' (Interdisciplinary Management Research XIV, University of Zagreb 2019), 1842.
[182] Cynthia Umurungi and Caroline Lagat, 'Law and FGM, are we having an implementation crisis?' (*Building Bridges to end FGM*) <https://copfgm.org/law-and-fgm-are-we-having-an-implementation-crisis/> accessed 22 May 2023.
[183] Ibid.
[184] Bright Opoku Ahinkorah and others, 'Association between female genital mutilation and girl-child marriage in sub-Saharan Africa' [2023] 55(1) Journal of Biosocial Science 87.
[185] Cynthia Umurungi and Caroline Lagat, 'Law and FGM, are we having an implementation crisis?' (*Building Bridges to end FGM*) <https://copfgm.org/law-and-fgm-are-we-having-an-implementation-crisis/> accessed 28 May 2023.
[186] Ibid.

adequate training to comprehend the connections between child marriage and FGM in order guarantee that FGM data is gathered in all instances of child marriage.[187]

The political determination of governments and the sufficient provision of funding have an overall effect on the effectiveness with which the law against FGM is implemented.[188] Governmental organisations responsible for addressing FGM must have adequate funding and physical presence in the regions where their assistance is needed.[189] In Kenya, it is the responsibility of the Anti-FGM Board to plan and carry out campaigns to eradicate FGM.[190] In response to the Presidential Declaration to End FGM by 2022, the Board's operations have increased rapidly, resulting in the establishment of Anti-FGM Steering Committees in 22 Counties to help localise anti-FGM campaigns within societies.[191] Despite this progress, the Board depends significantly on donations and money from Civil Society Organizations (CSO's) partners and donors because it receives minimal funding from the government.[192]

In the pursuit of eradicating FGM, various groups such as human rights advocates, leaders of social and feminist groups, local activists, and youth networks have demonstrated their potential to effect change.[193] These agents of change are able to address power imbalances and rights violations by reaching far beyond their local communities and networks. To fulfil the commitments made, organising new young leaders is essential, with a focus on women and girls in particular.[194]

Regardless of the widespread agreement that FGM violates human rights, there is still a gap between rhetoric and reality. The amount of financial resources and human effort committed to reaching to zero is too low. Additional funding, notably from domestic sources, is also necessary in addition to quick action.[195]

[187] Ibid.
[188] Ibid.
[189] Ibid.
[190] Prohibition of Female genital mutilation Act (adopted 30 September 2011, entered into force 4 October 2011) No. 32 of 2011, Revised edition 2012, art. 5.
[191] Cynthia Umurungi and Caroline Lagat, 'Law and FGM, are we having an implementation crisis?' (*Building Bridges to end FGM*) <https://copfgm.org/law-and-fgm-are-we-having-an-implementation-crisis/> accessed 28 May 2023.
[192] Cynthia Umurungi and Caroline Lagat, 'Law and FGM, are we having an implementation crisis?' (*Building Bridges to end FGM*) <https://copfgm.org/law-and-fgm-are-we-having-an-implementation-crisis/> accessed 22 May 2023.
[193] Jennifer Butler, Arthur Erken, Isaac Hurskin, Gretchen Luchsinger, Douglas Passanisi, Ragaa Said and Pio Smith, *Accelerating the promise. The Report on the Nairobi Summit ICPD25* (23 September 2019), 31.
[194] Ibid.
[195] Ibid.

3.1.2 Challenges in Kenya

In Kenya, government authorities claim that medicalization of FGM is on the rise, specifically among the Kisii county and in some regions of the Rift Valley, despite the fact that 83% of FGM in Kenya is still carried out by "traditional cutters".[196] This problem has underscored the necessity for a variety of interventions and strategies to stop the practice, moving beyond the more historically dominant focus exclusively on the health dangers of conventional cutting methods.[197] A number of organisations and government agencies are active in training healthcare workers, especially in nursing schools and help raise awareness in the clinics.[198] Despite the fact that FGM is prohibited by law, also when performed under medical supervision, it continues to be difficult to bring legal action against medical personnel who engage in the practice.[199]

The primary obstacle identified by government officials, UN agencies and NGO's attempting to end FGM in Kenya is the fact that practice is driven underground.[200] Despite the decline in prevalence due to legislation, awareness-building, and enhanced communication, it is also thought that these initiatives may have inadvertently encouraged a number communities and families to practice FGM in secret. [201] For example through performing FGM 'at night, across a national border, at a non-typical time of year (outside the "circumcision season" in December/January), or by cutting girls at a younger age so they are unable to report'.[202] The growing apprehension regarding FGM's unreported components raise doubts about the validity of claimed prevalence numbers as well as the worry that people and families may abstain from seeking necessary medical assistance or alternative services.[203]

