

An Advocate's Guide to Action

FEMALE
GENITAL
MUTILATION

A MATTER OF HUMAN RIGHTS

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Female Genital Mutilation
A Matter of Human Rights

An Advocate's Guide to Action

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Center for Reproductive Rights

This practical guide is adapted from a book entitled *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*, edited by Anika Rahman of the Center for Reproductive Rights (the Center) and Nahid Toubia of the Research, Action and Information Network for the Bodily Integrity of Women (RAINBO) and published in 2000 by Zed Books (United Kingdom). If you would like to obtain a copy of this book, please contact the Center.

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Introduction

The practice of female genital mutilation (FGM) has received a great deal of attention in recent years at both the national and international levels. One of the most highly debated issues is the role that law should play in addressing a social practice that is strongly anchored in cultural beliefs and norms. While history tells us that law alone cannot change social behavior, the recent adoption of criminal laws prohibiting FGM in many African and Western nations has established a role for law in advancing the process of social change. Another commonly posed question is whether the language of human rights is meaningful and appropriate for the majority of women who are affected by the practice of FGM. Our position is that FGM must be acknowledged as a violation of the human rights of women and girls—it cannot be separated from deep-seated and pervasive discrimination against women.

This guide was written in French by Sophie Lescure, an International Program Fellowship Attorney at the Center for Reproductive Rights. It was reviewed by Maryse Fontus and Laura Katzive, Staff Attorneys in the Center’s International Program. The Center would like to thank Prashanthi Dasanayake, a former International Program Assistant, and Danka Rapic and Kim Bylander, also former International Program Assistants, for their contribution to this publication. Morgan Stoffregen and Laura Katzive updated the information in this guide in 2006.

This publication is based on a book entitled *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*,¹ written by the Center for Reproductive Rights and the Research, Action and Information Network for the Bodily Integrity of Women (RAINBO) and published in 2000 by Zed Books (United Kingdom). This longer work provides more extensive human rights analysis and an examination of the laws and policies that have been adopted or are applicable to FGM in the nations in which this practice is prevalent.

This practical guide is intended for advocates working to stop the practice of FGM. Its objective is to assist advocates in their efforts to engage their governments in this struggle. It develops a framework by which to hold governments accountable under international human rights law and identifies the duties of governments to ensure that women are free to abandon the practice of FGM. Because nongovernmental organizations (NGOs) play a crucial role in this process, this guide proposes strategies for future action by these groups.

I. Female Genital Mutilation: Background and History

A. What is Female Genital Mutilation?

Female genital mutilation (FGM)² is the collective name given to several different traditional practices that involve the cutting of female genitals.³ The procedure is commonly performed upon girls anywhere between the ages of four and twelve as a rite of passage. In some cultures, it is practiced as early as a few days after birth and as late as just prior to marriage or after the first pregnancy.⁴ FGM is generally performed by a traditional practitioner who comes from a family in which generations of women have performed the procedure.

Interest in the practice has focused primarily on the physical and psychological damage that FGM can cause. However, the act itself is, at its essence, a basic violation of girls' and women's right to physical integrity and violates a number of recognized human rights. FGM is therefore increasingly being discussed and addressed in the context of girls' and women's rights, rather than as a strictly medical issue.

There are four main justifications cited for FGM:

- **Custom and tradition:** Communities that practice FGM maintain their customs and preserve their cultural identity by continuing the tradition.
- **Women's sexuality:** Society attempts to control women's sexuality by reducing their sexual fulfillment.
- **Religion:** It is important to note that FGM is a cultural, not religious, practice. In fact, while FGM is practiced by Jews, Christians, Muslims, and members of other indigenous religions in Africa, none of these religions requires it.

- **Social pressure:** In a community in which most women are circumcised, family and friends create an environment in which the practice of circumcision becomes a requirement for social acceptance.⁵

B. How Widespread is FGM?

Worldwide, an estimated 130 million girls and women have undergone FGM. At least two million women a year are “at risk” of undergoing some form of the procedure.⁶ Currently, FGM is practiced in 28 African countries in the sub-Saharan and Northeastern regions of Africa. Prevalence varies significantly from one country to another. For example, the prevalence rate is 92% in Mali, compared to 28% in Senegal.⁷ Women who have undergone FGM also live in African immigrant communities around the world, including in North America, Europe, Australia, and New Zealand.

C. What are the Health Consequences of FGM?

The World Health Organization (WHO) has grouped the types of FGM into four broad categories:

- **Type I (commonly referred to as “clitoridectomy”):** the excision of the prepuce with or without excision of the clitoris;
- **Type II (commonly referred to as “excision”):** the excision of the prepuce and clitoris together with partial or total excision of the labia minora;
- **Type III (commonly referred to as “infibulation”):** the excision of part or all of the external genitalia and stitching or narrowing of the vaginal opening;
- **Type IV:** all other procedures involving partial or total removal of the female external genitalia for cultural or any other non-therapeutic reasons.

FGM has serious health consequences for girls and women. The immediate complications include severe pain and bleeding that can lead to hemorrhaging. Long-term complications include chronic infections, infertility, problems during pregnancy, and pain during sexual intercourse. There have been few studies on the psychological effects of FGM. Some women, however, have reported a number of problems, such as disturbances in sleep and mood.

D. Historical Account of the Fight Against FGM

While the first documented attempts to stop FGM date back to the early twentieth century, it is possible that undocumented initiatives were carried out by local populations prior to this time.

Early last century, colonial administrations and missionaries tried to ban the practice in some African countries, but their efforts met with little success. In the 1940s and 1950s, the governments of Sudan and Egypt passed laws prohibiting FGM, which were ineffective because they were not accompanied by adequate information campaigns and outreach.

In the 1960s and 1970s, women's groups in many countries led campaigns to raise awareness about the harmful effects of the practice. In addition, doctors in Sudan, Somalia, and Nigeria who observed patients suffering from complications of FGM began to document the procedure and to write about its clinical complications in medical journals.

In 1979, WHO sponsored the first Seminar on Harmful Traditional Practices Affecting the Health of Women and Children in Khartoum (Sudan). This seminar ended in the rejection of a suggestion from the medical participants that FGM be performed under favorable hygienic conditions.

The international community again addressed the human rights implications of FGM at a series of international conferences: the World Conference on Human Rights in Vienna in 1993; the International Conference on Population and Development (ICPD) in Cairo in 1994, and the Fourth World Conference on Women in Beijing (Beijing Conference) in 1995.

Recent years have been marked by a change in approach in the information, education, and communication campaigns directed at the practice of FGM. Innovative methods, such as the use of music, theater, and films, have been increasingly employed to reach the population. These methods have been incorporated into programs carried out by the health sector and schools.

Along with these advances, there has been a heightened focus on the manner in which the practice of FGM violates women's rights, as illustrated by the recent adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Protocol on Women's Rights), which explicitly recognizes women's right to be free from FGM. In addition, legal and human rights organizations have begun including information on FGM in training programs on women's rights for lawyers, judges, and society at large. Increasingly, the law is being used to combat the practice, and legislation criminalizing FGM has been adopted in many countries (see Table I).

II. International Human Rights Law: A Framework for Social Justice

This chapter examines FGM within an international human rights law framework.

A. Background

Most contemporary human rights are based on international treaties signed by governments in the post-World War II era. In general, these treaties sought to establish universal standards by recognizing fundamental rights and requiring governments to take action to ensure that such rights are respected. The standards set by governments around the world in their own countries are key to the development of human rights norms.⁸ Since national-level laws and policies may also incorporate human rights principles and develop these norms, domestic laws are important tools for interpreting international legal standards.

Despite the expansion of the human rights field to address social concerns, the means by which to enforce human rights remain limited. National courts are the first step in enforcing human rights principles. To create accountability at the international level, the United Nations human rights system has set in place procedures for reporting on current human rights conditions in nations around the world. This system sets human rights standards, monitors compliance, and makes recommendations to governments for future action to ensure human rights.

B. Sources of International Human Rights Law

Three of the earliest and most authoritative human rights instruments are the Universal Declaration of Human Rights (the Universal Declaration),⁹ the International Covenant on Civil and Political Rights (the Civil and Political Rights Covenant),¹⁰ and the International Covenant on Economic, Social and Cultural Rights

(the Economic, Social and Cultural Rights Covenant).¹¹ Strong legal support for the right of women and girls to abandon FGM is also found in more recent treaties, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)¹² and the Convention on the Rights of the Child (Children's Rights Convention).¹³ These international treaties have been supplemented by regional treaties, including the African Charter on Human and Peoples' Rights (the Banjul Charter)¹⁴ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention),¹⁵ which contain provisions protecting the rights of women and girls. Nearly all of the African countries in which FGM is practiced are parties to the Banjul Charter (see Table II).

Additional sources of international human rights law include

- declarations and resolutions adopted by inter-governmental international organizations, such as the Declaration on the Elimination of Violence Against Women, which has been adopted by the General Assembly and which characterizes FGM as a form of violence;¹⁶ and
- documents adopted at international and regional conferences. These include the Programme of Action of the ICPD¹⁷ and the Beijing Declaration and Platform for Action,¹⁸ both of which call upon governments to take action against FGM.

It is important to recognize that most of the human rights protected in international and regional instruments may also be enshrined in national-level legal instruments. Consequently, human rights advocates may be able to rely on these national-level instruments without invoking international norms.

C. Major International Human Rights Violated by FGM

As noted above, FGM has for decades been recognized as a danger to women's health. Since the 1980s, the practice has increasingly

been considered a human rights violation. Addressing FGM as a violation of international human rights law places responsibility for the practice with governments, who have a duty to ensure the enjoyment of human rights in their jurisdictions.

Subjecting girls and women to FGM violates a number of rights protected in international and regional instruments. These rights include the right to be free from all forms of gender discrimination, the rights to life and to physical integrity, the right to health, and children's right to special protections.

1. The Right to be Free from Gender Discrimination

The right to be free from gender discrimination is guaranteed in numerous international human rights instruments. Article 1 of CEDAW takes a broad view of discrimination against women, defining it as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.”¹⁹ FGM is a practice aimed primarily at controlling women's sexuality and subordinating their role in society. When a woman undergoes FGM, she is a victim of discrimination based on sex that compromises the recognition and enjoyment of her fundamental rights and liberties. The impact of FGM on women's human rights is recognized explicitly in the recently adopted African Protocol on Women's Rights, which requires all states parties to prohibit and condemn “all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards.”²⁰

2. The Rights to Life and to Physical Integrity

The rights to life and to physical integrity are considered core human rights. The right to life is protected by a number of international instruments, including the Civil and Political Rights Covenant. The Human Rights Committee, the body that monitors implementation of the Civil and Political Rights Covenant, interprets the right to life as requiring governments to adopt “positive measures” to preserve life.²¹ FGM can be seen to violate the right to life in the rare cases in which death results from the procedure.

The right to physical integrity, while often associated with the right to freedom from torture, encompasses a number of broader human rights principles, including the inherent dignity of the person, the right to liberty and security of the person, and the right to privacy. Acts of violence that threaten a person’s safety, such as FGM, violate a person’s right to physical integrity. Also implicit in the principle of physical integrity is the right to make independent decisions in matters affecting one’s own body. An unauthorized invasion of a person’s body represents a disregard for that fundamental right. Violations of the right to physical integrity are most obvious when girls and women are forcibly restrained during the procedure. No less compromising of physical integrity is the subjection of non-protesting girls and women to FGM without their full, informed consent.

3. The Right to Health

Under Article 12 of the Economic, Social and Cultural Rights Covenant, individuals are entitled to enjoy “the highest attainable standard of physical and mental health.”²² The Committee on the Elimination of Discrimination Against Women (CEDAW Committee), the body that monitors implementation of CEDAW, in its recent General Recommendation on Women and Health,

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 FGM.

The complications associated with FGM often have severe consequences for a woman's physical and mental health. But even in the absence of complications, where FGM results in the removal of bodily tissue necessary for the enjoyment of a satisfying and safe sex life, a woman's right to the "highest attainable standard of physical and mental health" has been compromised. In addition, 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.

4. The Rights of the Child

Because children generally cannot adequately protect themselves or make informed decisions about matters that may affect them for the rest of their lives, international human rights law grants children special protections. The right of the child to these protections has been affirmed in the Children's Rights Convention. Article 1 defines a "child" as a person below the age of 18 unless majority is attained earlier under the law applicable to the child.²³ Article 3 affirms that "the best interests of the child shall be a primary consideration."²⁴ While this principle may be broadly interpreted to accommodate varying cultural views on what constitutes a child's best interest, such interpretations should be consistent with the Convention's other specific protections.

The international community has generally regarded FGM as a violation of children's rights because FGM is commonly performed upon girls between the ages of four and twelve, who are not in a position to give informed consent. The Children's Rights Convention requires States Parties to take "all suitable effective measures to abolish traditional practices that are prejudicial to the health of children."²⁵ The concern to stop traditional practices

that are harmful to health is also evident in the African Charter on the Rights and Welfare of the Child (the African Charter), which was adopted by the Organization for African Unity in 1990.²⁶

D. Other International Human Rights to Consider

The use of human rights principles to condemn the practice of FGM has given rise to counter-arguments, also drawn from international human rights law. The right to culture, the rights of minorities, and (despite the absence of a religious duty to practice FGM) the right to religious freedom are often raised to suggest that FGM should not be subject to government interference. Some have argued that the right to enjoy one's own culture and to choose one's own religion should not be subject to government intervention, and that government action to prevent FGM is an intolerable intrusion. This view is not, however, supported by international human rights law, which limits these rights to protect individual human rights, health, and safety. It is up to the government to decide how to put an end to FGM while respecting the rights of minorities and the rights to culture and to freedom of religion.

A human rights approach to FGM places the issue within a broader social justice agenda—one that emphasizes the responsibilities of governments to ensure the full spectrum of women's rights.

III. Duties of Governments Under Human Rights Law

To what extent do governments have a duty to ensure that girls and women in their jurisdictions are empowered to exercise their right to abandon FGM?

A. Duties of Governments

As a general rule, international human rights law governs the actions of states, not of private parties. However, the fact that FGM is typically performed by private individuals does not relieve states of accountability for the practice. Under international human rights law, governments are bound not only to refrain from violating people’s rights, but also to ensure that rights are universally enjoyed in their jurisdictions. Governments may thus be held responsible for failing to take steps to prevent the practice of FGM.

Governments’ duty to take action against FGM has its foundation in the provisions of international human rights treaties, such as the Civil and Political Rights Covenant, which obligates states “to respect and to ensure” rights guaranteed therein.²⁷ This language implies a duty to prevent violations of human rights at the hands of either the government or private parties. CEDAW is more explicit in framing this obligation, requiring that states take “all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.”²⁸

International human rights instruments also impose specific duties upon governments. At least four obligations pertain to FGM:

- The duty to modify customs that discriminate against women is affirmed in CEDAW (Articles 2 and 5)²⁹ and in the documents adopted at certain United Nations conferences, such as the

Vienna Declaration and Plan of Action,³⁰ the Programme of Action of the International Conference on Population and Development,³¹ and the Beijing Declaration and Platform for Action.³² The African Protocol on Women's Rights specifically directs states parties to take the following measures:

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;*
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;*
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;*
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.³³*

- The duty to abolish practices that are harmful to children is established in the Children's Rights Convention and the African Charter. The Children's Rights Convention recommends that states "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."³⁴ In addition, the Children's Rights Committee, the body charged with monitoring compliance with the Children's Rights Convention, has consistently characterized FGM as a "harmful traditional practice" that governments must work to eliminate.³⁵ The African Charter calls upon states to "abolish

customs and practices harmful to the welfare, normal growth, and development of the child in particular: (a) those customs and practices prejudicial to the health or life of the child, and (b) those customs and practices discriminatory to the child on the grounds of sex or other status.”³⁶

- The duty to ensure health care and access to health information has been articulated in a number of international and regional conventions, including the Economic, Social and Cultural Rights Covenant.³⁷ Health education is a crucial strategy for eliminating FGM. Governments should undertake educational efforts at the community level to inform women of the health risks of FGM. In addition, as affirmed in the African Protocol on Women’s Rights, women and children who have already been subjected to FGM and who are suffering from the complications of the procedure should have access to the care they need. Finally, governments themselves should take no action that compromises the right to health care. The CEDAW Committee, in its General Recommendation on Women and Health, characterizes governments’ obligation to provide health care as the duty to respect, protect and fulfill that right.³⁸ When a physician performs FGM in a public hospital upon a child or a woman who has not given informed consent,³⁹ governments are implicated in a practice that interferes with women’s right to health care, in violation of their duty to respect that right.
- The duty to ensure a social order in which rights can be realized is defined in the Universal Declaration, which states that “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”⁴⁰ This provision implies that governments have a duty to identify and address the social and economic factors that may prevent some sectors of society from exercising their human rights. Preventing women from abandoning FGM is the fact that, in a number of communities, women and girls who do not undergo FGM may have difficulty entering into marriage. In societies in which there are cultural barriers to

women's economic independence, a woman's inability to marry deprives her of basic economic security.⁴¹ Efforts to eliminate FGM, therefore, must include action to improve the status of women in every sector of society.

B. Measuring Compliance

Under international law, the prevailing legal standard used to assess government action or inaction is the general one of "due diligence." Governments are required to exercise due diligence in preventing, investigating, and punishing violations of human rights by both government actors and private persons.⁴² Where governments fail to act with due diligence to ensure protected rights, they may themselves be held responsible for violations of those rights by private parties.

In 1988, the Inter-American Court of Human Rights elaborated upon the due diligence standard in the Velasquez Rodriguez case, which addressed disappearances in Honduras.⁴³ The court determined that the government of Honduras could be held responsible for the kidnapping of Angel Manfredo Velasquez Rodriguez, even without proof of direct government action. The court's opinion relied upon Article 1 of the American Convention, which requires the states that are parties to this convention to "ensure" the free and full exercise of the rights and freedoms recognized therein.⁴⁴ The Court held that this duty to "ensure" protected rights required States to act with due diligence in taking the necessary steps to protect individuals from violations of their human rights.

IV. Recommendations for Governments

Stopping the practice of FGM involves a sea change in societal and individual thinking. To effect such profound social change, government action should take multiple forms and should be part of a long-term process of promoting social justice for all, particularly women.

This chapter recommends actions for governments of African countries and for governments of countries with immigrant communities from the parts of Africa in which FGM is prevalent (“receiving countries”). Suggested government action can be divided into roughly three categories:

- *Legal Measures:* These measures should be viewed broadly to include reforms necessary to promote women’s rights, as well as laws specific to the practice of FGM.
- *Regulatory Measures:* Regulatory measures are aimed at specific groups, such as health professionals, who may be in a position to discourage the practice of FGM.
- *Policy Measures:* Policies, which may provide the framework for education and outreach programs, may be part of broader initiatives aimed at promoting women’s empowerment.

It should be noted that measures addressing FGM in African countries may differ from those adopted in receiving countries.

A. Legal Measures

1. Ratify and Implement International Human Rights Treaties

Of the 42 countries reviewed in Table II, 39 are parties to CEDAW, and three (Somalia, Sudan and the United States) are not. Forty

countries have ratified the Children’s Rights Convention and two (Somalia and the United States) have not.

Government ratification of treaties is merely a first step toward social change. Subsequent national-level action must be taken to ensure that all existing domestic legislation is compatible with the ratified treaty. Future legislation must also be reviewed to determine its compatibility with the treaty. In some circumstances—as in the case of FGM—governments may have to enact laws and adopt policies to address widespread practices that violate the principles upheld in the treaty.

When governments ratify human rights treaties, it is important that they not undermine the force of these instruments by entering reservations. Reservations are statements made by governments declaring their intent not to be bound by certain provisions of a treaty. Reservations made by governments should be consistent with the “object and purpose”⁴⁵ of the treaty. Reservations that are so broad as to undermine the intended force of the treaty are regarded as invalid under international law.

2. Ensure Constitutional Protection of the Rights of Women and Girls

Most countries, as parties to international human rights treaties, have acknowledged a duty to protect women and girls from practices that threaten their physical integrity. This duty should be enshrined in national-level legal instruments, including the constitution—a nation’s law of highest authority. All legislation and government action should conform to the norms established in a nation’s constitution.

Governments should ensure that their constitutions contain provisions that guarantee the rights of women. These provisions should be broad enough to be interpreted to protect women against FGM. Where constitutions do not contain provisions that may be clearly interpreted to promote gender equality,

governments should consider amending their constitutions. Governments should also consider adopting a constitutional provision specifically addressing traditional customs harmful to women's health. Constitutional measures that ensure the right of women and girls not to undergo FGM create a concrete governmental obligation to work toward stopping the practice. Constitutional protections also enhance the possibility of engaging judicial bodies in these efforts. At the very least, constitutional protections represent a clear governmental commitment to protecting the rights of women and girls, which could add to the legitimacy of a developing social movement.

3. Adopt Reforms to Promote Equality of the Sexes

Because enabling women to make the choice to abandon FGM requires an improvement of women's status, governments should reform all existing laws that serve as barriers to women's equality. In many cases, this requires changing family laws, such as those that relate to marriage, divorce, child custody, and inheritance, as well as laws relating to property. In receiving countries, laws should prevent discrimination against immigrants and other minorities, and recognize the rights of immigrant women. For example, women whose immigration status is dependent upon that of their husbands should be granted independent status after a certain period of time or upon a showing of violence on the part of the spouse. Additional legal reforms ensuring equal representation of women in the public sector would help promote equality of the sexes.

4. Carefully Consider any Application of Criminal Sanctions for FGM

Under no circumstances should governments criminalize the practice of FGM in the absence of a broader governmental strategy to change individual behavior and social norms. For countries that do elect to impose criminal sanctions for the practice of FGM, the following considerations should be taken into account.

i. Is New Criminal Legislation Needed?

When a government decides to apply criminal sanctions, it should consider two possibilities: enacting a law specifically prohibiting the practice of FGM or applying an existing criminal law that is broad enough to cover FGM. In both cases, the purpose is to characterize FGM as a criminal offense. If a government decides to penalize FGM in the absence of a law specifically prohibiting the practice, it should conduct an information campaign announcing that the practice gives rise to criminal sanctions under existing laws.

ii. A Clear Definition of FGM

Governments that decide to enact legislation specifically criminalizing FGM should ensure that the law states

- a clear definition of FGM;
- the types of FGM that are prohibited (see Section I); and
- the persons who are potentially liable under the law (e.g., parents, practitioners).

iii. Punishment of Parents

In keeping with their duty to promote “the best interests of the child,” governments should carefully consider the application of criminal law to the parents of girls who undergo FGM. A law that provides criminal sanctions for parents who procure FGM for their daughters may create undue hardship for the children involved. Even a short prison term involves the separation of members of a family and can have severe effects on the emotional life of a child. