

**FEMALE GENITAL MUTILATION AND HUMAN RIGHTS IN UGANDA.
A CASE STUDY OF THE SABINY COMMUNITY LIVING IN THE PRESENT
DISTRICT OF KAPCHORWA**

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DECLARATION

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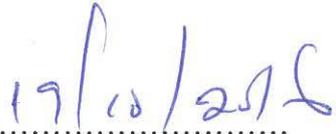
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APPROVAL

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DEDICATION

This research report is dedicated to Almighty God, my father Mr. Karameka Alan Kapsandul, Mother Mrs. Betty Karameka, my husband Mr. Yeko Denis Satya, my son Kemboi Shalom Jaiden and my daughter Chelangat Shalom Edriana.

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My gratitude first goes to God the creator who has given me the strength and courage to undertake this research.

I extend my sincere gratitude to a number of people like my lovely husband Mr. Yeko Denis Satya for their invaluable contributions and input to this research for without their help this research would not have come to fruition.

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May God Bless you all.

LIST OF ABBREVIATIONS AND ACRONYMS

USSR:	United Soviet States of Russia
FC:	Female Circumcision
FGM:	Female Genital Mutilation
UN:	United Nations
NGO:	Non Governmental Organization
REACH:	Reproductive Educative And Community Health.
DAW:	Division for the Advancement of Women
CEDA:	Committee on the Elimination of Discrimination Against Women

LIST OF STATUTES AND CONVENTIONS LOCAL INSTRUMENTS

The Constitution Of The Republic Of Uganda 1995.

The Penal code act Cap 106

The prohibition of female genital mutilation Act, 2010.

INTERNATIONAL INSTRUMENTS

USSR Constitution IN 1904

The universal declaration of human rights in 1948

The international covenant and civil and political rights and the international covenant on economic, social and cultural rights.

International bill of human rights.

Convention on the elimination of all forms of discrimination against women in 1981.

The Banjui charter on human and people's rights in 1981.

The convention against torture and other cruel in human or degrading treatment or punishment.

The United Nation Convection on the rights of the child, in 1990

The declaration on the elimination of violence against women 1993

The convention against torture and other cruel inhuman or degrading treatment or punishment

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ABSTRACT

This work contains five chapters and these are discussed as follows;

- i. Chapter one introduces the research topic of female genital mutilation and human rights giving its definition. It discusses the available literature review on female genital mutilation. The chapter also gives the statement of the problem, objectives of the study and the methodology that was used.
- ii. Chapter two discusses on the literature review.
- iii. Chapter three discusses the law regarding FGM, giving the human rights provisions which protect women against violence and these range from international instruments like un charter, universal declaration of human rights (UDHR), the 1995 constitution of the Republic of Uganda and the prohibiting of female Genital Mutilation Act of 2010 and many other laws applicable.
- iv. Chapter four discusses the study findings on the incident rate of FGM, the effectiveness of the law of FGM, the effect of FGM on the realization of the rights of women as well as the solutions to the challenges encouraged in the enforcement of law.
- v. Chapter five draws the conclusions and suggests possible recommendations to policy makers and implementers that should be put in place by the government, the non-governmental organizations and the natives of the affected society, in the fight to see zero tolerance of Female Genital Mutilation as a violation of human rights should be achieved. And these are majority practical recommendations solving communities.

CHAPTER ONE

BACKGROUND OF FEMALE GENITAL MUTILATION

1.1 Introduction

So interesting to note that the conflicting elements will be between cultural norms (way of life) of the people in a given society and the human rights as advocated for in chapter four of the constitution of the republic of Uganda 1995. These rights include among others, equality and freedom from discrimination and this is to the effect that;

All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection, of the law.

And clause (2) provides that;

Without prejudice to clause (1) of this Article, a person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.¹

And **Article 24** of the Constitution of the Republic of Uganda 1995, provides for respect for human dignity and protection from inhuman treatment in that,

No person shall be subjected to any form of torture or cruel, in human or degrading treatment or punishment²

The right of people to participate in their culture a human right and this was first recognized in the universal declaration of human rights and has been reiterated by the economic, social and cultural rights covenant. In examining human rights associated with culture, it is critical to note that these important

¹The Constitution of the Republic of Uganda 1995, Article 21(1)

²Ibid Article 24

instruments are phrased to protect the right of people to take part in cultural life rather than to create abroad and indeterminate right to culture. The Banjul charter is particularly strong in its call to;

*Preserve and strengthen positive African cultural values.*³

Human rights are generally thought to include those moral and political claims that every human being has upon her or his government or society as a matter of a right not by virtue of kindness or charity.⁴ In other words, fundamental and other human rights and freedoms of the individual are inherent and not granted by the State, and thus shall be respected, upheld and promoted by all organs and agencies of government and by all persons.⁵ For example in the case of Rev. Christopher Mtikila fathers the attorney General civil case no.5 of 1993(high court of Tanzania ruling).

In this case the definition of human was defined; these principles find expressions in our constitution. It is apparent from the scheme of part three chapter of the constitution, that EVERY PERSON IN TANZANIA IS vested with a double capacity: the capacity as an individual and the capacity as a member of the community. In his former capacity,, he enjoys all the basic rights set out in Art.12 to Art. 25; this scheme reflects the modern trend in constitutionalism which recognises the pre-eminence of the community in the formulation of the constitution. It recognizes that rights are correlative with functions.

While cultures worldwide have historically recognized a concept of human rights. The origin of modern human rights law is traced right from the eighteenth century.

³Banjul Charter on Human and Peoples' Rights, 1981, **Article 29 (7)**

⁴AnikaRahman and NahidToubia, Female Genital Mutilation: A Guide to Laws and Policies Worldwide, Zed Books Ltd, (2000), Cynthia Street, London, USA, p.32.

⁵The Constitution of the Republic of Uganda 1995, Article 20.

Fundamental rights are rights derived from natural law or fundamental law. They constitute a significant component of liberty, encroachments of which are to be rigorously tested by courts to ascertain the soundness of purported individual or governmental justifications.⁶

For example in the case of

Law & Advocacy for women in Uganda v Attorney General (Constitutional Petition No. 8 of 2007) [20101 UGCC 4 (28 July 2010);

In this case,

This petition was filed by Law and Advocacy for Women in Uganda, an NGO, under 137(1)(3)(a) and (d) of the Constitution of Uganda and Rule 3 of the Constitutional Court (Petitions and References) Rules. The petition is seeking for the following declarations and orders: -

(a) That the custom and practice of Female Genital Mutilation as practiced by several tribes in Uganda is inconsistent with the Constitution of the Republic of Uganda, 1995 to the extent that it violates Articles 2(2), 21(1), 24, 27(2), 32(2) and 33 thereof.

(b) As a result of this violation, the custom and practice of Female Genital Mutilation should be declared null and void and unconstitutional.

In this case, the main issue in this petition is whether the custom and practice of female genital mutilation [FGM] is unconstitutional and should be declared null and void. I have stated above that at the trial of this petition, the respondent stated that it did wish to contest the petition although in the pleadings it had done so. This, however, did not relieve the petitioner of the duty to produce sufficient evidence to prove that the practice, now commonly known as FGM, contravenes the Constitution of the Republic of Uganda. It is specifically alleged that the practice contravenes articles 2(2), 21(1), 24,

⁶Anika Rahman and Nahid Toubia Op.cit p.20, 697.

27,33(2) and 33 of the Constitution of the republic of Uganda 1995. I shall now proceed to consider whether the evidence which was adduced proves on a balance of probability the alleged contraventions.

In this case, it was held by court that the custom and practice of Female Genital Mutilation as practiced by several tribes in Uganda is inconsistent with the Constitution of the Republic of Uganda, 1995 to the extent that it violates Articles 2(2) 21(1), 24, 27(2) 32(2) and 33 thereof.

The whole theory of human rights has a very remote and chequered history over the years, divergent opinions have been expressed by various schools of thought about, concept, nature, legality and philosophy of human rights.⁷

One fact that stands out clear is that human rights relate to human beings who constitute members of a group, community society or a State. The origin of human rights can be held to be traceable to the creation of man and the right to life accorded him by God while the inherent nature of these rights is one of the many qualities that God has given man.⁸

Fundamental human rights have been defined as moral rights which every human being everywhere, at all times, ought to value simply because he is rational and moral in contradistinction with other beings.⁹

Lois Henkin defines human rights as those liberties, immunities and benefits which by accepted contemporary values, all human beings should be able to claim as of right in the society in which they live.¹⁰

⁷Edmund Burke, Theories of Natural Law and Social Contract, Natural Law Forum,(l 996), 196 Volume. 6.201.

⁸Ibid p.30

⁹G. Ezejofor: Protection of Human rights under the Law, Butterworths, (1964), London 3, p.20

¹⁰Lois Henkin, quoted by Umezurike in Constitutional Rights Journal, Nigeria, 1995 vol. 5 p. 11.

Human rights have also been held elsewhere¹¹ to represent demands or claims which individuals or groups make on society, some of which are protected by law and have become part of Lexlata while others remain aspirations to be attained in the future. Umozurike¹² contends that the fact that such rights are denied or violated does not detract them from their status since the rights are supposed to be claims, invariably supported by ethics and so should be by law, made on the individuals or groups on the basis of their humanity.

Human rights were thus initially believed to be natural rights of every individual and as such, those rights had a distinction of anthropological quality. In other words, basic human rights and fundamental freedoms were determined by their author's perception of the nature and essential characteristics of the human person. The particular rights and freedoms that were thus thought to be natural concomitants of being human were identified by contemplating the condition of an individual person in a stateless society. By eliminating all conditions that might be conditioned by a person's Station in life as a member of a political society, philosophers attempted to penetrate the true essence of the human being and sought to translate that vital modality of being human is fighting for human rights.¹³

With the emergence of positivism towards the middle of the 18th century, the doctrine of natural law of which the theory of natural rights was a district variety, lost much of its appeal. A tendency accordingly emerged of placing human rights into three generations. The first generation consists of the civil and political rights which are rights and freedoms that are pertinent to

¹¹12 C.E.Osita: Human Rights in Africa, Byrne Publishers, (1962), Galway City, America, p. 5

¹²Ibd p.5

¹³Daniel Brand (ed); From Human Wrongs to Human Rights, Pretoria University Law Press (1996), Pretoria p.44.

safeguarding the person and citizens basic liberties vis-avis governmental authority and requiring of the state to permit or endure those entitlements.¹⁴

The second generation of rights refers to economic, social and cultural rights which had their origin in the constitution of Mexico, 1917. The economic, social and cultural rights which were included in the USSR Constitution 1904 as the right to work, to leisure, to maintenance in old age and sickness, right to education and freedom of association. The negation of such rights found its way into the universal declaration of human rights, 1948 and constituted the subject matter of the international convention on economic, social and cultural Rights, 1996.¹⁵

During the last two decades, a new category of rights emerged, which is commonly referred to as "third generation rights" and which was first conventionalized by KasselVasa in his inaugural address to the Tenth study session of the international institute of human rights, Strasbourg, France in 1979. These rights include the; the right to peace, the right to development of disadvantaged sections of political community or, in the international context of developing countries, the right to nature conservation and to a clean and healthy environment, the right to share in the common heritage of human kind and so on.¹⁶

The third generation rights have the following attributes among others; first, the beneficiaries of these rights are no longer confined to individuals. The rights are now collectively perceived either in the sense of humanity as well as particular political community or a distinct section of the population within the body politic. Second, the third generation rights cannot be adequately protected within the confines of municipal bills of rights and their effective implementation consequently requires international cooperation. For instance,

¹⁴L. Sohn, "Protection of Individuals: American Law Review, Pretoria University Press (1982), Pretoria Volume 32 p. 17-18.

¹⁵ Ibid. p. 19

¹⁶ Ibid p.17

agitations and campaigns against female genital mutilation being practiced in various ethnic groups can no longer be confined to individual and personal efforts but a matter of international concern.

The first and third generations of fundamental human rights specified earlier, appear to be more relevant to the issue of female genital mutilation since they deal much with issues of natural law, civil liberties, dignity of human person, right to life, privacy, freedom from discrimination rights to peace, nature conservation, common heritage of mankind and development.¹⁷

Female Genital Mutilation. (FGM) is the collective name given to several different traditional practices that involve the cutting of female genitals.¹⁸ The procedure is commonly performed on girls anywhere between the ages of four and twelve years of age as a rite of passage to womanhood.¹⁹

Initially, interest in the practice will be focused primarily on the physical and psychological damage that FGM can cause.

However, the act itself of the cutting of healthy genital organs for non-medical reasons-is at its essence a basic violation of girls' and women's rights to physical integrity. This is true regardless of the degree of cutting or of the extents of the complications that may or may not ensue.²⁰

With the international community, the term "Female Circumcision" has been used for many years to describe the practice. Other expressions, such as "female genital cutting, "female genital surgery, "ritual genital surgery and "sexual mutilation" have also been used.²¹

¹⁷Amos Adeoyedowu, Effects of FGM on Human Rights of Women and Female Children: The Nigerian Situation, FGM Review Journal, Issue 26, g 17-18.

¹⁸N. Toubia, Female Genital Mutilation; A Call for Global Action, Second Edition, Rainbow Publishers (1995) New York, p. 9.

¹⁹ Ibid p.14

²⁰AnikaRahman and NahidToubiaOp.cit. p.3

²¹ Ibid p.4

However in the past decade, the term “Female Genital Mutilation” has been adopted by a wide range of women’s health and human rights activists because it clearly indicates the harm caused by the practices.²² The World Health Organization (WHO) also adopted the term “Female Genital Mutilation”.²³

Similarly, in 1990 at a meeting in Addis Ababa, Ethiopia the inter Africa committee on traditional practice affecting the health of women and children (IAC) formerly adopted this term. Subsequently, the international community has used this expression in several United Nations conference documents including those relating to the 1994 international conference on population and development in Cairo (Cairo conference), the 1995 world summit for social development in Copenhagen (Copenhagen summit) and the 1995 fourth world conference on women in Beijing (Beijing conference).²⁴

Although the term “Female Genital Mutilation” has been a very effective policy and advocacy tool, organizations working with communities that practice FGM have found that this term can be offensive or even shocking to women who have never considered the practice a mutilation.²⁵

This is purposely because FGM is deeply rooted in tradition, and the Sabiny believe it is an essential rite of passage that will enhance a girl’s chastity and chances of marriage.

Out of respect and sensitivity, many organizations have opted to use the local terminology or more neutral terms such as “Female Circumcision” or “Female Genital Cutting” when working with these populations.²⁶ In recognition of these two approaches the dual term “FC/FGM” has been used in my work except when quoting materials from United Nations conference documents and national legislation.

²² Ibid

²³ Nahid Toubia and S.Izett, *Female Mutilation: An Overview*, Geneva; World Health Organization, Rainbow Publishers (1998), Geneva p 105

²⁴ Ibid

²⁵ Anita Raham and NahidToubiaop.cit p.30

²⁶ Ibid at p.4

The spirit of the UN charter is largely motivated by moral imperative to restore human dignity and give it legal status. And indeed that moral concern permits subsequent development of Human Rights Law. **Article 3** of the UN charter provides

,.....respect for human rights and fundamental freedoms should be for all without discrimination.

It is for this, that human rights have been given a global recognition which entrench and guarantee the equality of sexes, equal and full dignity of the person, non discrimination on the basis of sex, and freedom from cruel, inhuman and degrading treatment.

Globally, it is also now recognized that women's rights remain as acknowledged by the world leaders at the world conference on human rights and reaffirmed by the world community in subsequent conferences held in Cairo, Copenhagen and Beijing.²⁷

It could be expected that women now enjoy their human rights but in practice, this is not so and particularly in Sub-Sahara Africa where the enjoyment of their rights remains elusive for the majority of African women. The situation is further compounded by low literacy, lack of properly articulated legal rights, and recognition of customary law that gives legal basis for some discriminating practice.²⁸

Female genital mutilation (FGM/FC) is a cultural and traditional practice that violates women's human rights but political commitment to outlaw these practices has been lukewarm.

In addition, the few efforts put in place to eradicate some of these practices have often been confronted with resistance from not only the community but in

²⁷AnikaRahman and N .Toubia, op.cit.10

²⁸ Ibid

some cases also from women who are the victims of these practices. *But why and what on earth could make women who are the victims of FGM support such oppressing acts?* What should human rights activities, government and concerned bodies do to help the girls and women in Sabiny land? This included the discussion in the fourth chapter. However for example, other communities in the world have been practicing such as the Masai, Pakuds, Kikuyu and Nandis in Kenya, The law have reacted with it's effectiveness against the practice of FGM. It became consistent because of the cultural value Data from all the District's 49 parishes showed that the number of women who underwent the ritual dropped from 621 in the 2002 circumcision season year to 225 in 2007 circumcision year. The data showed that 261 women were saved from the knife through peer education and provision of incentives to the circumcision, some of whom hail from Kenya.⁵⁰

FC/FGM is thought have originated from southern Egypt or Northern Sudan and was practiced by many cultures, including the Phoenicians, Hittites and the ancient Egyptians.⁵¹

Estimated country prevalence rates rung from as high percentage of 10 in Djibouti to 5% in Uganda and Democratic Republic of Congo. Countries with an estimated prevalence rate of 70 percent and above include Egypt female, Somalia, Sudan, Togo, Burkina Faso, Eritrea, Ethiopia, Gambia and Sierra Leone. Prevalence rates are expressed in percentages of the total, female population and may not necessarily bring out the entire picture. FC/FGM is however not only an African problem; it is also practiced in other parts of the world such as the Arab world, Asia and in Europe by Africa immigrants, although on a much smaller scale.⁵²

This is because these immigrants moved with their cultures and continue to practice them as part of their rituals and cultural norms.

1.2 Statement of the Problem

It is imperative to state that the act of FGM is a human rights violation which exposes girls to grievous circumstances and thus needs to be put out of practice. Despite its being a violation of human rights (FGM) is still being held in practice. FGM severely damages and affects the health of those that are mutilated (girls), and yet typically denied an opportunity to receive any medical attention by their cutters. Frequently, this has led to death of the innocent girls at the hands of their merciless cutters, a situation which has out of respect and sensitivity, generated a global concern. There is need to strengthen the laws governing human rights abuse, particularly those preventing against FGM in this context.

1.3 Objectives of the Study

1.3.1 General Objective

The main objective of the study was to examine the effectiveness of the law governing FGM in Uganda, particularly among the Sabiny community.

1.3.2 Objectives of the Study

The study was carried out with objective to;

- i. Examine the phenomena of FGM in Uganda particularly among the Sabiny community.
- ii. Find out how genital mutilation affects the human rights of women in Uganda.
- iii. To examine the effectiveness of the law governing FGM in Uganda.

1.4 Research Questions

- i. How has FGM affected the rights of women in Uganda?
- ii. How effective has the law been effective in preventing the act of FGM in Uganda?
- iii. What are the possible measures that can be adopted to improve the law governing FGM in Uganda?

1.5 Scope of the Study

The study took place for three months and it was limited to the effective application of the law of FGM. The study scope was thus restricted to examining the rate of incidence of FGM in addition to finding out its effect on the rights of women in Uganda as a way forward to providing possible measures that can be adopted to improve on the law governing FGM in Uganda.

The law of human rights condemns FGM and it's an offence to those practicing it and it's liable for life imprisonment.

1.6 Significance of the Study

The information will be useful to NGOs, Human Rights activists and students aiming at assisting the realization of human rights and the study of human rights.

The findings of the study will serve to add and supplement the existing literature and fill the existing gaps and this is very important in the sense that the study can be used as a point of reference by other researchers. It would also be used as guide for policy makers.

The study will enlighten the public about the dangers of practicing FGM as a cultural practice. The study therefore will sensitize the public of the laws on FGM and the abuse of human rights in general. This facilitates the reason as to why abandonment of this cultural practice is important in the observation of human rights.

Abuse of human rights in general. This facilitates the reason as to why abandonment of this cultural practice is important in the observation of human rights.

1.7 Methodology of the Study

The research is of a legal specificity therefore the researcher used a qualitative method of research by basically using textbooks, various articles and reports published and decided cases. Through library research especially the Center

for Basic Research Library, Foundation for Human Rights Initiative Library, Kampala International University library, the main Makerere University library and the Ministry of Gender and Integrity.

The researcher also used informal interviews especially with different NGOs fighting for the rights of women, and the victims of genital mutilation in the Sabiny Community.⁸

1.8 Definition of Key terms

In this study, the researcher used different terms that gave operational definitions. It was within the interests of this study that the words were defined the way they are to avoid double meaning. They include:

- (i) **Female Genital Mutilation:** The practice that involves partial or total removal of the female external genitalia.
- (ii) **Human Rights Instruments:** Conventional and law provisions that provide standards of common pursuit to safeguard and promote human entitlements.
- (iii) **Women's reproductive rights:** Entitlements that pertain the gender relations of women in society.
- (iv) **Challenges:** Factors that constrain effective implementation and use of instruments and laws pertaining the promotion, safeguard and enjoyment of women's reproductive rights.
- (v) **Health:** A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, with due regard of recognizing health as one of fundamental rights of every human being.
- (vi) **Reproductive health:** A condition in which the reproductive process is accomplished ;n a state of complete physical, mental and social-well being and is not merely the absence of disease or disorders of the reproductive process.

CHAPTER TWO

2.0 Review of Related Literature

Though numerous literature is available about FGM this is mainly on moral philosophy and the effect of female genital mutilation on human rights as a concept.

Wolfgang Benedict, Ester M. Kisaakye and Gerald Oberleitner in their book wrote about FGM as a cultural practice that violates the rights of women that, though for a while culture may have its negative side, it does have a positive side as a way of life and practices of a given groups, and represents identity, beliefs, norms and values, and acceptable behavior, it embraces practices imparted upon by the passage of time, which are deep-rooted and entrenched in the value systems of a particular community. It also promotes identity and social order.²⁹

Isabelle Gunning made an interesting contribution to this debate by arguing that “culturally challenging” practice such as female genital mutilation requires the critic to engage in “world traveling” which means multicultural and shared search for areas of overlap shared concerns and values.³⁰

In her research, Isabelle Gunning argues that she was faced with two major problems, “by what right did a western feminist have to criticize as a right or wrong the practice of an entirely different culture? Should and can law with its attributions of right and wrong exonerations and punishments be used to eradicate a cultural practice?

She goes on to say that as feminists if they do not abandon the paradigm of right versus wrong, they must develop a method of understanding culturally

²⁹Wolfgang Benedict, E.M Kisaakye and G Oberleitner, Human rights of Women International Instruments and African Experience, Zed Books Limited (2000), Cynthia Street, London, USA p.282.

³⁰Isabelle R. Gunning, World Traveling and Multicultural Feminisms, Pacific Publishers, (1989), California State University. P. 43.

challenging practices, like female genital surgeries that preserve the sense of respect and equality, of various and different cultures.

This implies that if the cultural practices are controversial, then the Constitution as the supreme³¹ law should suffice to determine the right course of action. The focus therefore needs to be on multicultural dialogue and shared search for areas of overlap, shared concerns and values.³²

Anika Rahman and Nahid Toubia wrote that interest in the practice was focused primarily on the physical and psychological damage that FGM can cause. However the act, itself of cutting of healthy genital organs for non medical reasons, is at its essence a basic violation of girls, and women's rights to physical integrity. It is important to note that this is an act that is preformed primarily on children, who have no say in the matter. That the practice violates a number of recognized human right, including those provided by the Convection on the right of the child.³³

The issue of FGM is therefore increasingly being discussed and addressed in the overall context of girls and women's rights, rather thin strictly as a health or medical issue.³⁴

Critics continue to observe that although the term female genital mutilation has been a very effective policy and advocacy too, organizations working with communities that practice FGM have found that this term can be offensive or even shocking to women who have never considered the practice a mutilation out of respect and sensitivity. Many organizations have opted to use local terminology or more neutral terms such as "Female Circumcision" of "Female Genital Cutting" when working with these communities.³⁵

³¹The Constitution of the Republic of Uganda, 1995, Chapter 1 Article 2

³²The Constitution of the Republic of Uganda 1995, Article 2.

³³Anika Rahman and N Toubia, op.cit, p. 1

³⁴Ibid p.2.

³⁵Ibid p.4

It is a worldwide estimation that, 150 million girls and women have undergone FGM. At least two million girls a year are at risk of undergoing the same form of abuse a year.³⁶

Balk Williams and Khadn in their paper "Female Genital Mutilation in Sudan" noted that in places where Female Genital Mutilation is practiced, most women usually believe this practice should continue because it ensures a daughter's place in the marriage and ultimately as a wife, it appears to be an integral part of gender identification in many of the cultures in which it is practiced. As a consequence women have actively participated in supporting the act of FGM.³⁷

Although some refer to Female Genital Mutilation as circumcision such a term is problematic because whatever form it takes, Female Genital Mutilation is not fundamentally comparable to male circumcision and does not alter the ability of a man to enjoy sex, while Female Circumcision does.³⁸

Renzeth and Curran further note that female genital mutilation is the practice of institutionalized violence against women observers particularly in the West have labeled criminal. Yet efforts to outlaw it have been unsuccessful and women themselves perpetuate this tradition. To most westerners this act of women appears irrational.³⁹

Rabman and N Toubia observed that to place FC/FGM within a human rights framework, it is critical to know more about contemporary human rights law. This body of law is based primarily upon Human Right Treaties at the International and Regional levels, supplemented by UN declarations and other instruments.⁴⁰

³⁶UNPFA, The State of World Population; 6 billion; A Time For Choices; TJNPFA, (1999), New York, Article 199, p.2.

³⁷BKW Female Genital Mutilation in Sudan p.1

³⁸Asma El Barer; Woman, why do you weep? BKW Publishing Limited, (1999) Juba, Pp 1-5

³⁹Ranzett and Curran, Female Genital Mutilation, Zed Publishing Limited (2000) California P. 273

⁴⁰Ibid p.1

2.1 NATURE AND FORM OF GENITAL MUTILATION

2.1.1 Introduction

Female Circumcision/Female Genital Mutilation (FC/FGM) is the collective name given to several different traditional practices that involved the cutting of female genitals, and this practice has been a part of their culture for as long as anyone can remember. Both girls and boys are circumcised.⁴¹

A three week festival accompanies circumcision and cutting when girls of about 15 years old and boys of 17 or 18 from throughout the region are initiated. It is a big occasion for everyone. Once the season is declared open by the elders, for about three weeks Male Circumcision candidates run through the villages of the districts collecting gifts and congratulations from friends and relatives, who often join in the run to the next village.

During this time, a boy collects the foundation for the bride price to be offered for a newly circumcised girl to be his wife. Female cutting candidates do not tour the districts but remain in the family homestead, where they are prepared for what is to come.⁴²

Girls may be circumcised alone or with a group of peers from their community. FG/FGM is generally performed by a traditional practitioner, often an older woman who comes from a family in which generations of women have been traditional practitioners and she is referred to as "Chemerianed." However more it is also performed by trained health personnel, including physician, nurses and midwives.⁴³

Female Genital Mutilation is widely practiced in Africa in at least 28 African countries. In the Sub-Saharan and North Eastern regions. The actual numbers

⁴¹N.ToubiaOp.cit, p.9 V

⁴²Sara Horsfall and Salonen, Female Genital Mutilation arid Associated Gender and Political Issues Among the Sabinu of Uganda, WHO Report, (2000), Geneva.

⁴³ Ibid pg 29

of women who have undergone FC/FGM are not known, due to the silence that surrounded the practice for a long time, and the fact that the issue did not receive international attention until the 1980s. However, by 1998, it was estimated that 136, 797, 440 women and girls in Africa had undergone one form or another of FC/ FGM.⁴⁴

According to George William Cheborian, Chairperson of the Sabinu Elders' Association reported that "less than 50 percent of the entire population of this region practices FGM."⁴⁵ It was reported that "594 women were circumcised in Kapchorwa district under the Sabinu ritual that ended on December 31st, 2005."⁴⁶

The victims of this practice are women and children. In many of the communities, the age of mutilation varies from an infant of a few weeks old to young girls of tender age and to adolescents who are undergoing initiation rites. This is carried out to mark the beginning of community and civic responsibility. Indeed, it is globally estimated that 2 million girls a year or 6,000 girls per day are at the risks of undergoing FC/FGM.⁴⁷

And if a girl develops any complications after the procedure, they are attributed to witchcraft or other supernatural powers.⁴⁸

One of the questions that have continued to puzzle human rights advocates and researchers in this field is the contradiction posed by the fact that the centuries old practice of FGM, which results in great risks and damages to the woman's sexuality is seemingly perpetuated by women against fellow women.

⁴⁴W. Benedek E.M Kisaakye and G.Oberleitner Op.cit p. 270- 271

⁴⁵Kwesiga David, Half of the Sabinu Population in FGM Practice, The Monitor, Monitor Publications, (2004), Industrial Area, Namuwongo, 26 December P.2.

⁴⁶Nathan Etengu, Uganda:600 Women Circumcised, New Vision Publishing Corporation, (2005), Industrial Area, Kampala p.2

⁴⁷NahidTobiaop.cit p. 5.

⁴⁸UNDP, Human Development, Awaken, (1999) Somalia at p.1.

This is because they don't wish to be outcasts in society. Traditionally the FGM rite was performed by women, a role either inherited or learned from a relative.⁴⁹

In some communities performing this role brings respect to women who originate from poor families and ethnic groups that are otherwise regarded as inferior. For these circumcisers, the role bestows on them respect and control in their communities, which in turn makes them look upon themselves as the custodians of their culture. For example in Uganda circumcisers (called Chemerit) are highly respected women leaders who are in control of the traditional societies, and are seen as priestesses.⁵⁰

For example in Sabiny region, Karamajong Region particularly in Toro Sub-County in Uganda, Pakuds, the Nandi's, the Kikuyu and the Masai in Kenya are also practicing it.

In Uganda there is less than 1% prevalence rate of FC/FGM and while this seems like a very low percentage the facts behind the numbers paint a shocking and intolerable situation.⁵¹

In a few districts in Eastern and North Eastern Uganda, particularly among some of the Sabiny, Pocket and Tepeth communities, the practice of FC/FGM occurs at more than 90% prevalence rate. FC/FGM is deeply rooted in tradition, for example the Sabiny believe it an essential rite of passage that will enhance a girl's chastity and chances of marriage.⁵²

The reality, however is that FC/FGM is a violent act that can cause permanent damage, both physically and emotionally. Tuesday, November 30th 2010

⁴⁹W. Benedict, E.M Kisaakye and G Oberleitner, opcit 271.

⁵⁰ Ibid

⁵¹Kimera Joseph, FGM: Remains Widely Practiced among the Sabiny, Sunday Vision, (2011), Industrial Area, New Vision Publishing Corporation 6 February, 2011 at pg 11

⁵²Kimera Joseph, FGM: Remains Widely Practiced among the Sabiny, Sunday Vision, (2011), Industrial Area, New Vision Publishing Corporation 6 February, 2011 at pg 11

marked the Sabiny Cultural Day. It also marked the beginning of female genital mutilation (FG4) season annually.⁵³

During the month of December, each night after the stroke of midnight, young Sabiny girls are taken from their home and subjected to this excruciatingly painful act. They have no choice and the majorities live in fear and dread this moment in their lives.⁵⁴

The act of FC/FGM which is usually carried out in the school holidays in the month of December, involves the cruel procedure of mutilation of the genitals of young girls of 10 years and above. Young girls are cut with crude knives usually in open and unsanitary conditions as they are cheered on by their mothers and fathers. This is followed up by some primitive sewing up of whatever has been left of the mutilation.⁵⁵

Despite the desperate need, girls are at times not availed with any medical attention after they have gone through the act and have to walk back to their home. Female General Mutilation can result in prolonged bleeding, infection, infertility and complications during childbirth. In some cases, it can be fatal.⁵⁶

A young woman from a practicing community who was cut at the tender age of 14 years was asked to describe her experience. She said after I was circumcised the whole world turned upside down. I did not believe what I was experiencing. I fainted several times. I bled severely and felt a lot of pain in my private parts, which had then become swollen and yet I could not access modern medicine. Three of my friends bled to death in the hands of the cutter⁵⁷

⁵³John Eteru, FGM Celebrations, New vision, New Vision Publishing Corporation (2010), Industrial Area, Kampala, Monday, December 13, pg 15.

⁵⁴W. Benedict, E.M Kisaakye& G. Oberleitner, op.cit, p.270.

⁵⁵Kimera Joseph, Young Girls Circumcised under Unsanitary Conditions, Sunday Vision, New vision Publishing Corporation, (2011), Industrial Area, Kampala, 6 February, p. 11.

⁵⁶Kimera Joseph, Op.cit, p. 12.

⁵⁷ Ibid

Reasons advanced for practicing FGM include:

- i. To initiate the women into womanhood.
- ii. To reduce the women's sexual urge
- iii. To preserve virginity and
- iv. To prevent promiscuity, sexual deviance and excessive arousals.⁵⁸

Cutting and circumcision not only make the passage into adulthood, they mark the beginning of community and civic responsibility. Prior to the cutting, a girl is not already been circumcised. A girl before circumcision is considered the "only a girl" and may not even undertake important women's tasks such as milking cows and drawing grain from the communal granary. However, after she is cut, she is accepted as a woman.

Among the Sabiny, the type of FGM practiced is, spontaneous infibulations. Excision involves an operation where the clitoris and labia minora are cut away. And "spontaneous infibulation", is the knitting together. No stitching is traditionally involved to close the wound. FGM is considered parallel to male circumcision.⁵⁹

Occasionally, uncircumcised girls are in school, with school requirements duly met by their families. However, after circumcision, girls usually drop out of school and get married. Girls who avoid cutting usually relent under heavy social pressure and intimidation from relative and neighbors despite the promise of lifelong pain and the possibility of death. Even a woman who manages to get married prior to cutting is likely to be pressured into it after marriage by her in-laws.⁶⁰

A survey of 400 women carried out in Sierra Leone in 1985 found that 369 women had undergone FC/FGM and gave the following reasons.

⁵⁸W. Benedict E.M Kisaakye and G.Oberleitner, op.citp.273.

⁵⁹W. Benedict E.M Kisaakye and G. Oberleitner, opcit p.273.

⁶⁰ ibid,p.270

Tradition (308), societal acceptance (105), increasing chances of marriage (12), preservation of virginity (11), female hygiene (10), prevention of promiscuity (6), enhancement of fertility (3), to please husband (2) , and to maintain good health (1)⁶¹

Many of these reasons are also surrounded in myths that are deeply entrenched among women and ensure their compliance.

Failure to undergo the practice have serious effects for example, traditionally among the Sabiny of Uganda a woman who had not undergone FGM was considered a girl, and could not get married to a Sabiny man. In addition, she could not carry out important functions such as milking cows, collecting cow dung from any body's kraal for smearing a house and coming into a granary to collect seeds. She was also not allowed to fetch water, grind grains or do anything before her circumcised counterparts, or to attend the circumcision ceremonies of others.⁶²

More so, apart from African countries practicing FGM other countries practice it for example, in the United Kingdom that is to say France, London, and others. Uganda has persisted with the practice of FGM particularly in Sebei region due to reason being that they didn't attend cultural relativism meeting in the whole world. Countries that attended are United States of America and others.

2.2. Mutilation and Legislation

2.2.1 Introduction

Female Genital Mutilation is a curse which many women in Uganda are beginning to treat as an affront on their dignity and human rights. The good news for the Ugandan women is that this practice only affects one ethnic

⁶¹O.Koso Thomas, *The Circumcision of Women; A strategy for its Eradication*, Zed Books, (1987), London, pg 45-9.

⁶²Benedict, E.M Kisaakye and G.Oberleitner, *op.cit*, p273.

group, the Sabinu who live in the present day districts of Eastern Uganda that is Mbale, Bukwo, Kween and Kapchorwa, Bugiiri and Tororo districts.

In addition to having potential serious health consequences the practice of FGM seriously violates women's human right. Women's rights and health are protected under the major human right treaties and conventions, including the International Bill of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment may also be applied to FC/FGM.

The jurist researchers documented this abuse or torture of FC/FGM to date back to the turn of the twentieth century. However it is possible that undocumented efforts and initiatives by local populations aimed at stopping the practice were carried out prior to this time.⁶³

In the early 1990s, administrations and missionaries in the countries of Burkina Faso, Kenya and Sudan attempted to stop the practice by enacting laws, but such steps only provoked anger against foreign intervention as the natives believed such attempts to be neo-colonialism.⁶⁴

In the 1960s and 1970s indigenous African activism against FC/FGM further developed. In 1990s, strong leadership against FC/FGM led to the growing international awareness, which resulted in the recognition of FC/FGM as a fundamental violation of women's rights.⁶⁵

The Committee on the Elimination of Discrimination against Women (CEDAW) monitoring States compliance under the women's convention, released a

⁶³Anika Rabman and N. Toubia, op.cit p. 11.

⁶⁴AnikaRahman and N. Toubia, op.cit p. 11.

⁶⁵ Ibid

general recommendation pertaining specifically to FC/FGM in which it was stated that;

With grave concern that there are continuing cultural, traditional and economic pressures that help to perpetuate harmful practices, such as Female Circumcision.

Article 2 of the Declaration on the Elimination of Violence against Women explicitly, states that;

“Violence against women shall be understood to encompass, but not limited to.... physical, sexual and psychological violence occurring in the family, including sexual abuse of female children in the household, dowry related violence, marital rape, Female Genital Mutilation and other traditional practices harmful to women”⁶⁶

Women are entitled to the equal enjoyment and protection of human rights and fundamental freedoms in the political, economic social cultural civil or any other field. These rights include; inter alia

- a. The right to life
- b. The right to equality
- c. Right to liberty and security of person.
- d. Right to equal protection under the law
- e. To be free from all forms of discrimination
- f. To the highest standard attainable of physical and mental health
- g. Right to just and favorable conditions of work
- h. The right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment⁶⁷

And **Article 5** provides that; State parties shall take all appropriate measures,

⁶⁶Proclaimed by the General Assembly of the UN 20th December 1993- Resolution 48/104

⁶⁷Article 3 of the Declaration on the Elimination of Violence Against Women

a. “to modify the social and cultural patterns of 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 of men and women?”⁶⁸

The Universal Declaration of Human Rights, adopted in 1948, enshrines the principle of equality between women and men and prohibits discrimination against women.

*Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour sex....*⁶⁹

The declaration also reaffirms the principle of equal political rights for men and women by stipulating in **Article 21** that;

1. Everyone has the right to take part in the government of his country directly or through freely chosen representatives.
2. Equal access to public services in his country.

In 1946, the economic and social council set up to the commission on the status of women to report and make recommendations on the promotion of human rights of women and to recommend measures to achieve equal rights of women. That same year the UN created in its secretariat the Division for the Advancement of Women (DAW), the main objectives of which are to improve the status of women worldwide and ensure the effective achievement of equality between men and women.⁷⁰

⁶⁸Convention on the Elimination of All Forms of Discrimination Against Women.

⁶⁹Article 2 of the Universal Declaration of Human Rights

⁷⁰Jabusz Symonides and Viadmir Volodin; Human Rights of Women, Volodin Publishers (1965), London, p.75.

The Government of Uganda recognizes that FC/FGM violates the rights of children as stated in **Article 24 (3)** of the 1990 United Nations Convention on the Rights of the Child.

State parties shall take effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

In Uganda Women's Human Rights are protected under the 1995 Constitution of Uganda, **Article 21(2)**, prohibits discrimination on the basis of sex, race and colour, ethnic and so on. **Article 24**, provides for human dignity and protection from inhuman treatment.

The protection of women's human rights under the constitution is backed up by legislative provisions. However, the law against FGM has been controversial in different aspects with other available legislations drawn earlier. The argument gains validity especially when no complementary efforts are undertaken to educate the communities in promoting change of attitude.

Article 1 provides "All human beings are born free and equal in dignity and rights".⁷¹

The preamble of civil and political rights covenant recognizes the inherent dignity of all members of the human family" and **Article 9(1)** provides "Everyone has the right to liberty and security of the person." And the Preamble of Economic, Social and Cultural Rights

Covenant recognizes that human rights "derive from the inherent dignity of the human person.

FC/FGM violates the liberty and security interests encompassed in the right to physical integrity, and is thus a form of violence against women. FC/FGM violates the right to liberty and security when they are subjected to F.C/FGM

⁷¹Universal Declaration of Human Rights

either against their will or before they have reached adulthood at which they can give meaningful consent.

Article 4, of the Constitution of the Republic of Uganda 1995, provides “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of her person” and **Article 5** is to the effect that “Every individual shall have the right to the respect of the dignity inherent in a human being.”⁷²

However, the role of legislative in tackling practices that violate women’s human rights should not be underestimated.

Given the constitutional and legislative provisions now in place in several countries the role of police and the judiciary are going to be crucial. African judges will need to follow the examples of their European counterparts such as France, where a court rejected the defense of culture and sentenced the woman who carried out FGM to an eight year jail sentence and the child’s mother to two year sentence.⁷³

The government of Uganda in 2009 passed a law banning Female Genital Mutilation⁷⁴ and convicted offenders face 10 years in prison, but if the girl dies during the operation, those involved will get a life sentence according to the female genital mutilation act 2010.⁷⁵

⁷²Banjul Charter 1981.

⁷³Wolfgang Benedict, E.M. Kisakye and G. Oberleitner, op.cit p. 273.

⁷⁴The Prohibition of Female Genital Mutilation Act 2010

⁷⁵Section 2 and section 3 of the FGM Act 2010

2.3. Effect of Female Genital Mutilation/ Female Circumcision

2.3.1 Introduction

Legislation on FGM is traced from the various conventions, and treaties and these include; Convention on the Elimination of all Forms of Discrimination Against Women (1981), Declaration on the Elimination of Violence Against Women (1993), The Universal Declaration of Human Rights (1948). These guarantee the rights of women to be protected by State practices and these include;

- i) The right to life and physical integrity, including freedom from violence.
- ii) The right to health.

Female genital, a traditional practice deeply rooted in the lines of the Sabiny communities of Bukwo, Kween, Kapchorwa, Bugiri and, Tororo District is practiced based on the following justifications.

I. Custom and tradition

II. Women's sexuality

III. Social pressure

IV. Religion.⁷⁶

In Sabiny, the practice initiates the girl into womanhood, which also declares her readiness for marriage, for example, traditionally among the Sabiny of Uganda, a woman who had not undergone FGM was considered a minor, and

⁷⁶Anika Rahman and NahidToubiaop.qit p. 5-6

could not get married.⁷⁷ Therefore girls and women carry out the norm for social acceptance and harmony.

However, international instruments, like the Declaration on the Elimination of Violence against Women provides for the elimination by concerned bodies all forms of violence against women. To this convention violence against women, “means any” act of gender based violence..., likely to result in physical sexual or psychological harm.⁷⁸

The act of FC/FGM has serious potential health consequence for girls and women. These include the risks of physical complications as well as psychological effects.

Women and girls who undergo FC/FGM suffer from infections caused through use of unsterilized cutting instruments. Such infections may also occur within a few days after the cutting just in case the genital areas are contaminated with urine or feaces. Infection can lead to septicemia.⁷⁹

If the bacterium reaches the bold stream acute urine retention can result from swelling and inflammation around the wound. Retention is usually irreparable and can lead to urinary tract infection.⁸⁰

On the other hand psychological effect includes experiencing fear submission or inhibition and suppressed feeling of anger, bitter or betrayal.⁸¹

Subjecting non-consenting girls and women to FC/FGM violates a number of recognized human rights protected in International Conference Documents.

⁷⁷Chekweko Jackson, Students Attitude and Practices towards Female Circumcision; Tingley Publishers Ltd, (2001), Kapchwora, p. 49

⁷⁸Article 1

⁷⁹Anika Rabman and NahidToubiaop.cit p.8-9.

⁸⁰ Ibid

⁸¹ Ibid

FC/FGM violates the right to equality, non discrimination on the basis of sex and the right to life and health, and also constitutes an arbitrary intrusion into one's privacy.

FC/FGM also violates children's right to life, survival and development, which are projected under the Convention of the Rights of the Child (CRC).⁸² The fact that the abuse is done without their consent further aggravates the violation.

Article 3 of the Committee on the Elimination of Discrimination Against Women, provides that women are entitled to the equal enjoyments and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include inter alia;

- (a) The right to life
- (b) The right to equality
- (c) Liberty and security of a person
- (d) Equal protection under the law
- (e) Be free from all forms of discrimination and so on.

The right of life is violated when death occurs. Violation of the right to equality happens when girls and women are obliged to undergo FGM because of social pressure and the desire to fulfillment of their customs. This consequently leads women to be subordinates to men.

Article 1 of the women's convention takes a broad view of "discrimination against women" it provides that "any distinction, exclusion or restriction made

⁸²CEDAW, Article 6

on the basis of sex that hinders a woman's ability to enjoy her human rights equally with men.⁸³

The prohibition of gender discrimination is supported in numerous international and regional instruments and conference and documents. It is a fundamental principle of human rights.

To view FC/FGM as an act of discrimination against women under human rights, the act must fall within the terms of Article 1 of the women's convention. This means that FC/FGM must meet two principal criteria.

- (1) It must be a distinction based on sex
- (2) It must have the effect or purpose of impairing the equal enjoyment of rights by women.⁸⁴

FC/FGM is within this definition of gender discrimination and it is a practice reserved for women and girls that has the effect of nullifying their enjoyment of fundamental rights.

FC/FGM, a practice carried primarily at controlling women's sexual urge, carried a strong message about the subordinate role of women and girls in society.

This procedure represents a societal impulse to replace the independent sexuality of women by altering their anatomy. By perpetuating the perception that women may play only the roles of mother and spouse, FC/FGM serves to reinforce women's subordination in political, economic, social and cultural norms.⁸⁵

FGM violates the girls to life and physical integrity, including freedom from violence. The FC/FGM violates the right to life in which sometimes death results from the practice. Moreover, it violates numerous human rights

⁸³Convention on the Elimination of All forms Against women Article I

⁸⁴Anika Rahman and NahidToubiop.cit P.21

⁸⁵Anika Rahman and NahidToubiop.cit p.21

associated with physical integrity. Since the norm is promised on the notion that women's bodies are inherently flawed and require correction, it does not respect women's inherent dignity. Respect for women's dignity implies acceptance of their physical qualities. The natural appearance of their genitals and their normal sexual function.⁸⁶

While male circumcision has not been proved to have severe health consequences to a man's health as compared to FGM. Male circumcision is scientifically proved to be good for one's health. For instance the recent study shows that men who undergo circumcision have less chances of contracting HIV/AIDS virus. And besides, male circumcision is a health practice which reduces the chances of spreading cervical cancer virus carried under the fore skin.

A decision to alter those qualities should not be imposed upon a woman or girl for the purpose of reinforcing socially defined roles. Similarly, because FC/FGM is an intervention into one of the most intimate aspects of a woman's life, her sexuality, her privacy rights are violated by the practice.

The right to health

Under international human rights law, individuals are entitled to enjoy "The highest attainable standard of physical and mental health"⁸⁷. The world Health organization has defined health as "a state of complete physical, mental and social well — being not merely the absence .of disease or infirmity"⁸⁸ According to the Cairo programme of Action, reproductive health encompasses "sexual health, the purpose of which is the enhancement of life and personal

⁸⁶ Ibid p.23

⁸⁷The International Covenant on Economic, Social and Cultural Rights, Article 12.

⁸⁸World Health organization, constitution of the WHO in basic documents adopted on July 22, 1946 (14th edition, 1994)

relations”⁸⁹ while the right to health does not guarantee perfect health for all people, it has been interpreted to require governments to provide health care and to work towards creating conditions conducive to the enjoyment of good health.⁹⁰ CEDAW, in its recommendations on women and Health, has recommended that governments devise health policies that take into account the needs of girls and adolescents who may be vulnerable to traditional practices such as FC/FGM.⁹¹

This is supported by the fact that the children’s rights committee has called for the elimination of FC/ FGM.⁹²

The government of Uganda in answering the international call to have this harmful practice of FC/FGM eliminated has (and is), through constitutional and legislative measures, working with non-government organization and the local people, sensitize the masses into abandoning the practice.

The independence and post-independence constitutions of Uganda did not prohibit discrimination on the basis of sex. This created a loophole in the legal framework for challenging discriminatory practices such as FC/FGM. However Uganda revised her constitution to prohibit sexual discrimination as well as harmful cultural practices affecting women. For example **Article 21 of the Constitution of the Republic of Uganda 1995**, provides for “equality and freedom from discrimination” and **Article 24** provides for respect for human dignity and protection from inhuman treatment.⁹³

⁸⁹ICPD Programme of Action, par 7.2

⁹⁰A Rahman and R. Pine, “An international Human Right to Reproductive Health care” Health and Human Rights (1995), Vol. NO. 4 p.14.

⁹¹CEDAW, General Recommendation No. 24 (1999) women and Health (General Comments) para,12(b)

⁹²United Nations General Assembly, Traditional or customary practices affecting the health of women, report of the secretary — General (fifty third session, Sept, 10, 1998), A153/354.

⁹³The Constitution of Republic of Uganda 1995, Article 24

The constitution also affirms that “women shall be accorded full and equal dignity of the person with men”, under **Article 33(1)**. The constitution permits state intervention to protect children’s health and other social and economic needs under **Article 34(3)**. The application of customary law and the exercise of religious freedom must conform to the “freedom to practice any religion and manifest such practices of any religious body or organization in a manner consistent with the constitution. Although constitutional provisions have not been enough in the past to protect women’s rights, they are never the less an important first step in the process of compacting these practices.

The role of legislation in fighting FC/FGM has been a subject of controversy, given an apparent failure of early legislative interventions in Uganda.

Before being repealed, several provisions of the Penal Code Act Cap 106(1964) were applicable to FC/FGM for example, **Section 212** provided that, “any person who unlawfully does grievous harm to another is guilty of a felony...”.“and **Section 4** defined grievous harm as “any harm which amounts to a main or dangerous harm...” In addition, **Section 215** provided that any person who “unlawfully wounds another is guilty of a misdemeanor...” The term “wound” was defined in **Section 4** as any incision or puncture which divides or pierces any exterior membrane of the body..”⁹⁴ This law was weak in enforcement and before the provisions were repealed as bad law, there were no criminal prosecutions for cases of FC/FGM.⁹⁵

Other measures; laws, Regulations and Policies that have been in place include the children statute, (now repealed) enacted in 1996, under **Section 8** provided that “it shall be unlawful to subject a child to social or customary practices that are harmful to the children health.⁹⁶ February, 1996, a girl upon whom

⁹⁴Penal Code Act Cap 106

⁹⁵Kasole Josephine, Safe Motherhood Initiative in Uganda, Butterworth, (1998), London Volume 12. p.2.

⁹⁶Statute No. 6 Apr. 4, 1996, Statutes supplement to the Uganda Gazette, Vol. LXXXIX, No. 21

FC/FGM was to be performed successfully secured the intervention of a court and the circumcision was prevented.⁹⁷

Although the harmful effects of FC/FGFM are well documented eradication of this practice has proved difficult. This is because of the weakness in the law, since the penal code provisions, as discussed above were not effective weapon against FC/FGM eradication. In many of the communities, practicing FC/FGM, proponents have argued that the practice is so deeply imbedded in the value system of the communities that its abolition is likely to be seen as an attack on the old age respected cultural practices and beliefs of the communities.⁹⁸

Resistance to reform has come from the communities practicing FC/FGM. For example, in the 1988, in response to a campaign to eradicate the practices by the inter African committee for the Eradication of Harmful Traditional Practices, the district of Kapchorwa passed a resolution making FGM compulsory for every Sabinu girl of 14 years and above or else she would be considered a social outcast but this was later rescinded.⁹⁹

The complex question becomes how does FC/FGM infringe upon the right to health? Although this right is potentially vast in scope and much work remains to be done to determine its parameters, the right to health is not equivalent to a guarantee of perfect health for all. But does this mean that people ought not be subjected to practices of norms that can have a profoundly adverse effect on their health? In other words, can the right to health be interpreted at least to prevent actions that compromise health and prevent individual attainment of the highest possible standards of health?¹⁰⁰ We believe so because the complication associated with FC/FGM can have devastating effect upon a woman's physical and emotional health; this procedure can be viewed as an infringement of the right to health.

⁹⁷ Ibid

⁹⁸ Wolfgang Benedict, E.M. Kisakye and G. Oberleitnerop.cit p. 274 - 275

⁹⁹ Namukasa Florence, A Fight Against FGM, New Vision, New Vision Publishing Corporation, (1994), Industrial Areas, Kampala, December, 6 p. 4.

¹⁰⁰ Anika Rahman and NahidToubiaop.cit p. 26-27

But even in the absence of such complications, FC/FGM compromises the abuse of the right to health where FC/FGM results in the removal of bodily tissue necessary for the enjoyment of a satisfying and safe sex life, a woman's right to "sexual satisfaction" is compromised. In addition, any invasive procedure — no matter how "safely" it is performed entails risks to the health of the person who undergoes it. Subjecting a person to health risks in the absence of medical necessity should be viewed as a violation of that person's right to health.¹⁰¹

In addition talking about FC/FGM in terms of health, the issue of mental health is a complex one. The Economic, Social and Cultural Rights Covenant, recognizes the right of everyone to the highest attainable standard of mental health. The World Health Organization defined' health as a "Social wellbeing" component.¹⁰² But while FC/FGM can result in negative emotions and psychological consequences, not undergoing FC/FGM can also cause an anguish because FGM is often a prerequisite for procuring a suitable marriage partner, a girl who has not been circumcised might suffer social, emotional and economic dislocation.¹⁰³

However, as indicated by the numerous women who have advocated against FC/FGM in their own countries, many women and girls view this practice or norm as emotionally and physical detrimental. Although women and girls differ in the manner in which FC/FGM affects their mental health, there is little doubt about the physical and emotional costs of practice.¹⁰⁴ Even when a girl adjusts positively after being circumcised and does not clearly suffer grave psychological consequences, the injury put on her body must not be the price of social acceptance and harmony.

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ Ibid at pg 28

¹⁰⁴ Ibid

The right of the child

Since children generally cannot adequately protect themselves or make informed decisions about matters that may affect them for the rest of their lives, human rights law grants children special protections.¹⁰⁵ The right of the child to these protections has been enshrined in the children's rights convention, one of the most widely ratified international human rights instruments.

A "child" is defined as a person below the age of 18.¹⁰⁶ Under the convention states must respect the role of parents and family members in providing appropriate "direction and guidance" in children's exercise of their rights¹⁰⁷.

However, governments are ultimately responsible for ensuring that all children's rights recognized in the convention are protected.¹⁰⁸ In so doing, they should be guided by the overarching principle that "the best interests of the children shall be a primary consideration."¹⁰⁹ While this principle may be broadly interpreted to accommodate varying cultural views on what constitutes a child's best interest,¹¹⁰ such interpretations should be in consistency with the convention's other specific protections.

The international community has generally regarded FC/FGM as a violation of children's rights. Because FC/FGM is commonly performed upon girls between the ages of 4 and 12.¹¹¹ Those primarily affected by the practice should seek protection under the definition of "Children" set out in the children's rights convention.¹¹² Moreover, this treaty is explicit in its call to states to "abolish

¹⁰⁵Children Rights Convention, Preamble

¹⁰⁶The Children's Rights Convention, Article 1

¹⁰⁷ *Ibid*, Articles 5

¹⁰⁸ *Ibid*, Article 2

¹⁰⁹ *Ibid*, Article 3

¹¹⁰P. Aiston, "The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights, Kingstone Publishers, (1994), New York, p.19

¹¹¹Anika Rahman and NahidToubiaop.cit p. 9

¹¹²Children's Rights Convention, Article 1

traditional practices prejudicial to the health of children.”¹¹³ In fact, the concluding observations of the committee on the rights of the child about particular countries often include a call for government action to stop FC/FGM.¹¹⁴ The concern to stop traditional practices that are harmful to children is also evident in the African charter, which was adopted by the organization for African Unity in 1990, and entered into force in December 1999.¹¹⁵

As noted earlier, preventing girls from undergoing FC/FGM may not always appear at first glance to be in their best interests. Girls who have not experienced the practice may suffer emotionally from certain social consequences, such as difficulty in finding a spouse or in gaining acceptance among peers. However, the adverse social consequences faced by some girls and women must of course be viewed in light of the negative health effects of FC/FGM as well as the implications of the procedures on women’s subordinate status. Given the overall detrimental effect of FC/FGM for women and girls and their societal status, the “best interests” standard should be interpreted to support the call to stop FC/FGM.¹¹⁶

Eradication of FC/FGM has faced resistance from the elders who feel that their Sabiny custom needs to be preserved. Women have been persuaded over the centuries to see their sexual impulses in terms of what suits men, as often marriage is the only secure future for a woman.¹¹⁷ To the women who perform the cutting, FC/FGM finding an alternative source of revenue is not easy. Therefore it is not easy for them to easily give up with the practice because this will leave them jobless. And still some women perpetuate the custom with zeal

¹¹³ Ibid Article 24(3)

¹¹⁴ Concluding observation on the Convention on the Rights of the Child: To go (fifteenth session, 1997) CRC (C) 15/ TDD. 83

¹¹⁵ Amnesty, International, FGM and International Human Rights Standards, “FGM: A Human Rights Information pack, 1997.

¹¹⁶ Anika Rahman and NahidToubiaop.cit, p 30

¹¹⁷ Ibid

because of their own prior suffering.¹¹⁸ Mothers encourage their daughters to undergo FGM because that is what custom (society) has made them to accept as part of their women's life without which they are a nobody in society and cannot be recognized.¹¹⁹ In one study of 100 infibulated older Sudanese women, 35 of them admitted that they have insisted on infibulations for their children and grandchildren "out of spite." And for the girls, they dread this moment of FGM due to the severe pain they suffer in the name of culture.¹²⁰ This can clearly be traced from the initiation ceremonies carried out as narrated in an interview with one Sabiny girl, Chemutai Lucy (not real names).

On the night before the cutting is to take place, age cohorts and school mates gather together, separated by gender. Girls dance all night and the accompanying singing and drumming resounds throughout the area. Around dawn the next morning, the "secrets" and history of the culture are imparted to the initiation candidates. Young men and women are exhorted never to reveal their tribal circumcision secrets to uncircumcised Sabiny or to outsiders. Then comes the cutting and circumcision performed in separate places.

(Traditionally, men could not be present during the ceremonies for girls, but this appears to have changed somewhat in recent years and they now attend to initiation ceremonies of the girls).

Sabiny girls are expected to be brave, during the procedure. They are not restrained. They lie down in turn on the cutting mat with their arms extended over their heads. After pulling up their skirts and arranging their legs to allow the procedure they do not blink an eye in reaction to the cuts. After the excision, the girls are, allowed to recover without much after care. The wound is traditionally treated with cow's urine. ¹²¹

¹¹⁸Ibid P.31

¹¹⁹Ibid 38

¹²⁰A Saad M.B "Female Circumcision in Egypt, Social Implications; Current Research and Prospects for Change".Amstem Publishing Ltd, (1980), Cairo, p. 3-16.

¹²¹Ibid.p.28.

However, now that the law is in place, it is imperative that we (Ugandans) ensure that it is implemented effectively so that FC/FGM becomes a practice of the past.¹²²

In 2010, United Nations Population Fund (UNFPA) and United Children's Population Fund (UNICEF) supported the government of Uganda and partners to create a simpler version of the law that has been disseminated to 34 high risk practicing counties.¹²³

Various politicians have positively responded to the call to stop Female Genital Mutilation, an abuse of women's human rights. Chiefs at district level tried to protect women and girls from such abuse by passing by laws in their regions. For instance, in 2009 the Kapchorwa district council passed a law banning Female Genital Mutilation in the district.¹²⁴

At government level, President Yoweri Kaguta Museveni on 17th March 2010 assented to the law following approval by Cabinet and Parliament. This came after the report of the committee on Gender, Labor and Social Development on Female Genital Mutilation bill, 2009 that observed and concluded that Female Genital Mutilation bill violates women and girls human rights, interferes with privacy and exposes victims to ridicule and undermines their integrity, it imparts a permanent psychological and physical damage to the victims and that there is a lot of stigma on women and girls who are not circumcised.

The committee recommended the passing of a law against Female Genital Mutilation'.¹²⁵ This determination by the Ugandan government led to the enactment of the Prohibition of Female Genital Mutilation Act, 2010.

¹²² Ibid p.37

¹²³ A Saad.M.Bop.cit p.17

¹²⁴ Mayega Justine, FGM: Local Chiefs Battle FGM, The New Vision Printing Corporation, (2010), Industrial Area, Kampala, p.12.

¹²⁵ Report of the committee on Gender, Labour and Social Development on Female Genital Mutilation Bill, 2009.

Now with the laws in place plus the heavy punishments provided for whoever is found guilty of Female Genital Mutilation, It's to no doubt that the law will help in deterring potential abuse of women human rights through Female Genital Mutilation. The law (Act) strongly addressees the act of Female Genital mutilation as an offence with a sentencing not exceeding 10 years.

The act provides for the prohibition of Female Genital Mutilation, the offences (such as aggravated female genital mutilation(**Section 3**), attempt to carry out female genital mutilation (**Section 5**), procuring, aiding and abetting (**Section 6**), prosecution and punishment of offenders and the protection of victims as well as girls and women under threat of female genital mutilation.

Under the Act, consent of the victim of Female Genital Mutilation is no defense as well as culture and religion. The law advocates for the protection of females who have not undergone Female Genital Mutilation as well as persons whose wives, daughters or relatives have not undergone Female Genital Mutilation (**Sections 11** and **12** respectively).

The law provides for compensation to the victim and gives a magistrate court special powers to issue a protection order for a girl upon application by the victim or next of kin. The Act provides for extra territorial jurisdiction and gives a duty upon everyone to report female genital mutilation. Therefore challenges like taking girls to Kenya to be circumcised were predicted and addressed. This means that the law may have limited loopholes to be exploited by offenders.

One of the rising issues could be the harshness of the law, but since female genital mutilation with its associated consequences to the health of women, is one form of abuse of women human rights and many efforts to stop such abuse have seemed fruitless, then a law like this will have what many human rights activists have long fought for the eradication of Female Genital Mutilation as a practice of the past. This is achievable in conjunction with other government policies, through projects like Reproductive Educative and Community Health

(REACH), by sensitizing the communities of the dangers of female genital mutilation.

The project director, Beautrice Chelangat, disclosed that the law banning female genital mutilation would be translated into Kupsabiny language to increase awareness among the community in Sebei Sub region about the law and this would be conducted alongside sensitization seminars in the villages.¹²⁶

With the law in place, the role of the police and judiciary is going to be important as long as instances of corruption are done away with. The courts should be well equipped to handle cases in time, and to pass free and fair justice.

In the past year (2009), 500 local law enforcement officials and key advocates were trained in how to enforce the legislation and as a result, arrests of cutters and parents continued, as a more extensive training and distribution of translated version of the law into the local language is being planned for 2014¹²⁷

Another key focus of the joint programme is creating social change through community dialogue and education, and this is in itself a hope for Ugandans Sabiny girls.

Therefore, from a point of view, if the New law is effectively implemented, the law enforcement agents like the police, judiciary and local council should be trained to strengthen commitment to enforcing the legislation and the law translated into “Kupsabiny” language to increase awareness among the community in Sebei sub-region about the law, then there is little doubt that this decade practice of violence will come to an end.

¹²⁶Nekesa Allan, FGM Law to be Translated, The New vision, New Vision Publishing Corporation, (2010), Industrial Area, Kampala, Wednesday, November 10, p. 11.

¹²⁷ Ibid

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter includes the research design, the area of study, target population, sampling proceedings, sample size, data collection in methods and instruments, validity and reliability of procedure, data analysis and presentation and limitations of the study.

3.1 Research design

The study used a case study in which both qualitative and quantitative techniques of data collection will be employed. The design was used because it is a method of investigation in which self-report data collection from samples of pre-determined interests can be done. The quantitative methods established quantifiable data while qualitative methods was used to establish peoples' perceptions, attitudes and beliefs about the practice of FGM and the attached implications to the enjoyment of human rights.

3.2 The Study Area

The study was conducted in Kapchorwa, Kween and Bukwo **District** is a district in Eastern Uganda. The district headquarters are located at Bukwo, one of the two municipalities in the district. Sabinu community is bordered by Nakapiripirit District to the north, Amudat District to the northeast, the Republic of Kenya to the south, Kapchorwa District to the west and Bulambuli District to the northwest. The town of Kapchorwa districts, where the district headquarters are located is approximately 69 kilometers (43 mi), by road, northeast of Mbale, the nearest large city. The coordinates of Bukwo District are: 01 25N, 34 31E. The district was created by act of parliament and started functioning on 1 July 2006. Prior to that, it was part of Kapchorwa District. Together with Kapchorwa District and kween District, it forms the Sebei sub-region, formerly known as Sebei District.

3.2.1 Population of the study

The study targeted people who participate in the practice of FC (FGM) female genital mutilation in rural areas of sabing counties such as girls who undergo the practice of GM and Human Rights Activist such as William Cheboriano the chair person against the practice of GM and the Nanyer of research programme organization initiative against female genital mutilation and other community members.

This included the over 80 girls who underreact FGM, one chairperson of the sabing sub region fighting against the practice of FGM and one research organization manager by the names –Chelangat Beatrice.

The overall total of the study population will be who have practiced female genital mutilation and other 2 people fighting against the practice of FGM.

3.3. Sample Selection

Purposive and stratified sampling procedures were employed by the researcher. Sekaman (2003;277) suggests that purposive or judgment sampling include choice of subjects who are most advantageously placed or in the best position to provide the information required similarly, Kakooza (1994) argued that purposive sampling ensures that the significant subgroups of the population are presented in the sample. 80girls who underwent GM was purposively selected as to manager, Human Rights activists of these fighting FGM as well randomly sampled into strata. In statistical surveys, when sub populations with in an overall population vary.

It is advantageous to sample each subpopulation (stratum independently). The strata were according to the enterprise carried out by the farmer. Stratification is the process of diving members of the population / society) into homogeneous subgroups before sampling. The strata were mutually exclusive. Every element in the population being assigned to only one stratum. The strata were also collectively exhaustive; no population element can be excluded. Then random

or systematic sampling was applied within each stratum. Female Genital Mutilation victims in Sabing community are either women or young girls who underwent(FGM). These victims are usually at the lowest level of education attainment and 50 percent of this category in the every parish is chosen in the Sabing communities of Kapchorwa district, Kween and Bukwo District in particular and which are selected by the researcher. 15% of the women and 20% of the young girls in Sabiny district were not circumcised or did not undergo female Genital mutilation.

3.4 Research Instruments

The study used three categories of research instruments: a research-administered Questionnaire, interview guides and a focus group discussion guide. A review of the available relevant written documents (documentary review) will also be done.

3.4.1 Research-administered Questionnaires

These were administered to the females aged over 14 years. Questionnaires were made up of both structured and un-structured questions. The structured questions aimed at generating quantitative data from multiple choices for each question, while the unstructured questions aimed at generating peoples' ideas and perceptions about the practice of FGM. The study used a questionnaire because it helps in generating reliable data and helps generating quantitative data.

3.4.2 Interview Guides

The researcher administered interviews to the local leaders, elders and health workers using an interview guide. The interview guide contained unstructured questions that reflected the major themes of the study (causes of FGM, instruments and challenges faced to enforce the instruments). The study used an interview guide because it helped guarantee an immediate feedback and generated reliable data especially when adequate probing was done.

3.4.3 Focus group discussion guide

Three focus group discussions (consisting of eight participants), each from the selected sub counties, was conducted using a focus group discussion guide. The focus group discussion guide consisted of women who had undergone the FGM practice.

3.4.4 Written documents

A review of the existing relevant written documents was done. This included textbooks, journals, pamphlets, official records and reports about the FGM practice and its implication of the enjoyment of women's reproductive rights.

3.5 Data analysis

3.5.1 Quantitative data analysis

The responses of the subjects were categorized in frequency counts and score tables and varying percentages calculated. Interpretations and conclusions depended on the number of occurrence of each item. This was done according to the developed themes in the analysis.

3.5.2 Qualitative data analysis

Field notes were written, grouped into themes and sub-themes and work were edited at the end of each working day to ensure accuracy in recording and consistency in information given by respondents. Themes, in respect to the study variables were identified and put in coding categories. A scheme of analysis was worked out following the coding categories, using content analysis, quotations and the most occurring ideas on every question.

3.6 Ethical considerations

This research received Ethical clearance from Kapchorwa District administrators and the reach managing Director, informed consent was got from the respondents as well. This was in form of written consent and verbal consent for example in terms of filing questionnaires.

3.7 Limitations

The researcher encountered a number of problems that could have affected the research findings or the stipulated time for the research. Some of these problems included the following;

Financial limitation; to do any research successfully a good amount of money should be used on the different expense like transport, paying any support staff, printing and other secretarial work among others. Since the study will be carried out in sabiny region, the researcher will have traveled to Kapchorwa, Kween, and Bukwo District in Sabiny, region, thus in currying the transport expenses to and fro. This will leave the researcher with very time to carry out the research did not respond thus affecting the results of the study and the legitimacy of the finding there after.

3.8. Female Genital Mutilation and Legislation

The relevant human rights instruments to women's reproductive rights

3.8.1 International Instruments

(i) The Universal Declaration of Human Rights (UDHR) The UDHR consists of a preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind (United Nations, 2000). The Universal Declaration recognizes that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. It recognizes fundamental rights which are the inherent rights of every human being including, inter alia, the right to life, liberty and security of person; the right to inadequate standard of living; the right to seek and enjoy asylum from prosecution in other countries; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment. These inherent rights are to be enjoyed by every man, woman and child throughout the world, as well as by all groups in society, as

some of the stipulations so point out. For example, Article 1 of the UDHR states that "All human beings are born free and equal in dignity and rights. They are endowed with a spirit of reason and conscience and should act towards one another in a spirit of brotherhood." And article 5 adds, "No one shall be subject or to torture or to cruel, inhuman or degrading treatment or punishment." With regard to FGM, it ought to be noted that the practice totally subjects the victims to torture, pain, physical, psychological and health implications if not death. The issue at stake is that the practice is manifested in some of the countries that fully ratified the UDHR. In view of this, this study intended to find out whether the women victims are aware of their rights as regards objecting the practice. This was done with a focus on the Sabinu community of Bukwo District.

(ii) The International Convention on Economic, Social and Cultural Rights

Economic, social and cultural rights are fully recognized by the international community and in international law and are progressively gaining attention. These rights are designed to ensure the protection of people, based on the expectation that people can enjoy rights, freedoms and social justice simultaneously (Centre for Reproductive Law and Policy, 1997). The Convention embodies some of the most significant international legal provisions establishing economic, social and cultural rights including, inter alia, rights relating to work in just and favorable conditions; to social protection; to inadequate standard of living including clothing, food and housing; to the highest attainable standards of physical and mental health; to education and to the enjoyment of the benefits of cultural freedom and scientific progress. By the fact that FGM violates women's full enjoyment of their physical being, as their bodies are subjected to malformations, reflects the fact that the convention is not fully recognized. It was, therefore, to the interest of this study to find out why the convention has not been put to full use, especially for countries like Uganda that ratified the convention.

(iii) Convention on the Elimination of all Forms of Discrimination against Women

As the United Nations (2000) puts, the convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 and entered into force in 1981. Despite the existence of international instruments which affirm the rights of women within the framework of all human rights, a separate treaty was considered necessary to combat the continuing evident discrimination against women in all parts of the world. In addition to addressing the major issues, the Convention also identifies a number of specific areas where discrimination against women has been flagrant, specifically with regard to participation in public life, marriage, family life and sexual exploitation. The objective of the Convention is to advance the status of women by utilizing a dual approach. It requires state parties to grant freedoms and rights to women on the same basis as men, no longer imposing on women the traditional restrictive roles. It calls upon state parties to remove social and cultural patterns, primarily through education, which perpetuate gender-role stereo-types in homes, schools and places of work. It is based on the premise that states must take active steps to promote the advancement of women as a means of ensuring the full enjoyment of human rights. It encourages state parties to make use of positive measures, including preferential treatment, to advance the status of women and their ability to participate in decision-making in all spheres of national life- economic, social, cultural, civil and political. Article 17 of the Convention establishes the Committee on the Elimination of Discrimination against Women to oversee the implementation of its provisions.

What remained a concern of this study was that irrespective of the stipulated intentions and framework of action, the convention has been accorded minimal recognition as regards women discrimination relative to FGM. It would be prudently put that the cultural attributes especially among the Sabiny have survived test of time and greatly influenced the community perception about the practice of GM. The issue of human rights, with regard to culture seems

not to have been greatly considered. It was this major aspect that necessitated redressing the practice of FGM from a human rights perspective with a belief that recognizing that FGM is a violation of the fundamental human rights would stimulate enhanced advocacy and lobbying strategies to completely eradicate the practice.

(iv) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Over years, the United Nations has developed universally applicable standards against torture which were ultimately embodied in international declarations and conventions. The adoption, on 10 December 1984 by the General Assembly, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was the culmination of the codification process to combat the practice of torture. The Convention entered into force on 26th June 1987 (United Nations, 2000). It should however be noted that despite the convention, torture, cruel and inhuman treatment is still being inflicted on women who are mutilated. These points to the fact that much as there could be laws, committing crime may still be explained by the social structure, norms, beliefs and values upheld by a given society. It is to this extent that the study opted to focus on Bukwo District where the practice of FGM has thrived for a test of time.

(v) Convention on the Rights of the Child

The convention embodies some of the general principles for guiding implementation of the rights of the child: non-discrimination ensuring equality of opportunity. In here, when the authorities of state take decision which affect children, they must give prime consideration to the best interests of the child; the right to life, survival and development which includes physical, mental, emotional, cognitive, social and cultural development. Children should be free

to express their opinions, and such views should be given due weight taking the age and maturity of the child into consideration.

Among other provisions of the Convention, state parties agree that children's rights include: free and compulsory primary education; protection from economic exploitation, sexual abuse and protection from physical and mental harm and neglect; the right of disabled child to special treatment and education; protection of children affected by armed conflict; child prostitution; and child pornography.

Under Article 43 of the Convention, the Committee on the Rights of the Child was established to monitor the implementation of the Convention by state parties (Centre for Reproductive Law and Policy, 1997). Despite this monitoring structuring place, children have continued to fall victims of physical and psychological torture as a result of FGM practice. In implementing the instruments, as Rukooko (2001: 138) puts, states ought to set verifiable benchmarks for subsequent national and international monitoring. In this connection, states should consider the adoption of a framework law as a major instrument in the implementation of the strategies. Considering Uganda, one would say that the country has complied to the international instruments by putting human rights aspects in her constitution. The issue that remains unresolved is whether the necessary stakeholders were consulted during the structuring and compilation of the constitution. This would point and bring to light why there have been some resistance to do away with FGM even when the constitution so puts forward grounds as to why the practice should be stopped. This fact appears a great concern that this study labored to resolve with a focus put on human rights perceptive and particularly women's reproductive rights.

Ugandan Constitutional provisions on FGM

Art 20 (1): Fundamental rights and freedoms of the individual are inherent and not granted by the state.

Art 20 (20): The rights and freedoms of the individual... enshrined in this chapter shall be respected, upheld and protected by all organs and agencies of government and by all persons. These two articles imply that if human rights are to be respected, upheld and protected, then women should not be mutilated since FGM violates their natural entitlements and is totally against the afore-listed clauses.

Equality and freedom from discrimination

Art 21 (1): All persons are equal before... the law in all spheres of... social and cultural life ... same rights as men, if men are not mutilated so shall not women be.

Art 21 (2): ... A person shall not be discriminated against on the ground of sex. Discrimination comes from the fact that only women are mutilated, and not men.

This reflects a form of human rights violation that ought to be stopped if females are to fully enjoy their reproductive rights.

Protection of the right to life

Art 22(1): No person shall be deprived of life. You are deprived of life if you do not live a full healthy life. FGM' leaves the victims with physical harm that deprives them from fully enjoying their reproductive rights. Such a scenario reflects the fact that FGM violates this article as generated women may not live a full healthy life, especially as a result of post mutilation effects.

Protection of personal liberty

Art 23(1): No person shall be deprived of personal liberty. However, it should be noted that one is deprived of liberty, if he/she does not have a right to say no to the GM practice. This is the common case in Bukwo District where women are forced to take part in the female circumcision ceremony as a cultural practice of initiating the youth into adulthood/motherhood.

Respect for human dignity and protection from inhuman treatment

Art 24: No person shall be subject to any form of torture, cruel, inhuman or degrading treatment. FGM is torture and cruel, inhuman and actually a degrading treatment.

Right to privacy of person, home and other property

Art 27(2): No person shall be subjected to interference with other property. Thus, to this effect, it can be argued that there should be no interference with the property of your own body. FGM does not recognize this, and thus, becomes a form of human rights violation.

Rights of women

Art 33(1): Women shall be accorded full and equal dignity of the person with men. Clearly women are not equal to men if FGM is performed on them. Art 33(3): The state shall protect women and their rights...The state should protect the woman's right to privacy of her own body and against torture. Art 33(4): Women shall have the right to equal treatment with men...include equal opportunities in social activities, such as dating or enjoying sex. Art 33(6): Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this constitution. To put it clearly, FGM does all the aforementioned, regardless of being prohibited by the constitution.

Rights of children

Art 34 (3): No child shall be deprived by any person of... other social... benefit by reason of religious or other beliefs. If the girl is under 16 years, and FGM is performed, then she is deprived of her social benefits.

General limitation on fundamental and other human rights and freedoms

Art 43(1): No person shall prejudice the fundamental or other human rights and freedoms of others. No person has a right to perform FGM because a woman has a right not to be mutilated. Art 43(2) (c): Public interest....shall not permit any limitation of the enjoyment of the rights and freedoms prescribed by this chapter. Specifically, this chapter (especially the clause against torture)

clearly supports the ban of FGM. Thus, even though the public interest is to continue the practice, it still should be banned.

In view of the stipulations within the Ugandan Constitutions, there would be no reason to practice FGM, even for the sake of observing the contents of the law of Uganda as a country. What insinuates controversy that ought to be resolved is the fact that the Sabiny females brave for the practice. Is it absolutely the cultural element that drives the Sabiny women into FGM exercises? Do they know that their rights are being violated by having their female organs mutilated? Much as culture has been pointed out by some studies, for example Kiirya and Kibombo(1999), it is apparently true that most of the human rights violations go without knowing that they constitute to human rights abuse. To this extent, therefore, a study on human rights concern, reflecting on FGM practice, proves a clear way on empowering the Sabiny women to not only agitate for, but also protect and promote their natural entitlements.

3.8.2 Laws in other countries (Outside Africa)

(i) United States

FGM was added in 1996 to the Assault Chapter of Title 18, US Code 116 FGM:

a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than five years, or both,

b) A surgical operation is not a violation of this section if the operation is:

(i) Necessary for the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(ii) Performed on a person in labor or who has just given birth and is performed for a medical purpose connected with that labor or birth by a person licensed

in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife;

c) In applying subsection (b) (i), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual (Maguigan, 1999).

It can be deduced from the US stipulations that despite the allowance of health related concerns in the provision, mutilating an adult may not constitute to violation of women's Reproductive Rights, as the provision only condones the practice on a minor that is less than 18 years. This forms a basis of divergence and disagreement between FGM provisions between different countries. If Uganda was to adopt the US's FGM provision, the practice would still thrive as the target would be 18 years and above to cross over the bracket being labeled a human rights violator.

(iii) United Kingdom

The prohibition of FGM is not limited to procedures performed to minors. It is criminal to perform, or to aid, abet or procure the procedure. The act mandates that health care personnel report instances of FGM to law enforcement. The prohibition of Female Circumcision Act provides that the procedure is not criminal if necessary for the physical or mental health of the patient, and that in the application of that subsection, no weight is to be given to the belief that FGM is required by custom (Maguigan, 1999).

To the above effect, of the FGM provision in the United Kingdom, therefore, it would be absolutely criminal to carry out FGM, or aid the procedure of mutilating females. This shows a provision in which cultural purports can never be compatible with issues to do with safeguarding human rights. Whereas this could be the ideal concern for the provision in the United Kingdom, the case seems different in Uganda where the practice of FGM is deeply embedded and supported by the cultural attributes.

(iv) Spain

Genital mutilation is considered a crime punishable with prison sentences ranging from 6 to 12 years. The Penal Code allows for a reduced sentence if the victim has consented free and spontaneously, but the consent of a minor is not considered valid (Coello, 1999). Reflecting on the laws regarding FGM in the afore-listed countries, it can be observed that there is clarity over the nature of reprimand and due punishment in case one so circumcises or mutilates a female. What remains urgent to note here is that much as laws restrain one's acts, especially as regards what is legal and illegal, criminology cannot wholly be explained by the failure to observe the laws. There is, therefore, need to explicitly reflect on other factors such as culture, awareness levels and purported benefits in committing an act like FGM. It is this legally lacking element in the explaining the practice of FGM that this study was set to find out. On top of recognizing the illegal component of FGM, the study equally approached the practice from a human rights perspective, with focus put on women's reproductive health.

3.8.3 Laws in African countries on FGM

(i) Djibouti

Penal Code outlawing FGM was enacted in 1994. The law includes prison term and fine in instances when a female is mutilated.

(ii) Ghana

Law prohibiting FGM was enacted in 1994. Section 69A of Criminal Code makes it a second degree felony with fine and imprisonment. Article 39 of the constitution abolishes injurious and traditional practices. These points to the fact that issues of human rights cannot be compromised over because of cultural and/or traditional bearing as the case is in Uganda.

(iii) Burkina Faso

Law outlawing FGM passed in October 1996. The Penal code articles enacted include Article 380: Whoever attempts or harms the physical integrity of the

genital organ of a female, either by total ablation, excision, anesthetization or by other means, will be imprisoned for a period of three to six years and fined 150,000 to 900,000 francs or be ' subject to one of these penalties. If death ensues, the penalty will be imprisonment for a period of five to ten years. Article 381 states that penalties will be applied to the fullest extent of the law if the culprit belongs to the medical or paramedical field. The jurisdiction of judgment may forbid him to practice for a period of no longer than five years. Article 382 states that a person having knowledge of the acts aforementioned in article 380, and failing to advise the proper authorities, will be fined 50,000 to 100,000 franc.

(iv) Guinea

Article 256 of the Penal Code prohibits FGM. Article 6 of the constitution prohibits cruel and inhumane treatment. As per WHO (1999), the government initiated a 20year (1996-2015) collaboration with WHO to work towards elimination of the practice. Government works with non-governmental organizations to eradicate GM through films, TV, seminars and so forth.

(v) Senegal

In July 1997, the women of Malicounda, a small village in Senegal, set an example for the rest of the world to follow by being the first village to officially stop FGM. In February 1998, President Diouf began drafting the legislation ban on FGM. On January 13, 1999, the Parliament approved the legislation (Jaimmer, 1999).

(vi) Egypt

In 1996, the Ministry of Health and Population issued a decree finally forbidding the practice except for medical indications, and only with the occurrence of a senior obstetrician. The decree (No. 261) states: It is forbidden to perform excision on females either in hospitals or public or private clinics. The procedure can only be performed in cases of diseases and when approved by the head of the obstetrics and gynecology department at the hospital and upon the suggestion of the treating physician. Performance of this operation will be considered a violation of the laws governing the medical practitioners

from performing FGM in any governmental facilities or private clinics (since they could face administrative punishment). However, it still did not legally prevent the performance of FGM in a home by nongovernmental medical practitioner (WHO, 1999).

(vii) Ivory Coast

Ivory Coast implemented the Law Concerning Crimes against Women in December in 1998, which is a local law that civilly and criminally punishes those who practice

FGM (Wllenstein, 1999). In view of the FGM provisions in African countries, there is a common observation that irrespective of the differences in the individual country's provisions, the practice of FGM is highly considered criminal as it constitutes to the violation of human rights. What remains an issue of great concern is the reason as to why the cases of FGM keep on being committed irrespective of the existing provisions. It is not clear whether the provisions are inherently weak or lack implementation strategies/law enforcement. It is this unclear scenario that this study intends to address, focusing on FGM and women's reproductive rights in Kween Districts a case study.

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.1 Introduction

This chapter presents the study findings related to the peoples' awareness and achievements with regard to the practical use of the relevant instruments to FGM and human rights in Kapchorwa, Kween and Bukwo District. The socio-economic background of the respondents was incorporated in the presentation of findings to give the study a basis for interpreting the findings (section 4.2). Subsequently, presentation on the levels of awareness and practical application of the relevant human rights instruments begins with section 4.3

4.2 Respondents' socio-economic background

The data pieces elicited on this variable was presented under the following sub themes: age of respondents, sex, and level of education attained and the religion of the respondents.

4.2.1 Age of respondents

The respondents' age was classified into four major groups and according to the three different categories of the respondents that were involved in the study (females from the Sabiny community members, local council chairpersons, elders, and health workers). The elicited responses were presented in table 1

Figure 1: age group of women and girls who underwent Female Genital Mutilation.

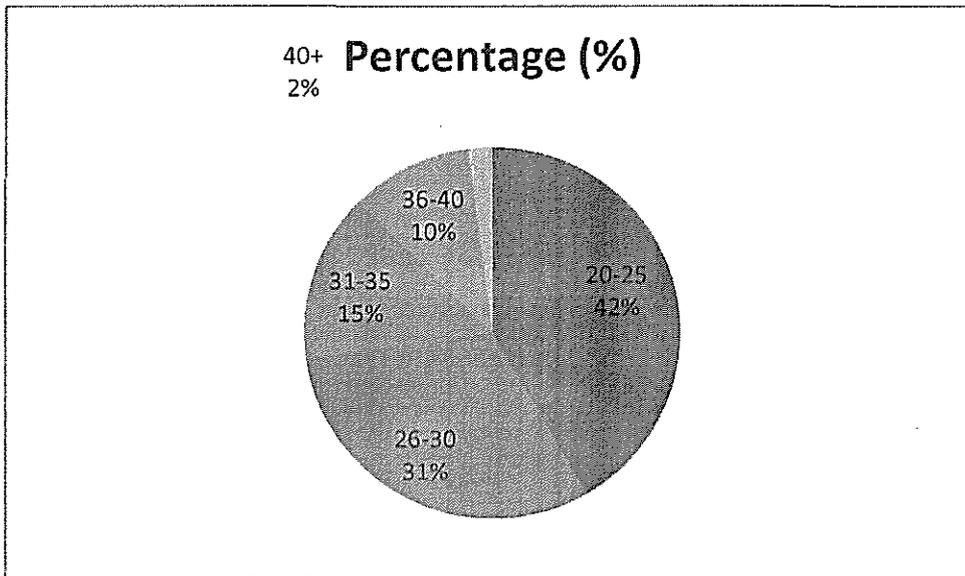


Figure 1 indicates that respondents were grouped into five age groups starting from 20 years up to above 40 years.

From figure 1, 41.067% of the respondents were aged between 20-30 years, 31.025% were aged between 26-30 years, 14.58% were aged between 31-35 years, 10.42% were aged between 36-40 years, and 2.08% of the respondents were above 40 years of age.

The statistics displayed on figure 1 show that the majority of the respondents were in the age group of 20-30 years.

This can be attributed to the fact that it is mostly the youths who underwent and are undergoing FGM.

4.2.2 Sex of respondents

While administering the questionnaires, conducting interviews and focus group discussions, the researcher took interest to note down the sex of the respondents involved. In all, an overwhelming majority of the respondents (88.6%) were females while only 11.4% were males. Vital to note on the gender issue was that all the Local Council I Chairpersons were males, something that reflected much on the women's ascription to leadership positions among the

Sabiny. As a matter of fact, this reflected the fact that more men were in politics and leadership positions than their counterpart females. As a result such a position reinforces men dominance over women in all social aspects and family decision making process. This is a position held by Hoffman (2002). In a report about the Masai womanhood and circumcision, Hoffman depicts the point that FGM among the Masai can be reduced only when women change their social positioning to ascribe for positions of leadership. Hoffman was critical that unless the Masai women ascribed for leadership positions, they would never advocate or lobby for the eradication of FGM.

On the other hand, it should be noted that the pre-dominance of females in view of the total sample composition, especially with regard to females for the survey questionnaire, was somewhat predetermined to target the female victims of FGM. Otherwise, the proportionately selection of elders on a gender-balanced component was aimed at attracting views from both sexes on the traditions explaining the long time held belief and the benefits attached thereof that has survived a test of time among the Sabiny communities.

4.2.3 Respondents' level of Education

The respondents were requested to state their highest level of education. The basis of this question was to find out whether one's level of education allowed for or constrained taking part in the FGM practice. Besides, the study wished to find out whether there was any linkage between one's level of education and awareness about women's reproductive rights as well as the instruments and laws that stipulate, safeguard and promote women's reproductive rights. The elicited responses on this issue were presented in table II.

Table II: Respondents' level of education

Item	Frequency	Percentage
Female respondents (n=90)	00	00
Post graduate	04	4.4
Graduate	10	11.1
Diploma	12	13.3
Secondary level	28	40
No formal education	39	40
Total	90	100
Local council 1 Chairpersons (n=6)		
Female respondents (n=6)	00	00
Post graduate	00	00
Graduate	03	50
Diploma	03	50
Secondary level	00	00
No formal education	00	00
Total	06	100
Health workers (n=6)		
Female respondents (n=6)	00	00
Post graduate	00	00
Graduate	06	100
Diploma	00	00
Secondary level	00	00
No formal education	00	00
Total	06	100
Elders (n=12)		
Post graduate	00	00
Graduate	12	16.7
Diploma	01	8.33
Secondary level	05	41.7
No formal education	04	33.3
Total	90	100

It can be observed from table II that although the majority (40%) of the selective female respondents had not attained any level of formal education, there were

some levels of education attained thereof For instance, 31.1% had attained primary level, 13.3% secondary level, 11.1% diploma level while 4.4% were graduates. For the case of the Local Council I Chairpersons, 50% had attained formal education to the diploma level and another 50% had attained secondary school level.

For the case of health workers, all of them (100%) had studied up to a diploma level. To the elders, 41.7% had attained primary level, 33.3% had no formal education, 16.7% had attained a diploma level of education while 8.33% had attained secondary school level of education. It can be observed from table II that irrespective of some respondents who had not attained any level of formal education, there was a substantial number of literate members that would influence community perception over the practice of FGM. However, as the study found out later, education did not have any significant positive influence people's perceptions and beliefs about the FGM practice. This coincides with the observation made by.

Boyle (2002) that because of its religious and cultural implications, the formal knowledge acquired from schools have not explicitly confronted the practice of FGM to the extent that even the educated women feel much confined by the social meaning attached to the practice.

4.2.4 Respondents' Religion

The respondents were also requested to state their religious faith. This was aimed at finding out whether matters related to FGM and allegiance to the practice had any link with one's religion. The elicited responses on this aspect were presented in Figure II.

Figure II: Respondents' religious faith (n=114)

Religion	Frequency	Percentage
Catholics	52	45.6
Protestants	22	19.2
Muslims	28	24.5
SDA	4	3.5
Pentecostal	6	5.2
Traditionalists	2	1.7
Total	114	100

Figure II shows that the majority of the respondents (52/45.6%) were Catholics, followed by the Muslims (28/24.6%), Protestants (22/19.3%), Pentecostal (6/5.3%), Seventh Day Adventists (4/3.5%). The least were the traditionalists (2/1.7%). It can be observed from figure II that there was a fair representation of all the religions in Kapchorwa, Kween and Bukwo District in Sabinu community. The dominance of the Catholics reflects their dominance in the District, and is attributed to the works of the Roman Catholic Church during the early missionary times.

On the whole, however, the representation of all the major religions provided the study with a basis of evaluating whether FGM had any attachment to religion. As the results in hypothesis two reveal, there was no significant linkage between religion and the practice of FGM, for there was an equal proportion of circumcised women irrespective of their religious following (See Section 5.2). The findings here coincide with Johnson's (2000) observation that much as issues related to FGM can be attached to religion, especially within the Muslim world, such a belief ought not to lure any scholar into a thinking the practice is a concern of religion.

To Johnson (2000), much as religion enhances the practice, it does not explain the origin of the practice, especially in African countries where Islam was not

an indigenous religion. This brings to light the supremacy of culture as opposed to religion in explaining the phenomenon, origins and social importance of FGM in Kapchorwa, Kween and Bukwo District. On the whole, this proposition does not reflect any of the human rights concerns, possibly a position that has led to low responses in addressing FGM in a human rights perspective.

4.3 The relevant human rights instruments to women's reproductive rights

This study variable was guided by the hypothesis which stated that "**There are no practical relevant instruments stipulating the protection and promotion of women's reproductive rights in Kapchorwa, Kween and Bukwo District**" The generated responses were presented under the following sub-themes: awareness about women's rights, awareness of international instruments, awareness of the instruments that safeguard and promote human rights in Uganda as well as FGM and women's reproductive rights.

4.3.1 Awareness about women's rights

In the bid to find out whether respondents knew something about the relevant human rights instruments, respondents were first requested to state whether they knew something about human rights. The generated responses were presented in table III.

Table III: Responses to knowledge about human rights

Item	Frequency	Percentage
Female respondents (n=90)		
No	51	56.7
Yes	39	43.3
Total	90	100
Local Council I Chairpersons (n=6)		
No	06	100
Yes	00	00
Total	06	100
Health workers (n=6)		
No	06	100
Yes	00	00
Total	06	100
Elders (n=12)		
No	5	41.7
Yes	7	58.3
Total	12	100

Table III shows that apart from the Local Council I chair persons and health workers, there were some respondents, especially among the females (43.3%) and elders (58.3%) that did not know anything about human rights. It can be observed from table III that there were relatively significant levels of females and elders who were not aware of the existing human rights. The study findings here agree with Pieters and Lowenfels's (1977) report about infibulations in the horn of Africa. It was observed in the report that majority of the populace never associated FGM to a form of human rights violation, but

rather an obligation for every female as a precondition for becoming an adult and for hygiene purposes. For those who were aware, still had different levels that varied from one form of human rights to another. This can be seen from table IV below.

Table IV: Commonly known rights that women are entitled to

Item	Respondents			
	Females (n=51)	Local Leaders (n=6)	Health Workers (n=6)	Elders (n=5)
Right to education	36 (70.6%)	6 (100%)	6 (100%)	3 (60%)
Right to a health living	31 (61%)	6 (100%)	6 (100%)	2 (40%)
Right to enjoy freedom of thought, conscience and religion	44 (86.3%)	4 (66.7%)	5 (83.3%)	1 (20%)
Freedom from torture and degrading treatment	28 (54.9%)	4 (66.7%)	5 (83.3%)	-
Others	26 (51%)	1 (16.7%)	2 (33.3%)	2 (40%)

It is evident from table IV that among the 56.7% of the females who were aware of human rights, the majority 86.3% pointed out the right to enjoy freedom of thought, conscience and religion, while 70.6% mentioned the right to education. For the case of the local leaders and health workers, all of them

were certain of the right to education and health living. A look at the elders, majority (60%) was certain of the right to education. None of the elders considered freedom from torture and degrading treatment as a form of human rights violation. Issues mentioned under the category of others included the right to marry, own property and live a recognized life.

4.3.2 Awareness of international and national instruments human rights

There was a general linkage between the levels of awareness about human entitlements and the instruments stipulating the need to safeguard and promote the fundamental human rights. Apart from the Local Council Leaders and health workers who were aware of some of the Ugandan Constitutional stipulations, knowledge concerning the international instruments was lacking. This pointed to the need for enhanced campaigns to improve the communities' awareness, especially through information communication and providing the community members with materials that can popularize access and utilization of national and international instruments and laws that relate to human rights. Although there were linkages between the occupied social positions and level of awareness (as all the local council leaders and health workers were aware of the fundamental human rights), there was no linkage between one's level of education and knowledge concerning human rights and latter women's reproductive rights.

This was manifested by the fact that some of the females, who had attained some education above the primary level, did not know anything while some of those who had not attained any formal education were certain of some human rights. This coincides with Gruenbaum's (2001) observation that issues regarding cultural practices seem to be persisting even in instances when there are higher levels of education. As a matter of fact, one of the respondents had this to say;

I hear the educated girls and members of parliament want the practice eradicated. But how can they stop something that our ancestors have been practicing for ages? Our mothers and grandmothers earned their respect and preserved their honor by undergoing circumcision. One respondent exclaimed.

The above led the study to a realization that though the social positioning may favor the realization of human rights, acquiring formal education per-se, may not have a significant impact on the cultural practices. Education needs to be enhanced by power and authority, a position that can be reinforced by the support of those in positions of authority and the law.

4.3.3 FGM and women's reproductive rights

Respondents were also requested to state whether they were aware that FGM was a form of women's reproductive rights violation. This greatly related to the levels of awareness about the general concept of human rights and levels of education. 56.7% of the females were certain that FGM was a form of women's reproductive rights violation. All the local leaders and health workers were certain that FGM was a form of women's reproductive rights violation. However, a look at the results in table IV shows that though some respondents were certain of issues like right to a health living and freedom from torture and degrading treatment as some of the human rights, they did not consider FGM as a form of women's reproductive rights violation. This reflected how the practice has gone so native into the lives of the Sabiny that its performance is in no way considered a form of human rights violation.

There was a great disposition of culture over human rights. As responses from the elders so emphasized, FGM was a practice that reinforces kinship relations, and females' social transformation from childhood to adulthood. The above point agrees with the Centre for Reproductive Law and Policy (1997) irrespective of the existing laws and instruments on reproductive health rights, the practice of FGM has persisted for a long time due to low levels of awareness

within the targeted communities. The communities resist adopting and implementing the reproductive laws due to the held belief that the practice is part of their lives. The low levels of awareness also pose a somewhat question to the <http://dusteye.wordpress.com/tag/educationJ> (August, 4, 2008) report that, interests curtailing the practice of FGM has increased in the past 10 years.

This argument was largely based on the example, of awareness that on 30 April 2007, women's rights activists in Uganda petitioned the Constitutional Court demanding that FGM, practiced by several communities in the east of the country be declared illegal. This, therefore, points to the fact that irrespective of the activists' campaigns against FGM, the rural communities have not yet got the message regarding FGM as a form of human rights violation. However, this points out something to appreciate about the work done by civil society organizations in addressing the issue of FGM. The mass media, especially the print media, has also taken greater steps in trying to depict the dangerous aspect of FGM through publications. For example, the news paper articles, (refer to the list of news papers cited in the Bibliography) clearly stress significant aspects pertaining FGM, especially in Kapchorwa District.

In view of the findings on this hypothesis, it can be put that much as there are international and national laws that stipulate safeguarding and promotion of human rights, there is a substantial number of people in Kapchorwa District that do not know anything about human rights and Female Genital Mutilation. A good number of respondents do not know that FGM is a form of human rights violation. It is substantially out of such a scenario that FGM has survived a test of time and attracts majority support from the community members.

The afore-listed, therefore, agrees with the stated hypothesis (There are no practical relevant instruments stipulating the protection and promotion of

women's reproductive rights in Kapchorwa, Kween and Bukwo District). The vital issue to consider here is much as there could be international and national laws; they have not been put into effective implementation to eradicate the practice of FGM in Kapchorwa, Kween and Bukwo District.

4.4 The Status and Reasons for Carrying Out FGM

This study variable was guided by the hypothesis which stated that "There are no clear reasons for carrying out Female Genital Mutilation in Kapchorwa, Kween and Bukwo " The generated responses were presented under the following sub themes: Circumcision status for the female respondents, age at which women were circumcised, type of circumcision commonly used, voluntarism in taking part, state on the instruments used, reasons for carrying out FGM, social status of the uncircumcised women, benefits accruing from the FGM practice and the dangers associated with the practice of FGM.

4.4.1 Circumcision status for the female respondents

The female respondents were requested to state whether they were circumcised. All the respondents (90/100%) acknowledged that they had been circumcised as a practice to initiate them into womanhood. There were no significant difference between one's religion, level of education and FGM practice. This was because respondents from different religious backgrounds and educational levels were all circumcised. The practice remains an obligation for everyone to embrace irrespective of religious attributes and affiliations. There were variations about the age at which the respondents were circumcised. The generated responses were presented in table V.

Table V: Responses to the age at which females were circumcised

Item	Frequency	Percentage
Below 14 years	2	2.2
14-24 years	87	96.7
Any other	1	1.1
Total	90	100

The table shows that though majority (96.7%) revealed that they had been circumcised between 14-24 years, some were circumcised as early as below fourteen (2.2%) while (1.1 %) pointed out that they were circumcised after their first birth. This coincides with the observation made by Kirya and Kibombo (1999) that women were circumcised at different ages, some as early as 14 years to avoid the prevalence of women who, after joining high schools and in most cases boarding schools refuse to be circumcised. For those who may escape early circumcision, may be still targeted to the age of even 20 years and above.

However, responses from the focus group discussions and interviews with the local leaders and health workers revealed that the practice has been greatly changed to target younger girls due to resistance, especially from girls who get exposed to strange cultures as they go to schools. As girls access and acquire higher levels of formal education, they get to know much about their natural entitlements. This helps them agitate for the promotion and protection of their rights. Due to this eventuality, the Sabiny community members target young girls who have not yet acquired much of the formal education or left their traditional homes.

4.4.2 Type of circumcision commonly used

The female respondents were also requested to state the type of circumcision that they had undergone. The majority (65.6%) revealed that they had undergone Type I while 34.4% pointed out that they had used Type II. Type I

involves the excision (removal) of the clitoral hood with or without removal of part or the entire clitoris.

Type II involves the removal of the clitoris together with part of or all of the labia minora. The generated responses were presented in table VI.

Table VI: Responses to the type of circumcision used

Item	Frequency	Percentage
Type I	59	66.5
Type II	31	34.4
Type III		00
Type IV		
Total		100

Responses from the focus group discussions and interviews were also in agreement with the responses generated from the questionnaire. There were no responses acknowledging the use of Type III or IV. Type I that was revealed to be commonly used, involves the excision (removal) of the clitoral hood with or without removal of part or the entire clitoris. On the other hand, type II involves the removal of the clitoris together with part of or all the labia minora. The study findings here agree with the observation made by Hosken (1993) that Type I and II operations account for 85% of all FGM. Type III (infibulation) is common in Djibouti, Somalia, Sudan and in parts of Egypt, Ethiopia, Kenya, Mali, Mauritania, Niger and Senegal.

On the whole, however, type III is also referred to as infibulations. This involves the removal of part or all of the external genitalia (clitoris, labia minora, and labia majora) and stitching and/or narrowing of the vaginal opening leaving a small hole for urine and menstrual flow. Type IV is unclassified and involves all other operations on the female genitalia including pricking, piercing, stretching, or incision of the clitoris and/or labia, cauterization by burning the

clitoris and surrounding tissues; incision to the vaginal wall; scraping and introduction of corrosive substances or herbs into the vagina.

The http://en.wikipedia.org/wiki/Female_Genital_cutting (August, 2, 2008) highlights also supports the fact that different countries opt for different types of FGM. On the whole, however, it is clearly reflected that type I and II are generally used in most African countries, Uganda inclusive. The type and prevalence of FGM in most African countries is put as can be seen in table VII

Table VII: Type prevalence of FGM per country

Country	Prevalence (100%)	Type
Burkina Faso	71.6%	II
Central African Republic	43.4%	I&II
Cote d'Ivoire	44.5%	II
44.5% II		
Djibouti	90-98%	II
Egypt	78-97%	I,II&III
78-97% I, II and III		
Eritrea	90-95%	I,II&III
90-95% I, II and III		
Ghana	9-15%	I,II&III
9-15% I, II and III		
Guinea	98.6%	I,II&III
98.6% I, II and III		
Indonesia	No figures	I & IV
Nigeria	25.1%	I, II &III

Senegal	5-20%	II & III
Sudan	91%	I,II& III
Tanzania	7.6%	II & III
Togo	12%	II
Uganda	5%	I & II

Adopted from: http://en.wikipedia.org/wiki/Female_J5enita'-cutting (August 17, 2013)

In view of the data in table VII, it can be observed that type I and II are used in almost all the African countries. However, as Obermeyer (2003) argues, emphasis should not be on the type but the overall impact the practice brings to innocent girls whose health destiny is compromised for the purposes of rituals and cultural values.

It is justifiably right that fulfilling one's cultural practices creates a sense of belonging. But every culture has positive and negative aspects. There are cultural practices that protect human rights and others that violate people's rights. To *this* extent, therefore, we may take it that though respect for culture is important, practices that are detrimental to the physical and mental well-being of its members should not be tolerated. The enjoyment of the right to practice culture should not result in negation of other rights.

4.4.3 State of the instruments used

Regarding the instruments used to carry out the operations, majority of the female respondents (60%) could not recall or tell whether the instruments were sterilized or not. However, 40% were certain that the instruments were not sterilized at all, reason being that a couple of girls were operated at one ceremony, using similar instruments. This agrees with Moussa's (2003) observation that the practice of FGM increases the risk of contracting HIV/AIDS due to the fact that similar unsterilized instruments are used in communal operations.

For the case of the Sabiny, it is usually a practice of organizing more than one girl for the operation. Age mates are operated at the same time in a communal gathering. As regards the safety of the instruments, there is no clear guarantee of not contracting the HIV I AIDS virus as one instrument is usually used over all the candidates. Though there have been efforts to enlighten the community members over the HIV/AIDS scourge, there are still pockets of resistance and the strong belief in the practices still poses a great challenges among the community members. It is to this extent that the issue of FGM ought to take a human rights perspective to safeguard the natural entitlements of females who fall prey to the purports of mere traditional practices.

Those who voluntarily took part in the operations pointed out that they were motivated by the brevity, social beliefs and practices as a requirement for social transformation and initiation into womanhood. However, for those who were forced, there were gross lamentations over what transpired. This can be manifested in what one respondent from Kaptanya Sub-county forwarded during a focus group discussion guide:

I was taken to an open kraal very early in the morning, surrounded by undressed strong men and women who seemed to have drunk the whole night. I was stripped naked leaving my vagina open for everyone around to see. I was later forced to lie flat on my back by strong men who held my legs tight. Some sat on my chest to prevent my body from moving. When it begun, I struggled but all in vain, they cut off my private parts and I faced too much pain and there was severe bleeding which nearly killed me. Surprisingly, all those who were witnessing the tragic exercise were ululating and dancing obscenely.

Responses from the elders and local leaders revealed that its is a duty and obligation for every female Sabiny to be circumcised as a moment to mark the transformation of females from one stage to another and a precondition for

social acceptance and preparation for future family obligation. This idea was earlier put across by Kiirya and Kibombo (1999) who observed that some Sabinu females were forced to be circumcised irrespective of their objective positions. Kiirya and Kibombo (1999) put it that it is rather a compulsory practice that every female has to undergo rather than by choice of age. This compulsory element makes the whole practice of FGM a violation of human rights. Reflecting on Article 20 (2) of the Ugandan Constitution, it is put forth that;

The rights and freedoms of the individual ...enshrined in the chapter, shall be respected, upheld and protected by all organs and agencies of government by all persons.

Thus, someone who is forced to circumcise is denied of the chance to enjoy her natural entitlement, which tantamount to violation of women's reproductive rights.

4.5 Reasons for carrying out FGM and the benefits thereof

All the respondents involved in the study acknowledged the FGM as a socially accepted cultural attribute that the Sabinu communities uphold as sacred practice that distinguishes them from other tribes. Apart from the purity and cleanliness aspects, the practice is upheld for various reasons:

The practice guarantees virginity and promotes morality. There is a common belief that when a woman is circumcised, she loses some of the urge for sex. Ironically, the urge is never revitalized when a circumcised women finally marries. Instead, she completely loses her sexual desires, something that results into a form of social incompleteness. The need for morality leads to unhappiness in due turn.

That uncircumcised girl is rude and disrespectful. However, there is no clear proof linking circumcision to being respectful and being well behaved.

(iii) That FGM increases a woman's fertility. It is attributed to the fact that circumcising a woman makes it easier to become pregnant.

(iv) There were responses that FGM increases pleasure for the males during sex as they do not get obstacles constraining their penetration.

(v) That uncircumcised girls smell bad. It is upheld by the Sabiny that an uncircumcised woman may not effectively clean themselves, thereby generating some bad smell. However, it should be noted that the issue of a bad smell relates much to personal hygiene that should not be confused with circumcision issues.

(vi) FGM makes it easier for women to give birth. Whereas this is traditionally upheld, research findings reveal that mutilated women find it hard to give birth; reason being that the vaginal canal is narrowed, hence making it difficult for a child to go through. As pointed out by PATH (2006), there are several myths attached to FGM. PATH reckons with several study findings and reflects that FGM is a ritual-full of myths that violates women's reproductive rights and makes it hard to produce. Circumcised women were observed to take long in labour and would end up being operated than their uncircumcised counterparts.

(vii) That men cannot marry uncircumcised girls. As the findings by PATH (2006) indicate, this is also a myth for testimonies from men indicate that mutilated women are tight and hard for men to penetrate. This makes sex painful for both the man and woman. Men were, therefore, not supportive of the practice, irrespective of its traditional roots. Responses generated pointed out that there were commonly upheld benefits out of FGM practice. There was a general agreement that that:

- (i) FGM is a ritual that marks change of a girl into a woman. Having a FGM ceremony, therefore, shows the community that a girl is now prepared for her life as a woman. Equally so, the family can show that they have educated their daughter in how to be a good wife and mother.

- (ii) Some girls give in out of peer pressure. Because girls of their age go in for circumcision, they usually become afraid that their friends and other people will make fun of them. They may also get teased or talked about because they are not circumcised. They also believe that they cannot get a husband if they are not cut. Thus, they are driven by the desire to be like others. The search for this identity and its eventual attainment is ultimately a benefit that the Sabiny women treasure very much.
- (iii) The FGM ceremony is perceived as a moment of knowledge transmission from one generation to another. Grandparents like to hand down their wisdom and experience to their granddaughters. They believe this is an important responsibility to the older generation. To parents, the ceremony shows who they are and their tradition, and wants everyone to notice they have raised a good daughter.
- (iv) As a social obligation and moment of ceremony, people receive gifts. Parents who have received gifts at the operation of someone's daughter will feel socially obliged to return the favor by organizing a circumcision ceremony for his/her own daughter.
- (v) As an inspirational mechanism, the girls themselves get new clothes and other presents. They are also the center of attraction. Besides, they believe that FGM shows their courage and beginning of a new phase in life.
- (vi) Everyone enjoys the food, singing, dancing, and the general celebrations that go with FGM. Overall, it should be noted that much as the community members may enjoy a lot of benefits out of a FGM ceremony, such benefits should never override the essence of one's human rights. The individual benefits should never be attained at expense of one's rights for the rights are inherently and naturally attained, and should never be violated.

4.6 Social status of the uncircumcised women

The social status of uncircumcised women is more of a curse and a misfit in society. The responses from interviews with the elders and focus group discussion revealed that uncircumcised women cannot get married as she is believed to be immoral, dirty and will lack the ultimate preparedness to become a mother in a family. This is a belief that girls are initiated into womanhood through the circumcision ceremonies.

4.7 The dangers associated with the practice of FGM

Respondents were requested to state whether they had witnessed cases of ill-health as a result of the FGM practice. Responses from the 90 females on this aspect were presented in table VIII.

Table VIII: Responses to dangers associated with FGM (n=90)

Item	Frequency	Percentage
There are dangers associated with FGM	68	75.6
There are no dangers associated with FGM	18	20
Do not know	04	4.4
Total	90	100

Table VIII shows that majority of the targeted female respondents (75.6%) acknowledged that there were dangers associated with the practice of FGM while only 20% had a negative position over the presence of ill-health as a result of female circumcision. The other 4.4% did not know. They could have never had any problem or had never manifested a case related to ill-health as a result of being operated during the FGM practice. After establishing that there

were health problems associated with FGM, the study embarked on finding out the nature of the dangers thereof this can be seen in table IX.

Table IX: Responses to the dangers associated with FGM (n=68)

Item	Frequency	Percentage
Pain during and after operation	68	100
Excessive bleeding	43	63.2
Difficulty in child birth	34	50
Spread of diseases	18	26.5
Scaring	29	42.6
Death	19	27.9
Painful sexual intercourse	50	73.5
Others	10	14.7

Table IX shows that all the females (100%) who pointed out that there were dangers associated with FGM further pointed out that they experienced pain during and after the operation. Another 73.5% pointed out painful sexual intercourse as a result of loss of frigidity, 63.2% pointed out excessive bleeding, followed by difficulty in child birth due to the narrowing and stitching of the vaginal canal. This agrees with Mugisha's (2006) article that circumcised women get problems during delivery because the scar left after circumcision tears. There were also cases of death (27.9%). These were witnessed cases among the community members as a result of the FGM operation, especially in cases of excessive bleeding that is not urgently attended to.

Other related complications include cases of paralysis as Emasu (2005) observed. Emasu observed that three circumcised women got both of their legs

paralyzed and developed vesico-vaginal fistula. Looking at the responses in table VI, it can be noted that the FGM practice adversely violates women's reproductive rights. The responses from the health workers agreed in principle that mutilated women usually face hardships during child birth. One health worker had this to put across: The FGM practice has increased the risk of delivery failures in this health center due to narrow vaginal narrowing. It is generally hard for such women to afford a normal delivery.

The above coincides with earlier studies, especially the one done by World Health (1993). It was observed that the practice of FGM had increased the risk of maternal and child morbidity and mortality due to obstructed labour. It was observed that women who have undergone FGM were twice more likely to give birth to stillborn children than other women. Obstructed labour can also cause brain damage to infants and complications to the mother, especially fistula formation-an abnormal opening between the vagina and the rectum. More so, the practice of using one instrument over one victim exposes women to contracting HIV/AIDS. A similar observation was made by Etengu (2005) that some of the women are badly cut and left with large holes while others are cut using the same knife, thereby leaving them open to HIV / AIDS infection.

http://en.wikipedia.org/wiki/Female_genital_cutting (August, 2, 2008) highlights that prohibition has led to FGC going underground, at times with people who have had no medical training performing the cutting without anesthetic, sterilization or the use of proper medical instruments. However, even without prohibition, it should be noted that the procedure, when performed without any anesthetic, can lead to death through shock from immense pain or excessive bleeding.

The failure to use sterile medical instruments may lead to infections. Other serious long term health effects are also common. These include urinary and reproductive tract infections, caused by obstructed flow of urine and menstrual blood, various forms of scarring and infertility. The first time having sexual

intercourse will often be extremely painful, and infibulated women will need the labia major to be opened, to allow their husband access to the vagina. This second cut, sometimes performed by the husband with a knife, can cause other complications to arise.

A June 2006 study by the WHO has cast doubt on the safety of genital cutting of any kind. This study was conducted on a cohort of 28,393 women attending delivery wards at 28 obstetric centers in areas of Burkina Faso, Ghana, Nigeria, Kenya, Senegal and the Sudan. A high proportion of these mothers had undergone FGC. According to the WHO criteria, all types of FGC were found to pose an increased risk of death to the baby (15% for Type I, 32% for Type II, and 55% for Type III). Mothers with FGC Type III were also found to be 30% more at risk for cesarean section and had a 70% increase in postpartum hemorrhage compared to women without FGC. Estimating from these results, and doing a rough population estimate of mothers in Africa with FGC, an additional 10 to 20 per thousand babies in Africa die during delivery as a result of the mothers having undergone genital cutting.

Conclusively, in view of the findings on this variable, it can be put that there are traditionally held beliefs about FGM practice. These beliefs shape and are in turn reinforced by the benefits associated with the FGM practice. Irrespective of whatever transpires, method or instruments used, the Sabiny community members have their inherent values attached to FGM. To this extent, therefore, to the Sabiny communities, the earlier stated null hypothesis that there are no clear reasons for carrying out Female Genital Mutilation in Kapchorwa, Kween and Bukwo District could have been rejected. On the whole however, the whole practice contravenes the stipulations in the national and international instruments regarding the promotion and protection of women's reproductive rights.

4.8 Challenges of Human Rights Instruments to Women's Reproductive Rights

This sub chapter presents responses reflecting the challenges that constrain the implementation of human rights instruments to women's reproductive rights. The chapter was guided by the hypothesis which stated that *"The implementation of human rights instruments has had no significant challenges in safeguarding and promoting women's reproductive rights in Kapchorwa District"*. The elicited responses were presented under the following sub-themes: women's social status, social support for the eradication of FGM practice, lack of universality of the law, the sacred nature and sacredness of the practice, lack of practical support, specific challenges and possible solutions to the challenges constraining efforts to eliminate FGM practice. A summative remark/conclusion was also made depending on the findings presented.

4.8.1 Women's social status

First, the female respondents were requested to state whether they were socially recognized like their male counterparts in Kapchorwa District. This aimed at evaluating whether there was a favourable environment that would allow for easy lobbying and advocating for women's reproductive health. The elicited responses were presented in figure IV.

Table X: Responses to women's social status (n=90)

Respondents	Frequency	Percentage
Equal recognition of women and men		
Women are considered inferior		
No response		

Figure IV shows that an overwhelming majority of the female respondents (85%) revealed that women were not considered equal to men while only 7%

revealed that women and men were considered equal in the Sabin community. This could have been out of the traditional beliefs held that put men in a higher social position than their female counterparts. There was relationship between females' levels of education, the social position and beliefs held thereof. It was observed here that in instances of upheld exploitative cultural beliefs, women become native to the social expectations and they cease to consider the practice as exploitative. In such cases, implementing a human rights instrument becomes quite hard for it will not attract support even from women it is protecting. This coincides with Katzive's (2003) observation that legislation targeting FGM is likely to have little positive effect in a legal context in which women's rights are not wholly recognized or are explicitly undermined due to traditionally upheld practices.

In a report about FGM, Obermeyer (2003) disagreed with medical justifications offered by cultural tradition and regarded by scientists and doctors as unsubstantiated. He observed that some FGM is gender based and in African societies. The practice is considered part of maintaining cleanliness as it removes secreting parts of the genitalia. Vaginal secretions, in reality, play a critical part in maintaining female health.

Mossi of Burkina Faso and the Ibos of Nigeria believe that babies die if they touch the clitoris during birth. In some areas of Africa, there exists the belief that a newborn child has elements of both sexes. In the male body the foreskin of the penis is considered to be the female element. In the female body the clitoris is considered to be the male element. Hence when the adolescent is reaching puberty, these elements are removed to make the indication of sex clearer.

In years past, doctors advocating or performing these procedures sometimes claimed that girls of all ages would otherwise engage in excessive masturbation and be "polluted" by the activity, which was referred to as "self-abuse".

McDonald wrote in a 1958 paper titled "Circumcision of the Female", thus "If the male needs circumcision for cleanliness and hygiene, why not the female? I have operated on perhaps 40 patients who needed this attention." The author describes symptoms as "irritation, scratching, irritability, masturbation, frequency and urgency," and in adults, smegmaliths causing dyspareunia and frigidity. The author then reported that a two year old was no longer masturbating so frequently after the procedure.

Of adult women, the author stated that "for the first time in their lives, sex ambitions became normally satisfied. However, justification of the procedure on hygienic grounds, or to reduce masturbation, has since declined. The view that masturbation is a cause of mental and physical illness has dissipated since the mid- 20th century. Thus, if one is to take up this explanation for mutilating women, the practice would be over 100 years gone. The fact that FGM still exists, points to the fact that the gender-based prepositions still hold some value among the communities that practice FGM

4.8.2 Social support for the eradication of FGM practice

The study also labored to find out whether eradicating the FGM practice would attract social support. First, the female respondents were requested to state whether they believed the elders would support any programme aimed at total eradication of FGM. None of the respondents had a belief that the elders would accept. However, on a personal basis, 30% of the females, majorly consisting of the educated ones accorded their utmost support to do away with the practice while 70% revealed that they would not support any programme aimed at stopping the practice.

They would, thus, also encourage their daughters to be initiated into womanhood by undergoing it Responses from the interviews with the Local Council I leaders and the elders revealed that much as the Local Council I leaders would support any programme to eliminate FGM, the elders were

optimistic to maintain it. This pointed to the element of awareness campaigns that often target the local leaders to gain support for implementation. This agrees with Katzive's (2003) observation that though the governments, international bodies and NGOs have tried to lobby against the FGM, the practice still find its stronghold in the traditional beliefs that most communities, and especially elders strongly support. This strong resistance from elders was observed to be a result of the upheld social and sacred benefits the communities' accord to the FGM practice and ceremonies.

http://en.wikipedia.org/wiki/Female~enital_cutting (August, 2, 2008) highlights that there are websites promoting the practice like Circlist, BMEzine (Body Modification E-Zine), and the Clitoral Hood Removal Information Page contain testimonials and citations of medical studies, which support this claim (for example a study done in 1959 Rathmann et al claim that 87.5% of women saw an improvement in sexual pleasure following a hoodectomy. Such elements have justified the need to continue the practice as such revelations so ascertain that the practice is never harmful.

4.8.3 Lack of universality of the law

There was a strong perception that enacting a law criminalizing FGM would give the communities practicing it a discriminatory perception. There was a general agreement that a law targeting the Sabiny criminalizing their upheld social value, would tantamount to persecuting Sabiny community members alone. This reflected the greatest challenge of culture and perceived women's reproductive rights. Culture, in the case of the Sabiny communities, seems to be stronger than criminalizing FGM, especially due to lack of an amended law criminalizing the practice.

Even a consideration of the international instruments reflects the fact that there are different and contradicting stipulations regarding FGM, for example where as there is a Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, following the Unites State's stipulation

may heighten the FGM cases. This is because one of the USA provision states that;

Whoever knowingly circumcises excises, or infibulates the whole or any part of the labia major or labia minora or clitoris of another person who has not attained the age of 18 year!! Shall be fined under this title or imprisoned not more than five years, or both.

It goes ahead to state that a surgical operation is not a violation of this section if the operation is necessary for the health of the person on whom it is performed. As a matter of fact, the Sabiny argue that they carry out FGM for health reasons such as avoiding bad smell. Thus, upholding the United State's standards may be used to form a firm ground for practicing FGM among the Sabinys. The New Vision, Friday, March 10th 2006 portrayed that the Sabiny want law on FGM. This would help prosecute the promoters of the practice, thereby substantially reducing on the levels of the whole practice of FGM. However, this urgently needs significant awareness campaigns such that the interventions are not resisted, especially by the traditionalists who greatly value the practice.

4.8.4The sacred nature and sacredness of the practice

Females were requested to state whether how issues regarding FGM operations were handled. All the generated responses revealed that the practice is considered sacred and not open to non-community members. This sacred nature has rendered all efforts regarding the elimination of FGM difficult. This has been out of the fact that community members cannot willingly reveal much about their sacred practice. Response from the interview with the health workers revealed that their clients usually don't agree that FGM can cause certain illnesses, pointing out that the practice is holly and has been upheld for a test of time. One health worker revealed that majority of the women are diagnosed with painful/blocked menses and recurrent urinary tract infections,

but could only link such issues to misfortunes and witchcraft other than FGM practice.

The issue regarding the sacredness of the practice has been widely documented. For example, as Castle Dine (2008) puts, the U.N. agency and the United Nations Children's Fund (UNICEF) reports that FGM has persisted for a long time because of its sacredness. Normally performed by traditional practitioners, law enforcers may not be tipped on when, where and how the practice has to be operated. This could have been the reason as to why there have been no documented arrests regarding the violation of women's rights by falling victims of mutilation. .

4.8.5 Lack of practical support

Regarding special attention to mutilated women, majority of the female respondents (70%) revealed that they were not accorded any special treatment in the hospitals and health centers. However, responses elicited from interviews with the health workers revealed that there are provisions to offer mutilated women special attention in health centers, but the patients do not want to know that they are differently treated. This pointed to the fact that there is need for a formalized structure of concern that should be clearly communicated to all the stakeholders. On the whole, however, the health workers were clear on the fact that access to materials regarding the dangers of FGM is still limited to a few urban and semi urban places, leaving the rural areas in complete neglect. This idea agrees with Centre for Reproductive Law and Policy (1997) which observed that the government has not put in place the recognition of a link between the practice of FGM and the need for reproductive health services for all women.

Some countries which have prohibited FGC still experience the practice in secrecy. In many cases, the enforcement of this prohibition is a low priority for governments. Other countries have tried to educate practitioners in order to

make it easier and safer, instead of outlawing the practice entirely. However, with pressure from the WHO and other groups, laws are being passed in regards to FGC. On June 28, 2007 Egypt banned female genital cutting after the death of 12-year old Badour Shaker during a genital circumcision. The Guardian of Britain reported that her death "sparked widespread condemnation" of the practice. However, Britain has had its own problem confronting cases of FGC, as immigrants from Africa have been known to send their daughters to their home nations to undergo the procedure before returning to Britain.

4.8.6 Failure to understand the economics of FGM and Women's reproductive rights

As Castledine (2008) observes, there are several economic factors that contribute to the cultural importance of FGM. One of these factors is the ritual that surrounds the practice. Often this ritual involves gifts given to the girls in a ceremony that also honors their families. More importantly, though, is the fact that it is much easier for the parents of a circumcised daughter to find a mate for their child, than it is for the parents of an uncircumcised daughter. Being able to "marry off" daughters is an important economic consideration in some of the poorer countries that practice FGM.

Another important economic consideration is that for those who perform FGM, nearly all women, there are few equally lucrative options for supporting themselves. These women gain both financial support and a place of honor in their communities for performing this rite. Thus, there is substantive need to effectively understand the economic benefits, which, as Hoffman (2002) observes, is a significant factor in enhancing and supporting the practice of FGM. It should be noted that a cultural practice that has no ultimate benefit may not survive a test of time. Cultural practices, in most of the times, are a source of survival strategy, either in financial reinforcements or kinship relations.

4.9 Possible solutions to the challenges constraining efforts to eliminate FGM practice

After finding out that there were challenges affecting the implementation of instruments protecting and safeguarding women's reproductive rights, the study embarked on establishing the possible ways of overcoming the challenges. Respondents were requested to state what they thought would help implement the instruments that can help safeguard women's reproductive rights. There was a general agreement that:

- (i) The government should aggressively increase the levels of public awareness about the need to eradicate the practice of FGM. This would need beginning from the grass root communities and involving the majority community members into programmes that may help eradicate the FGM practice. However, this should be calculative done. The attempt should not be an overnight's outcome but should be progressively instituted to compromise the attributes of culture and the prerequisites of safeguarding inherent human rights.
- (ii) Train local cadres that can pioneer the cause of eradicating FGM practice. In order to argue against FGM at the local level, there is need to be tactful and use the local and their own life experiences and frames of reference. For example, as MelronNicol Wilson (2000), in a FGM study in Sierra Leone, had this to put across;

I would never approach circumcised women using terminology that referred to them as genitally mutilated. Although "female circumcision" misleadingly equates the practice with male circumcision. it focuses on the intent rather than the consequence and is respectful to the people practicing it.

Thus, with concepts that are familiar and understandable, and grounded in the idea of a precedent set by God, government, law, or man, or that which is just or fair, one can contest the credibility of female circumcision as a practice. More so, the approach and the continuation of intervention should be technically organized. Reflecting on the possible questions related to FGM,

one's position is more forceful when uncircumcised women, are present to prove to people that they have married well, remained faithful, and have husbands who have found pleasure in them and are unashamed of them.

We may not be able to convince our audiences to stop circumcision with our first conversation, but at least they begin to realize certain contradictions, and they start to rethink the "facts" as they understood them. Thus, one should recognize that it is a slow process of change, but arguments supporting FGM can be dismantled with persistent questioning. Human rights declarations, treaties, and languages aside, an appeal informed by an understanding of human rights but which draws upon local cultural and religious notions of common sense, justice, and dignity is often the best way to promote human rights and change the cultural norms that violate them (human rights) .

- iii) Development and formulation of women organizations at the grassroots that can spearhead the cause of implementing policies that promote and safeguard women's reproductive rights. This should however first aim at increasing the levels of awareness to ensure that the organizational members clearly understand why they have to join such organizations. It is the awareness levels that promote a sense of devotedness and being ready to design a framework of addressing the organizational concerns.
- iv) Enhanced collaboration and partnership between the Community Based Organizations, Local and International Non-Governmental Organizations in lobbying and advocating for the necessary resources to aid and facilitate the process of eradicating the practice of FGM.
- v) Creating a structure in which the women can get disentangled from the traditional beliefs of enslaving women under the violating traditional practices. The structure should facilitate the monitoring process to ensure that women's rights are safeguarded. Otherwise, mere creation of structures without a follow up may not significantly help eradicate the practice of FGM. Local structures of power and authority, such as community leaders, religious leaders,

circumcisers, and even some medical personnel can contribute to towards a total eradication of the practice.

Overall, there is need to recognize that one of the biggest barriers to the eradication of FGM is the perception, among those who practice this rite, that Western opposition to the practice is an example of cultural imperialism. This argument is bolstered by the fact that FGM was once performed in the West. In the past, feminists and human rights activists have also created resentment by not respecting the social and religious implications of FGM. One Somali woman states,

"If Somali women change, it will be a change done by us, among us. When they order us to stop, ten us what we must do, it is offensive to the black person or the Muslim person who believes in circumcision. To advise is good, but not to order."

Thus, a serious problem faced by activists, is how to keep opposition to FGM from being viewed as part of "the current Western onslaught on Islam.

Education programs that are sensitive to the cultural and religious importance of FGM seem to be the best hope of eradicating the practice. Education can, however, be a long process, as evidenced by the UN plan "to bring about a major decline in female genital mutilation in 10 years and completely eliminate this practice within three generations." In Ethiopia, the Ministry of Education has used radio broadcasts to warn about the dangers of FGM. The broadcasts are sponsored by the National Committee on Traditional Practices in Ethiopia, a committee that includes UN agencies. These actions, along with a government ban on FGM, have had "encouraging" results. The UN has also helped fund programs in Sudan where Dr. Amna Abdel Rahman has been working through the Sudan National Committee on Harmful Traditional Practices (SNCTP) to eradicate FGM. Although the programs in both Ethiopia and Sudan are backed, in part, by UN agencies, they are administered by committees headed by citizens of these countries. This is an important

consideration in dealing with the justifiable concerns about Western interference and cultural imperialism.

Not all governments, however, have welcomed efforts to eradicate FGM. The West African nation of Gambia has prohibited any programming that opposes FGM from being broadcast on state-owned radio and television stations, and has even called for the use of radio and television to promote FGM. The reaction of the Gambian government toward educational efforts to end FGM helps to illustrate the difficulty faced by those trying to eradicate the practice. As the Director-General of WHO has stated, we have to realize that female genital mutilation is a deeply-rooted traditional practice. As such, it can only be abolished completely when attitudes have been changed." As this statement suggests, change can only be made by the countries involved, and not by well intentioned Western forces.

In view of the study findings on this variable, it can be observed that the implementation of women's reproductive rights face some significant challenges with regard to the practice of FGM (eliminating the practice). However, with designing clear policy guidelines and interventions, such challenges can be overcome. The outright solution lies in the recognizing that there is need to reflect on the human rights instruments and recognize that women are naturally entitled to their natural entitlements by the virtue of being human beings

4.10 Towards a Human Rights-Based Approach to Reproductive Health

This sub chapter describes a human rights-based approach to FGM programming and aims to provide guidance to programmers to bring about a large-scale abandonment of FGM in sub-Saharan Africa, and Kapchorwa District-Uganda in particular. This rights-based strategy analyses the practice of FGM from the perspective of different types of social programming that is intended to bring about lasting social change. The chapter highlights the need

for a rights-based approach to reproductive health, human rights in the modern era and the fundamental principles thereof, Cultural Relativism versus Human Rights concerns, Understanding the economics of FGM and Women's reproductive rights and the framework for addressing FGM in a human-rights based perspective.

4.10.1 The need for a rights-based approach to reproductive health

Human rights and reproductive health advocates are increasingly working together to advance women's and men's well-being. The modern human rights system is based on a series of legally binding international treaties that make use of principles of ethics and social justice, many of which are directly relevant to reproductive health care.

By placing reproductive health in a broader context, a rights-based approach can provide tools to analyse the root causes of health problems and inequities in service delivery. By emphasizing fundamental values, most notably respect for clients and their reproductive decisions, a rights-based approach can shape humane and effective reproductive health programmes and policies. By taking advantage of the international human rights treaty system, a rights-based approach can challenge the status quo and Pressure governments into working proactively for reproductive health.

4.10.2 Reproductive rights in the modern era

The concept of reproductive rights is rooted in the modern human rights systems developed under the auspices of the United Nations (UN). Since 1945, the UN has created internationally recognized standards for a range of human rights, including the rights to health and has established mechanisms to promote and protect those rights. In response to atrocities committed during World War II, the UN General Assembly adopted the Universal Declaration on Human Rights in 1948.

It should be noted that transforming the legal obligations into a genuine political commitment to reproductive rights, however, requires concerted and

sustained pressure from women's advocates as well as government instruments and support. The women's empowerment movement drew attention to human rights abuse stemming from women's subordinate position in society and pressured governments to change the circumstances of women's lives. It is in this volition that the struggle against FGM has taken root.

The 1993 World Conference on human rights in Vienna affirmed that women's rights are human rights and should not be subordinated to cultural or religious traditions. The conference also made a breakthrough for reproductive rights, acknowledging that human rights can and should be broadly applied to the areas of sexuality and reproduction. In due cognizance of this conference's outcomes, it ought to be observed' that by the fact that FGM interferes with a woman's health and sexuality, is itself condemned. Thus, he who mutilates a woman on the cultural grounds does not only violate the stipulations and outcomes of the conference but also the woman (victim's) natural entitlement. The 1994 International Conference on Population and Development in Cairo created a comprehensive framework to realize reproductive rights and health. Women's advocates persuaded government to reject population policies focused solely on reducing fertility and to forge a new approach that focused instead on meeting individual women's needs for a wide array of reproductive health services. The 1995 Fourth World Conference on Women in Beijing confirmed and built on the link established in Cairo between women's reproductive rights and human rights already recognized by international treaties and national laws. The Beijing Platform for Action took a holistic, rights-focused view of health and the social, political and economic factors that affect it. It focused on governments' obligation to fulfill the right to health by creating the conditions that enable women to realize their right to health.

4.10.3 Fundamental principles and reproductive rights

Many of the human rights defined in international treaties have implications for reproductive health care (Table X). They guide almost every aspect of the

delivery of care, defining what services must be offered, to whom and in what fashion. However, three principles are key for reproductive health:

(i) Based on the right to liberty, to marry and found a family, and to decide the number and spacing of one's children, individuals have the right to control their sexual and reproductive lives and make reproductive decisions without interference or coercion.

(ii) The right to non-discrimination and respect for difference requires governments to ensure equal access to health needs of women and men.

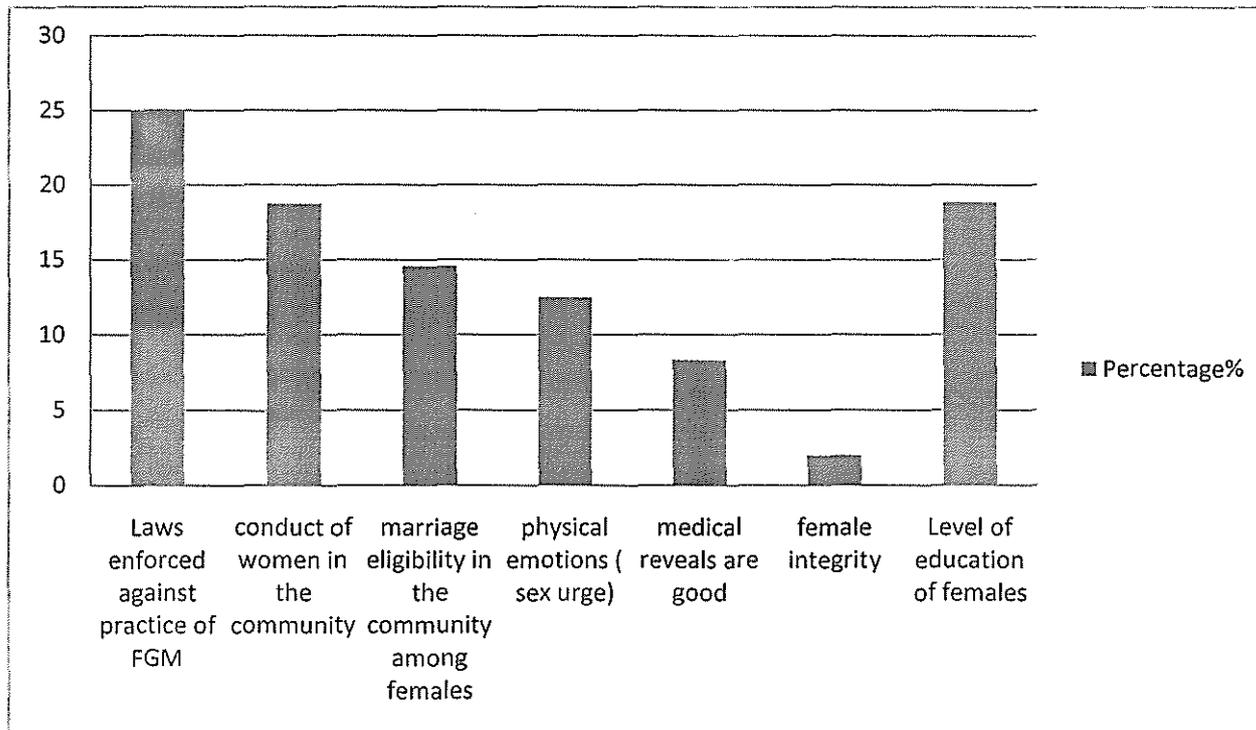
(iii) To fulfill the people's rights to life and health, governments must make comprehensive reproductive health services available and remove barriers to care.

Achievements of human rights and female genital mutilation in present districts in Kapchorwa, Kween, and Bukwo particularly in Sabiny community.

This part handles the achievements of human rights in the transformation of the females in sabiny communities. Respondents state how human rights as a law has benefited females in Kapchorwa, Kween and Bukwo district in particular; Figure 5 shows results from findings .

Figure 5 shows reveals that females stated benefits of human rights against the practice of FGM in Sabiny communities as follows;

Figure 5; achievements of human rights against FGM practice in Kapchorwa, Kween and Bukwo districts



Laws enforced against practice of FGM (25%) conduct of women in the community (18.75) marriage eligibility in the community among females (14.58%) physical emotions (sex urge) (12.5%), medical reveals are good (8.33%), level of education of females 18.84% and female integrity (2%). This implies that out of the many achievements of Human Rights in the present district of Kapchorwa, Kween and Bukwo, the law that was enforced effectively among the females against female genital mutilation banned, and improvements on education levels of women, conduct of women or girls in the community topped as the major achievements of Human Rights and (FGM) Female Genital Mutilation in Sabinu community in Uganda in particular.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

Introduction

This study on FGM/FC and Human Rights in Sabiny land, was aimed at examining the phenomena of the practice, that is to say, the study was aimed at discussing how the abuse of women human rights occurs. It discusses the law on FGM, giving the human rights provisions which protect women from violence and discrimination. The study also shows how effective the law on FGM has been, and the recommendations that the government and non-government organization have to consider when implementing the law on FGM.

First, the origin of FGM/FC a ritual that is practiced by the Sabiny community is unknown and this practice is so deeply imbedded in the value system of the communities that it's abolition is likely be seen as an attack on the old-age respected cultural practices and beliefs of the communities. This is one of the factors that explain the persistence of the practice. Therefore, government and other concerned bodies to achieve total abandonment of the practice, a lot of effort and various measures should be adopted and incorporated in prevention of FGM.

Secondly, it has been discovered that, the types of FGM practiced is spontaneous infibulations which involves an operation where the clitoris and labia minora are cutoff. Girls who avoid the circumcision usually relent under heavy social pressure and intimidation from relatives and neighbors despite the promise of lifelong pain and the possibility of death. Even a woman who manages to get married prior to circumcision is likely to be pressured into it after marriage by her in-laws. The fear of being a social outcast forces many women to have their girls circumcised. Therefore protection of girls and women,

boasting their confidence and making them realize their rights is essential in doing away with the practice.

Third, in Uganda the persistence of FGM/FC has been due to the weakness of the legislative protections for the victims of such harmful practices. These loopholes in the law were due to the fact that the provisions of the Penal Code Act (now repealed) did not specifically address issues of FGM/FC. However, with the enactment of the Prohibition of Female Genital Mutilation Act 2010, there is hope that the long time harmful practice of FGM will be abandoned.

Fourth, FGM/FC has been branded internationally as a violation of women human rights as provided for under Article 3 of the Declaration on the Elimination of Violence Against Women, for example the right to life (in case of death), equality and liberty. FGM is an act carried out against the will of girls and women who have to undergo the painful brutal experience of a circumcision with the use of knives and razorblades, leaving them to nurse physical wounds and psychological torture.

5.2 Recommendations

While the government of Uganda should be applauded for passing the legislation that bans female circumcision, the fact that girls are still undergoing the procedure demonstrates the need for a responsive action. So what can be done to achieve total abandonment of FC/FGM in Uganda? We know that FGM functions as a social norm for those communities that still practice it. So it is difficult for anyone family to abandon it on their own. To do so would risk the marriage eligibility of daughters as well as a loss of social status for the entire family. The Study recommends that;

1. The government should carefully consider application of criminal sanctions for FC/FGM.

As does any legal measure condemning FC/FGM criminal laws specifically prohibiting the practice help strengthen the position of those advocating for

change where the laws are enforced, they may create incentives for change in individual behavior. There are important reasons why in most African countries, the instruments of law should not be used too strongly to stop FC/FGM¹²⁸

- (i) Law enforcement mechanisms are weak and lack of resources.
- (ii) In kinship-based societies, behavioral change at the individual level is difficult to achieve without the approval of the community to which the person belongs. Therefore taking legal action against one's own relative may cause graver social and economic repercussions for the person belongs. Therefore taking legal action against one's own relative may cause graver social and economic repercussions for the person filing a complaint than any penalty the court applies to the defendant.
- (iii) When FC/FGM is common among one ethnic group, and another, enacting and applying a criminal law could fuel ethnic animosities.

However a well-studied and strategically timed introduction of a criminal law prohibiting FC/FGM is a strong political and logical tool. If social change is well underway with substantial popular backing and approval from the political establishment, the process would itself serve to accelerate the change.

2 The government should provide other legal protections against FC/FGM

In addition to criminal prosecution, there are a number of legal mechanisms that can be employed to discourage FC/FGM. For example, with adequate mechanisms for adjudicating civil claims and enforcing judgments, FC/FGM can be recognized as an injury that gives rise to a civil lawsuit for damages or other remedies. Girls who have undergone FC/FGM can seek money damages from practitioners. Such lawsuits would have a long term effect of deterring practitioners from performing FC/FGM. Other procedures may be available to

¹²⁸Anika Rahman and Nahid Toubia

prevent the procedure from occurring in the first place. Individual women and girls wishing to avoid undergoing the practice have sought judicial intervention. For example, at least one girl in Uganda was able to avoid undergoing FC/FGM by obtaining the protection of a court.¹²⁹ However, while civil legal actions are a potentially effective means of influencing individual behavior and protecting girls and women from the practice, such mechanism have not consistently been utilized.¹³⁰

3. The government should put in place regulatory measures in

(1) Health professionals;

Medical ethics standards should make it clear that the practice of FC/FGM upon non- consenting children or women violates professional standards. Medical practitioners who engage in the practice should be subject to disciplinary proceedings and should lose their licenses to work in the medical field. Uganda, should take the example of Sudan, where government health authorities have sanctioned traditional birth attendants and village midwives, who participate in FC/FGM by confiscating their midwifery kits and placing them under close supervision¹³¹.

Non-government organizations should be permitted to organize and operate without government interference. NGOs play a crucial role in implementing activities aimed at stopping FC/FGM. They have also been instrumental in governing community support for women's rights not to undergo the practice. NGOs should be permitted to monitor government efforts to eliminate 'FGM and to hold government accountable for failure to fulfill their international

¹²⁹Kasole Josephine, op.cit p.4

¹³⁰Anika Rahman and Nahid Toubia, op.cit p 67

¹³¹Inter-African Committee, Traditional Practices Affecting the Health of Women and Children, No. 19 KIME (1996), pg8.

obligations. In addition, government should finance NGOs engaged in programmers designed to stop FC/FGM and be willing to work with them.

The government should continue implementing policy measures like education.

Where the government should devote resources to supplying information to FC/FGM practicing communities about this practice and human rights in general. This information should emphasize the potential psychological and physical impact of FC/FGM on women, girls and the community at large; and demonstrate the manner in which human rights are affected by FC/FGM; and focus on the needs of women and girls while involving the entire community. Government should rely on the assistance of NGOs, local leaders and health care professionals to collect and to provide this information in an effort to generate social dialogue. Moreover government resources, skills, development and training.

4. The Media

Policies relating to the media, especially those that are owned by the government, should facilitate public dialogue on FC/FGM. In addition, in countries in which government exerts considerable control over the media, media outlets should be encouraged to discuss the right of women and girls to be free from FC/FGM. Moreover, groups or individuals advocating against FC/FGM should not be denied access to the media. Rather, policies should, be established to facilitate the Medias access to such advocates.

5. Empowering Women

Women cannot abandon the practice of FC/FGM until they have the information, material conditions and skills to access different options. Since FC/FGM is a prerequisite for marriage, women and girls whose economic security depends upon their ability to be married have little choice but to undergo FC/FGM.

Uganda government should reform policies that prevent women from raising their economic, social and political status, including ensuring that both women and men have the right to work and the right to equal pay for equal work. They also have a responsibility and obligation to support women and encourage their participation in all aspects of community life. Barriers to women's ability to access credit and training should also be addressed.

Government should ensure girls equal access to education by allocating sufficient resources and adopting gender appropriate policies. Government should also work to ensure women's participation in public and decision making.

6. The government should ensure that women and girls have access to reproductive health services.

Government should not lose sight of the link between the practice of FC/FGM and the need for reproductive health services for all women. First, such service can be a critical avenue for supplying information to women about their own reproductive health. Women who understand the harmful health consequences of FC/FGM may be less likely to undergo FC/FGM and encourage their daughters to do so. Second, women who have already undergone FC/FGM have the greatest need for medical attention, particularly during pregnancy, child birth and the post — partum period. These special healthy needs have explicit recognition in Togo's recent legislation prohibiting FC/FGM, which requires public and private health facilities to ensure that women and girls who have undergone the procedure receive the most appropriate medical care when arranging these facilities.¹³²

¹³²Nahid Toubia, *Caring for Women with circumcision; A Technical Manual for Health Care Provider*, (1999), New York, P71.

International legal standards establish not only that women and girls have the right not to undergo FC/FGM, but that government must take action to ensure that women and girls are indeed enabled to make such a choice.¹³³

In taking action against FC/FGM, the measures that government employ should themselves conform to accept human rights norms.¹³⁴ These recommendations are intended to guide government towards compliance with these norms. Government should therefore, bear these recommendations in mind when formulating legal procedures, regulatory and policy response to the practice of FC/FGM and when evaluating existing initiatives. By undertaking some or all of the recommendations presented, Uganda could take an important step towards promoting the well being of its people.

¹³³ Anika Rahman and Nahid Toubia op.cit.p.71

¹³⁴ Ibid 76

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