Apart from FGM being driven underground, a more recent problem occurred, namely the COVID-19 pandemic. Kenya's political, cultural and socio-economic sectors have all been profoundly affected COVID-19. [204] Findings show that because of the pandemic there is an increase in FGM cases,[205] due to the closure of schools, people

[196] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 8.
[197] Ibid.
[198] Ibid.
[199] Ibid.
[200] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 10.
[201] Ibid.
[202] Ibid.
[203] Ibid.
[204] Ibid.
[205] Tammary Esho and others, 'The perceived effects of COVID-19 pandemic on female genital mutilation/cutting and child or forced marriages in Kenya, Uganda, Ethiopia and Senegal' [2022] 22(601) BMC Public Health 10.

staying at home and economic losses.[206] According to reports within the community-level monitoring systems, there have been fewer incidents of girls being rescued from FGM in 2020. Between January and May 2020, there were 76 cases, compared to 870 cases during the same period in 2019.[207] This abrupt drop in reporting is partly due to the deterioration of law enforcement organisations and informal community protection networks, which is a by-product of COVID-19 control efforts. [208]

Furthermore, even prior to the present global health crisis, there were a total of 14 rescue centres spread across seven counties in Kenya, providing collectively 1,887 at-risk girls who were susceptible to FGM, temporary shelter. [209] However, because of COVID, many rescue facilities and charitable houses had to close. Girls who were staying in these institutions were reunited with their families in March 2020. The possibility of FGM occurring to the girls increases if these centres are closed since they would no longer have the safety net and refuge that these facilities provide. [210] Increasing attempts to reach communities with messages via radio and television is one way to counteract the lack of access.[211] Furthermore, the Department of Children's Services (DCS) in Kenya, in collaboration with UNICEF, has facilitated alternative care arrangements for children, including girls who require protection against FGM. This has been achieved through the identification and support of foster families.[212]

3.2 Reasons for FGM in Kenya

It is important for this research that the grassroot reasons of why FGM exists in Kenya are described, besides the more recent developments that have been discussed above. Knowing the underlying factors, gives a better understanding of how FGM is seen in Kenya and provides for a better implementation of the measures that are presented in chapter 4.

Since there are multiple explanations as to why FGM is performed, there is not a single, definitive response to why FGM is performed on girls.[213] Numerous cultural, religious, and social factors are prevalent within families and communities are among

[206] Tammary Esho and others, 'The perceived effects of COVID-19 pandemic on female genital mutilation/cutting and child or forced marriages in Kenya, Uganda, Ethiopia and Senegal' [2022] 22(601) BMC Public Health 3.
[207] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 10.
[208] Ibid.
[209] Ibid.
[210] Ibid.
[211] Ibid.
[212] Ibid.
[213] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 128.

the many reasons why FGM is carried out.[214] The root causes of FGM are complicated, interconnected, and embedded in the ideals and principles that societies embrace.[215]

The two scholars used to identify the main reasons (3.2.1 – 3.2.6), are Annemarie Middelburg and Mária Marková. Both research two different countries, namely Senegal and Kenya.[216]

The many defences of the practice are outlined below:

3.2.1 Tradition and culture

Tradition and custom are the most frequent given justifications for the continuation of FGM.[217] The practice is ingrained in the community's culture and is often taught for generations.[218] FGM is a key component of the legacy of the communities and seen as a symbol of ethnic identification. Communities embrace customs like FGM because they wish to maintain their cultural identity. [219] One of the primary drivers of conformity is the concern of losing the mental, ethical and material advantages of "belonging".[220] A girl is not recognised as an adult until she has had FGM. This happens in cultures where FGM is performed as a part of the ritual initiation into womanhood.[221] This step into adulthood is frequently marked with a rite of passage that generally occurs around puberty and involves a joyous ritual and party. [222] The celebration may continue for weeks and is rich in ceremony and symbolism.[223] In order to prepare the girl for womanhood and marriage, the initiation also involves a time of isolation and learning about the rights and obligations of a wife.[224] This process of "becoming" a woman helps to keep local traditions alive.[225] FGM has become part of the social customs of the communities.[226] The girls who choose not to undergo FGM, face strong social

[214] World Health Organization, 'Female genital mutilation' (*Who.int*, 31 January 2023) <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed 31 May 2023.
[215] Anika Rahman and Nahid Toubia, 'Female Genital Mutilation: A Guide to Laws and Policies Worldwide (Zed Books 2000) 5.
[216] The reasons why I drew from both of the scholars, is that they both gave the same reasons for the continuation of FGM. Middelburg however provided more in depth information concerning the main reasons, that is why I included her research along with Marková's.
[217] P. Stanley Yoder and other, 'Female Genital Cutting in the Demographic and Health Surveys: A Critical and Comparative Analysis' DHS Comparative Reports No. 7 (September 2004), 42.
[218] Human Rights Watch, 'They Took Me and Told Me Nothing, Female Genital Mutilation in Iraqi Kurdistan' (June 2010), 34.
[219] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 129.
[220] Nahid Toubia, 'Female Genital Mutilation: A Call for Global Action' [1995] 26(1) Population Council 37
[221] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 129.
[222] Ibid.
[223] Ibid.
[224] P. Stanley Yoder and other, 'Female Genital Cutting in the Demographic and Health Surveys: A Critical and Comparative Analysis' DHS Comparative Reports No. 7 (September 2004), 2.
[225] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 129.
[226] Mária Marková, 'Torture is not culture: Human Rights Law and Education as effective tools to abandon Female Genital Mutilation/Cutting. (Case study in Kenya)' (Master Thesis, Tilburg University 2015), 19.

pressure and consequences. These girls are shunned, humiliated, marginalized and disadvantaged. Additionally, uncut girls have a decreased and occasionally zero chance of finding a husband and getting married.[227]

3.2.2 Women's sexuality and marriageability

FGM is often rationalised by references to a girl's sexuality.[228] In various societies, uncut girls are seen to be unable to control their sexuality. [229] The virginity or sexual constraint of a girl determines her family's honour.[230] A girl who is uncut will embarrass herself and it is seen as a humiliation for their families[231], while a chaste girl is admired and appreciated.[232] FGM aims to lessen women's desire for sexual activity.[233] It is thought that a woman who has less sexual desire won't look for extramarital affairs, ensuring faithfulness in her marriage.[234] FGM protects girl's ethical principles, stops them from becoming sexually active, and deters them from immoral and abnormal sexual activities, like masturbation.[235] FGM is additionally practiced to lessen the sexual demands that women have towards their husbands, particularly in polygamous tribes, making it possible for the husbands to have multiple wives at once.[236] FGM and particularly Type III, is viewed as a sign of virginity and purity prior to marriage.[237] The concept of virginity is a requirement for marriage in these types of male-centred cultures and is connected with female dignity, because the girls are kept 'pure' before marriage.[238] In many societies, FGM is a means of ensuring that a women is eligible for marriage and because of that give women financial security.[239]

3.2.3 Religion

FGM/C is not recommended by any religion, yet it is sometimes excused as a religious obligation.[240] Despite the fact that the practice happens within groups of Muslims,

[227] Ibid.
[228] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 129.
[229] Ibid.
[230] Anika Rahman and Nahid Toubia, 'Female Genital Mutilation: A Guide to Laws and Policies Worldwide (Zed Books 2000) 5.
[231] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 129.
[232] Mária Marková, 'Torture is not culture: Human Rights Law and Education as effective tools to abandon Female Genital Mutilation/Cutting. (Case study in Kenya)' (Master Thesis, Tilburg University 2015), 20.
[233] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 129.
[234] Ibid.
[235] Ibid.
[236] Anika Rahman and Nahid Toubia, 'Female Genital Mutilation: A Guide to Laws and Policies Worldwide (Zed Books 2000) 6.
[237] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 130.
[238] Ibid.
[239] Ibid.
[240] Mária Marková, 'Torture is not culture: Human Rights Law and Education as effective tools to abandon Female Genital Mutilation/Cutting. (Case study in Kenya)' (Master Thesis, Tilburg University 2015), 21.

Christians, Jews and atheists, people assume it traces its origins back to Islam.[241] In Kenya FGM is predominant in mostly Christian communities.[242] Misconceptions can occur as a consequence of data indicating that FGM is most prevalent amongst Muslim women.[243] FGM however has no relation to religion because it predates both the Islam and Christianity.[244] There is no explicit language that permits FGM in the Bible, the Quran or any other holy texts.[245] There is not a passage in the Quran that addresses FGM, and there is not any academic agreement (Ijma) either.[246]

This has led some to contend that FGM is a "cultural" as opposed to a "religious" practice.[247] Even though FGM is not practiced in the majority of the Islamic world, it has gained a religious component.[248] Because they believe it is mandated by their religion, a substantial percentage of the people in many African states perform FGM.[249] Comparable to the Middle East and Asia, religious duties is considered as the main justification for FGM. [250] FGM is often believed to be a religious obligation in several states. Muslims who live in those areas support the practice.[251] FGM is closely associated with Islam and consequently intertwined with religion in a number of countries, despite the fact that it is not described as a religious practice in this sense.[252] UNICEF asserts that the perception that FGM is a mandate of religion adds to the practice's persistence.[253]

The view of FGM has been addressed by collaboration with religious authorities to challenge misconceptions that support the continuation of this practice.[254] In Kenya, 97% of the Somali population engages in FGM.[255] In order to interact with Somali communities in Kenya's Wajir area, the Population Council came up with an

[241] Ibid.
[242] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 130.
[243] Ibid.
[244] Ibid.
[245] I El-damanhoury, 'The Jewish and Christian view on female genital mutilation' [2013] 19(3) African Journal of Urology 128.
[246] Mária Marková, 'Torture is not culture: Human Rights Law and Education as effective tools to abandon Female Genital Mutilation/Cutting. (Case study in Kenya)' (Master Thesis, Tilburg University 2015), 21.
[247] Anika Rahman and Nahid Toubia, 'Female Genital Mutilation: A Guide to Laws and Policies Worldwide (Zed Books 2000) 6.
[248] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 130.
[249] Ibid.
[250] Ibid.
[251] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 131.
[252] Ibid.
[253] UNICEF, 'Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change' (July 2013), 69.
[254] Population Reference Bureau, *Ending Female Genital Mutilation/Cutting: Lessons from a decade of progress* (3 February 2014), 11.
[255] Ibid.

unconventional method.[256] The major justifications given for the practice by the Somali are rooted in the belief that it is part of their culture and that they believe it to be mandated by the Islamic faith.[257] The most widespread kind of FGM in these communities is infibulation, as this is considered to protect female sexual purity by maintaining virginity and restraining female sexual lust.[258]

The approach developed by the Population Council attempted to foster debate among community members and agreement among religious experts.[259] With the usage of Islamic principles allowing religious leaders to support community abandonment.[260] Religious experts were invited to participate in meetings at the local, regional, and national levels to debate FGM in Islam, raise awareness withing the communities and to devise strategies for educating society about FGM abandonment.[261] This intervention discovered that utilising a religious strategy can be effective in persuading members of the community to abandon FGM. At the communal level, religious leaders can have a significant impact on the decision to stop FGM.[262]

3.2.4 Hygiene and aesthetics

Additionally, hygienic and aesthetic considerations can be used to support FGM practice.[263] The female genitalia are seen as filthy, disgusting, and unpleasant by multiple societies.[264] Women who are uncut are thought to be unclean. Unclean girls are not permitted to participate in specific communal work, and they are also not allowed to take care of the food and the water for the community.[265] Therefore, it is necessary to cut the female genitalia in order to improve cleanliness and the appearance of a woman.[266] The notion of gender identification is also related to this argument of cleanliness.[267] The clitoris is viewed in certain cultures as a masculine or manly body part that has to be removed.[268] Women must undergo bodily alteration in

[256] Ibid.
[257] Ibid.
[258] Ibid.
[259] Ibid.
[260] Ibid.
[261] Ibid.
[262] Maryam Sheikh Abdi and Ian Askew, 'A religious oriented approach to addressing female genital mutilation/cutting among the Somali community of Wajir, Kenya' (2009), 24.
[263] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 132.
[264] Ibid.
[265] Mária Marková, 'Torture is not culture: Human Rights Law and Education as effective tools to abandon Female Genital Mutilation/Cutting. (Case study in Kenya)' (Master Thesis, Tilburg University 2015), 21.
[266] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 132.
[267] Ibid.
[268] Ibid.

order to develop genuine womanhood.[269] To easily determine one's gender, excision is used. Mens' foreskins make them "female", while girls' clitoris, make them "male".[270] In addition, it is thought that Type III gives women a more female appearance and creates a smoothness that is regarded as attractive.[271]

3.2.5 Myths and beliefs of the community

FGM is a practice that is linked to a lot of incorrect myths and notions.[272] Some cultures hold the view that the clitoris, if left uncut, will grow until it is as long as the penis.[273] Certain cultures hold that a woman's clitoris is fatal. If it would touch the men's penis, then they would die. [274] Another incorrect belief, is that the clitoris could prevent a baby from being born during delivery, so it is thought that FGM could make childbirth simpler and more safe. Some people think that if the baby's head hits the clitoris during childbirth, the infant will die. [275] Certain groups where FGM is practiced are of the opinion that it increases female reproduction and protects male strength.[276] Some cultures think that uncut women are incapable of getting pregnant.[277] In certain societies, FGM is defended on the grounds that it increases a men's sexual satisfaction. Still, informal information indicates that men favour having sex with women who weren't subjected to FGM.[278]

3.2.6. Social norm

FGM is frequently seen as an accepted norm in society. Social pressure amongst societies is a frequent justification for the persistence of FGM. [279] These people who live in an area where the majority of women are circumcised, foster a climate whereby the practice of cutting transforms into a constituent of social compliance.[280] If certain conditions are met, FGM could be regarded as a societal standard, including if: (I) Individuals are conscious of the behaviour standard governing the cutting of girls and

[269] Ibid.
[270] Marie Bassili Assaad, 'Female Circumcision in Egypt: Social Implications, Current Research, and Prospects for Change' [1980] 11(1) Studies in Family Planning 4.
[271] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 132.
[272] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 132.
[273] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 133.
[274] Ibid.
[275] Ibid.
[276] Ibid.
[277] Ibid.
[278] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 133.
[279] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 133.
[280] Anika Rahman and Nahid Toubia, 'Female Genital Mutilation: A Guide to Laws and Policies Worldwide (Zed Books 2000) 6.

are conscious that it is applicable to them. (II) Individuals choose to abide by this standard because: (a) they anticipate that an important part of their social circle will cut their daughters; (b) they are convinced that a substantial portion of their social group believes that they should cut their daughters and can punish them if they don't perform FGM.[281]

The need to fit in with other people in the community is a major driver of FGM practise in areas where it is a societal norm. Given that there is an immense worry of being denunciated and refused, it is challenging for people to stop FGM due to the of the social systems within the community as a whole.[282]

In chapter 3 a comprehensive analysis was given about the reasons why FGM has not been eradicated in Kenya. This was discussed with the means of grassroot causes, as well as more recent problems, such as the medicalization of FGM and the practice being driven underground. In the next chapter, more pragmatic measures will be discussed in order to give that extra step of making sure the practice is eradicated. These measures should be a supplement to the already existing legal framework.

[281] Annemarie Middelburg, 'Empty promises: Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' (Doctoral Thesis, Tilburg University 2016), 133.
[282] Ibid.

Chapter 4: What types of pragmatic measures could supplement the abolitionist approach in the current legislation and in what ways?

As mentioned, focusing purely on the legislation regarding the abolition of FGM will not give the intended outcome, the pragmatic more social aspects have to be taken into account as well to help shift the perspective of FGM. This will be done through the measures, which will be discussed in this chapter.

What is needed to change? Bringing about change requires more than merely enforcing the law. [283] As discussed it needs a social and communal perspective as well. This process should encompass various levels of governance, from the national to the local level, including political, social, cultural, and economic facets. [284]

4.1 What measures have been taken?

What measures have been taken already by Kenya in order to realize change?

In Kenya, the Ministry of Gender, Children, and Social Development joined forces with non-governmental organisations to develop the UNFPA-UNICEF Joint Programme in 2008.[285] The first phase ended in 2014 and targeted specific communities in the country. The Programme developed some notable outcomes, including the implementation of a national policy on the prohibition of FGM, namely the Anti-FGM Act 2011, and the expansion of community-led actions against FGM.[286]

During phase two, which was centred in ten regions in Kenya and finished in 2017, achieved success with regard to improving the Anti-FGM Board's abilities to organise, oversee, and hold people accountable for the eradication of FGM.[287] In order to assist measures to end FGM, it additionally made investments in building the skills of related fields, such as health, education, safety and security and justice. A clear and consistent shared viewpoint has been secured by this approach. It simplified activities on different governmental levels within the more general goal of advancing girls rights.[288]

[283] Ernst Patrick Graamans and others, 'Legislation against girl circumcision: a cultural psychological understanding of prohibition' [2019] 27(1) Sexual and Reproductive Health Matters 307.
[284] Jennifer Butler, Arthur Erken, Isaac Hurskin, Gretchen Luchsinger, Douglas Passanisi, Ragaa Said and Pio Smith, *Accelerating the promise. The Report on the Nairobi Summit ICPD25* (23 September 2019), 31-32.
[285] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 5.
[286] Ibid.
[287] Ibid.
[288] Ibid.

The Joint Programme promotes and aids in ensuring the compliance of the legislative and regulatory system, and creating clear guidelines to help with this.[289] It also emphasises improving interactions amongst groups at local and state levels. Additionally, it works with the local population, finding and preparing change agents to lead community discussions to encourage people to publicly declare that they will not practice FGM.[290]

The government of Kenya also presented measures under the National Plan of Action during the Nairobi Summit of the 25th International Conference on Population and Development (ICPD25) [291] in an effort to promote the eradication of FGM.[292] For instance, a state-sanctioned commission has been established to facilitate coordination of efforts aimed at eradicate the FGM. The commission brings together parties engaged in the battle against FGM at both the national and regional levels. Its primary objectives are to facilitate the exchange of knowledge, generate funds, and work together on projects.[293] The Kenyan government and regional organisations must enhance public understanding regarding the extant legislation concerning FGM and the procedure for reporting instances of FGM to the relevant authorities. [294] Additionally, the municipal and federal governments need to enforce the laws more earnestly.[295]

Besides the initiatives, an important statement was made concerning the action to eradicate FGM. On the 8th of November 2019 at the High Level Elders Forum at State House, His Excellency (H.E.) President Uhuru Kenyatta repeated his dedication to eradicate FGM by the year 2022.[296] Religious and cultural leaders from regions with a significant prevalence of FGM attended the meeting. The leaders signing of pledges to support the President's objectives marked an important moment in the battle against

[289] Ibid.
[290] Ibid.
[291] Ministry of Public Service and Gender, *Kenya's Priorities, Commitments to and Recommendations for Advancing Gender Equality and Ending Gender-Based Violence at the Generation Equality Forum and Beyond* (June 2022), 3.
[292] Habil Oloo, Monica Wanjiru, Katy-Newell Jones, 'Female genital mutilation practices in Kenya: The role of alternative rites of passage. A case study of Kisii and Kuria districts' (2011), 9.
[293] Ibid.
[294] Habil Oloo, Monica Wanjiru, Katy-Newell Jones, 'Female genital mutilation practices in Kenya: The role of alternative rites of passage. A case study of Kisii and Kuria districts' (2011), 31.
[295] Ibid.
[296] UNFPA Kenya, 'Presidential Commitment To End Female Genital Mutilation By 2022' (*Kenya.unfpa.org*, 26 April 2020) <https://kenya.unfpa.org/en/news/presidential-commitment-end-female-genital-mutilation-2022> accessed 28 May 2023.

FGM.[297] The President gave instructions to the necessary government authorities to guarantee that the law is upheld and that offenders are punished. [298]

In an opinion piece from the Sunday Standard, written by UNFPA Representative Dr. Olajide and UNICEF Representative Ms. Zaman, the authors say that Kenya has an advantage over other countries in the battle against FGM, because of the coordinated action taken by the government.[299] They say it is still crucial to gather more precise and trustworthy data and to ensure close cooperation between the different parties. All of this will need long-term domestic funding and preventative initiatives, including contributions from the corporate sector and other local institutions as well as national and regional funding.[300] To establish methods for combating the societal norms and actions that lead FGM at the local level, county authorities must engage side by side with fundamental organisations and communities.[301] Disturbing trends are developing in the 22 counties of Kenya where the FGM prevalence rate is the highest; including the medicalization of the practice, girls cutting themselves and an increase in cross-border FGM.[302] In order to safeguard vulnerable girls and women, it is essential to develop effective community monitoring systems. Community leaders and law enforcement officials working together may also help to stop these new trends. The Ministry of Public Service and Gender obtains funding from UNFPA and UNICEF to help implement the former President's plan to end FGM in 2022.[303]

4.2 What measures should be taken?

Programs that aim to end FGM have focused on designing interventions that fit the specific needs of different communities.[304] To do this, a number of community leaders have been consulted, observed, and engaged in open discussion in order to check the development of the programs and make sure that the programs design works for each community. [305] Through communal debates, it has been possible to talk about cultural norms and expectations, health issues associated to FGM, laws related to FGM, and also the duties and obligations of people in the community.[306] The majority of the time,

[297] Ibid.
[298] Ibid.
[299] Dr Ademola Olajide and Maniza Zaman, 'Let's work together to end FGM' *The Sunday Standard* (6 February 2021) <https://www.standardmedia.co.ke/opinion/article/2001402502/lets-work-together-to-end-fgm> accessed 28 May 2023.
[300] Ibid.
[301] Ibid.
[302] Ibid.
[303] Dr Ademola Olajide and Maniza Zaman, 'Let's work together to end FGM' *The Sunday Standard* (6 February 2021) <https://www.standardmedia.co.ke/opinion/article/2001402502/lets-work-together-to-end-fgm> accessed 21 May 2023.
[304] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 6.
[305] Ibid.
[306] Ibid.

these dialogues are focussed on important local elders and religious leaders, but also young people, parents, teachers, and healthcare professionals are involved in these debates.[307] Places where they have held these debates, are for example in churches. These places of worship are seen as powerful institutions, and because of that the church can give guidance and educate the public about FGM.[308] In general, focussing within the communities on a religious approach, where the religion is also disapproving the practice, is proven to be successful.[309]

Education plays a very important role in the effectiveness of eradicating FGM. [310] In the article of Dennis Juma Matanda and others, they explain that: 'Formal education exposes girls to new information, including the health risks/consequences and illegality of FGM and can therefore play a significant role in the abandonment of the practice by empowering women and girls to demand their rights and to challenge existing gender and social inequalities such as FGM'.[311]

Furthermore, in October 2018 representatives of Gender Ministries from Kenya, Uganda, and Tanzania, along with UNFPA and UNICEF, formally agreed to establish a tripartite initiative to End Cross Border FGM in the East Africa region.[312] As mentioned before, cross-border movement of FGM is a big problem in Kenya. In order to fulfil its promise to stop cross-border FGM, the Kenyan government extended invitations to the governments of Ethiopia and Somalia to side with this initiative.[313] In April 2019 all five countries came together and implemented the Declaration and Action Plan to End Cross-border FGM.[314] With this monumental Declaration it set a path for strong partnerships to eradicate FGM.[315]

Besides cross border FGM, another initiative that is raised in FGM programmes is the alternative rites of passage (ARP). There have been different opinions about this. With ARP it gives the girls the opportunity to learn about womanhood, without being forced to undergo FGM. [316] These elements of womanhood are for example teaching the girls

[307] Ibid.
[308] Purity Mwendwa and others, '"Promote locally led initiatives to fight female genital mutilation/cutting (FGM/C)" lessons from anti-FGM/C advocates in rural Kenya' [2020] 17(30) Reproductive Health 13.
[309] Ibid.
[310] Ibid.
[311] Dennis Juma Matanda and others, 'What interventions are effective to prevent or respond to female genital mutilation? A review of existing evidence from 2008–2020' [2023] 3(5) PLOS Global Public Health 11.
[312] UNFPA, '1st Regional Inter-Ministerial Meeting to #EndCrossBorderFGM' (April 2019), 2.
[313] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 8.
[314] Ibid.
[315] Ibid.
[316] Dennis Juma Matanda and others, 'What interventions are effective to prevent or respond to female genital mutilation? A review of existing evidence from 2008–2020' [2023] 3(5) PLOS Global Public Health 11.

about family life and their duties within the family and as a women.[317] But they are also educated on human rights and the negative effects of FGM.[318] It is important that within the community there is discussion and debate about the procedures that work well in their specific community.[319] The ARP's are given by the community itself, so that everyone that is included in that community understands the importance of these ARP's. [320] However, there are also complications involved around ARP's. There is a risk of exclusion, an anticipated loss of cultural identity and insufficient understanding about the subjective sexual experience. [321] Due to this, it makes this initiative less lucrative. [322]

Additionally, initiatives have been carried out to encourage the creation of solid, effective community safety mechanisms, like community surveillance systems.[323] In some areas, like West Phokot, Migori and Marsabit, these systems have proven to be effective.[324] Eighty-three chosen families have been identified by the community, hired by the Joint Programme, and trained has and are looking out for the girls who are at risk of FGM. Through this system, 106 girls have been placed in foster care since 2018. The Joint Program's long-term goal is to expand this system to more regions.[325]

It is a crucial aspect to address the empowerment of girls.[326] Initiatives have to empower girls with more economic control and promote education for girls.[327] An education and awareness campaign led by an NGO, had a beneficial effect within some communities. [328]Many girls refused to undergo FGM and demonstrated through the town fighting for their rights, namely demanding access to school and an end to FGM. It is essential that these efforts are accompanied with a shift in community norms to ensure the protection of the girls in the long run. If this does not happen the girls will continue to be at risk.[329]

[317] Population Reference Bureau, *Ending Female Genital Mutilation/Cutting: Lessons from a decade of progress* (3 February 2014), 10.
[318] Dennis Juma Matanda and others, 'What interventions are effective to prevent or respond to female genital mutilation? A review of existing evidence from 2008–2020' [2023] 3(5) PLOS Global Public Health 11.
[319] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 8.
[320] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 8.
[321] Dennis Juma Matanda and others, 'What interventions are effective to prevent or respond to female genital mutilation? A review of existing evidence from 2008–2020' [2023] 3(5) PLOS Global Public Health 11.
[322] Ibid.
[323] UNICEF, *Case Study on the End Female Genital Mutilation (FGM) programme in the Republic of Kenya* (April 2021), 10.
[324] Ibid.
[325] Ibid.
[326] Population Reference Bureau, *Ending Female Genital Mutilation/Cutting: Lessons from a decade of progress* (3 February 2014), 18.
[327] Ibid.
[328] Ibid.
[329] Ibid.

Chapter 5: Conclusion

To conclude, this research started off with the question: ***What have been the barriers that have prevented the eradication of FGM in Kenya and how successful have international, regional and Kenyan laws been in addressing this issue?*** This question has been answered in a variety of ways.

Firstly, a clear understanding of what FGM is, was needed in order to understand the underlying problems that were discussed after.

FGM refers to all the procedures involving partial or total removal of the female external genitalia and or other injury to the female genital organs for non-medical reasons. FGM is a violation of a women's and girls' human rights. It reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against girls and women. FGM is recognized as a harmful practice for both women and girls and is in violation of a number of international human rights treaties, conventions and fundamental freedoms. By performing FGM on women and girls it can cause severe health issues. It causes short term effects, as well as long term effects.

In this research various methodologies were used in order to answer the main research question. With the use of a doctrinal, feminist, socio-legal approach, I was able to formulate a discussion about the eradication of FGM in Kenya.

The thesis was divided into four chapters. Chapter 1 being the introduction of the problem. Chapter 2 examines the international, regional, and national legal frameworks concerning FGM, analysing relevant laws and conventions. This chapter ends with a cultural psychological perspective on the legal framework, that describes the notion that in order to bring about change in Kenya it requires more than enforcing the law. Chapter 3 provides an overview of why the practice of FGM continues, despite the implementation of aforementioned legal frameworks. An overview of the challenges is given. Chapter 4 focusses on the measures that are needed in order to eradicate FGM.

Chapter 2 outlined a legal framework on international, regional and national level. Within the international legal framework, there are many Conventions and laws prohibiting the practice of FGM. In this research attention was drawn towards girls

under the age of 18 in relation to FGM. Children need more protection and are more vulnerable than adults, because of that the legal measures change with it. Two specific international Conventions were chosen, namely the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The CRC recognizes that appropriate legislative, social and education measures have to be taken in order to protect the girls and to eradicate FGM. CEDAW is an important agreement directed towards establishing gender equality and empowering women and girls. The practice of FGM is not specifically mentioned in CEDAW. However, an important article that needs to be mentioned, is article 5(a) CEDAW. States take appropriate measures to tackle customs that are discriminatory, like FGM. CEDAW also requires periodic reports from countries, including Kenya, about the status of FGM. In the latest periodic report of Kenya, areas of concern and recommendations regarding FGM have been given by the Commission.

Another important framework is the Sustainable Development Goals from the United Nations. The UN implemented their 2030 Agenda to achieve sustainable development by 2030. They adopted 17 goals, one of these goals is SDG 5. This goal is about achieving gender equality and empowering all women and girls. Target 5.3 talks about the elimination of all harmful practices, such as female genital mutilation. Kenya also adopted the SDG's. Different targets have to be met and measures have to be taken by Kenya in order to fulfil these goals.

The African legal framework also calls for the eradication of FGM. For example with the African Charter on Human and Peoples Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (Maputo Protocol), the African Charter on the Rights and Welfare of the Child and the African Youth Charter. These Charters are implemented by Kenya to prohibit all forms of FGM and to take legislative to eradicate the practice.

The last legal framework, is the national framework of Kenya. Kenya has created a strong legislative framework concerning the eradication of FGM. The country outlawed FGM in 2011, however the practice is still a problem in the everyday lives of the Kenyan girls and women. Kenya has ratified a number of international treaties that are now incorporated into Kenyan legislation. There are specific Acts in Kenya on the

prohibition and criminalization of FGM, the Prohibition of Female Genital Mutilation Act 2011 and the New Children Act 2022. The new National Policy of 2019 highlights major challenges and measures to combat FGM in important areas including health, education, security, access to justice, and public information.

Despite the fact that these legal frameworks exist and are implemented, FGM in Kenya is still prevalent. What are the reasons for the continued persistence of the practice? Multiple challenges have been discussed, as for example: tradition and culture, a girls' sexuality and marriageability, religion, hygiene and aesthetics, myths and beliefs and FGM as a social norm. These challenges contribute to the continuation of FGM.

Due to the new norms and rules, other problems appear. A lot of girls are not cut anymore by traditional practitioners, but the girls are cut by medical professionals. This causes the problem of medicalization and makes it even more difficult to eradicate the practice. Besides medicalization, the practice is being driven underground, which makes it more difficult to control the situations and to act on it.

What is needed for change? Bringing about change requires more than merely enforcing the law and making persuasive arguments. It needs a social and communal perspective. The process of enforcing the law should encompass various levels of governance, from the national to the local level, including political, social, cultural, and economic facets. It is important to focus on measures that invest in healthcare, education, safety and justice. This is done by creating awareness among the communities, talking with community leaders and religious leaders. But also by education programmes and teaching girls and boys at schools about the harmful effects of the practice. A crucial aspect to all of this, is that the girls are empowered, stand up for themselves and their human rights!

It is important that we end FGM in the next generation. We need to end FGM so girls can live in dignity, free from violence, and realize their full potential! [330]

[330] Equality now, 'How Can Youth End FGM?' (*Equalitynow.org*, 5 February 2020) <https://www.equalitynow.org/news_and_insights/youth_end_fgm/> accessed 22 May 2023.

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