

AI Index: ACT 77/14/97
FEMALE GENITAL MUTILATION
AND INTERNATIONAL HUMAN RIGHTS STANDARDS

“To succeed in abolishing the practice of FGM will demand fundamental attitudinal shifts in the way that society perceives the human rights of women.”

Efua Dorkenoo, *Cutting the Rose*

The subordinate position historically occupied by women and girls within the family, community and society has meant that abuses such as female genital mutilation (FGM) have to date been mostly ignored, a marginalization which has too often been reflected in the preoccupations of the international human rights movement. Nevertheless, a whole range of standards exist which present governments with a clear obligation to take appropriate and effective action.

The Universal Declaration of Human Rights (UDHR), the cornerstone of the human rights system, asserts that all human beings are born free and equal in dignity and rights. It protects the right to security of person and the right not to be subjected to cruel inhuman or degrading treatment — rights which are of direct relevance to the practice of FGM. The traditional interpretation of these rights has generally failed to encompass forms of violence against women such as domestic violence or FGM. This arises from a common misconception that states are not responsible for human rights abuses committed within the home or the community.

More recent instruments give greater specificity to the range of rights enshrined in the UDHR. They also affirm that FGM, along with other forms of violence against women and other harmful traditional practices, is an assault on the dignity, equality and integrity of women and an affront to human rights.

FGM and discrimination against women

“[Excision] shows an attempt to confer an inferior status on women by branding them with this mark which diminishes them and is a constant reminder to them that they are only women, inferior to men, that they do not even have any rights over their own bodies or fulfilment either bodily or personal... As we can view male circumcision as being a measure of hygiene, in the same way we can only see excision as a measure of inferiorization.”

Thomas Sankara, former President of Burkina Faso

FGM is rooted in discrimination against women. It is an instrument for socializing girls into prescribed roles within the family and community. It is therefore intimately linked to the unequal position of women in the political, social, and economic structures of societies where it is practised.

The UN Convention on the Elimination of All Forms of Discrimination against Women, which came into force in 1981, sets out in detail the measures that have to be taken to eliminate discrimination. Article 5 of the Convention requires states to work towards “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”. Gender-based violence is recognized as a form of discrimination which seriously inhibits a woman’s ability to enjoy the full range of rights and freedoms on a basis of equality with men.

The Committee on the Elimination of Discrimination against Women, the monitoring body of the Convention, has issued several general recommendations relating to FGM. General

Recommendation 14 (1990) calls on states parties to take appropriate and effective measures with a view to eradicating the practice, including introducing appropriate health care and education strategies and including information about measures taken to eliminate FGM in their reports to the Committee.

General Recommendation 19 draws a connection between traditional attitudes which subordinate women, and violent practices such as FGM, domestic violence, dowry deaths and acid attacks, stating that: “Such prejudices and practices may justify gender-based violence as a form of protection or control of women”. The Recommendation also recognizes that violence against women not only deprives them of their civil and political rights (such as the right to physical integrity); it denies them their social and economic rights: “While this comment addresses mainly actual or threatened violence, the underlying (structural) consequences of these forms of gender-based violence help to maintain women in their subordinate roles, contribute to their low level of participation and to their lower level of education, skills and work opportunities.”

The provisions of the Convention are strengthened and complemented by the UN Declaration on the Elimination of Violence against Women, adopted by the General Assembly in 1993. It addresses gender-based violence “both in public or private life”, and includes within its scope FGM and other traditional practices harmful to women. Article 4 provides that states should not invoke any custom, tradition or religious consideration to avoid their obligation to eliminate violence against women. The Declaration sets out an internationally recognized framework for action by governments. It details the measures states should adopt to prevent, punish and eradicate such violence. These duties include due diligence in investigating and imposing penalties for violence and establishing effective protective measures.

The UN Beijing Declaration and Platform for Action, resulting from the Fourth World Conference on Women in 1995, contains a clear condemnation of FGM as a form of violence against women and reaffirms the responsibility of states to take action to curb such violence.

FGM and the rights of the child

The UN Convention on the Rights of the Child was the first binding instrument explicitly addressing harmful traditional practices as a human rights violation. It obliges governments to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” (Article 19(1)). Article 24 (3) of the Convention specifically requires governments to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

At a regional level, the African Charter on the Rights and Welfare of the Child, adopted by the Organization of African Unity in 1990, but yet to enter into force, contains many similar provisions to those in the UN Convention. However a number of unique provisions relate to FGM, including the provision that “any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall... be null and void”. The Charter requires governments to take all appropriate measures to eliminate social and cultural practices “harmful to the welfare, normal growth and development of the child, in particular those prejudicial to the health or life of the child and those customs and practices discriminatory to the child on grounds of sex or other status.”

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief protects the rights of the child against abuse carried out in the name of a particular belief or cultural tradition, stating that: “Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development...” (Article 5(5)).

FGM and the right to health

The severe consequences of FGM for the psychological and physical health of women and girls bring it within the scope of the human rights instruments mentioned above. The right to enjoy the highest attainable standard of physical and mental health is enshrined in the International Covenant on Economic, Social and Cultural Rights. This Covenant refers to specific steps governments are obliged to take to achieve full realization of this right, including measures for reducing the infant mortality and still-birth rates and for the healthy development of the child.

Misconceptions about FGM (such as the belief that the clitoris can damage a baby during childbirth) are perpetuated in many areas because of women’s lack of access to information about their sexual and reproductive health. The 1994 UN International Conference for Population and Development in Cairo emphasized the interconnections between reproductive health and human rights. Its Programme of Action urges governments to put a stop to the practice of FGM and put in place programmes for education and rehabilitation. The World Health Organization has a long history of addressing FGM from the perspective of the right of women and girl-children to the highest attainable standard of health (see FGM: UN Initiatives).

FGM is a graphic illustration of the indivisibility and interdependence of all human rights. This violation of the right to physical and mental integrity of women and girls cannot be addressed in isolation from the context of systematic deprivation of women’s civil, political, social and economic rights. Governments have clear obligations under international law to take appropriate and effective measures to eradicate and prevent FGM. To do so, they must address the human rights implications of the practice in a holistic manner, recognizing that violence against women is indivisible from and interdependent with gender-based discrimination in all its forms.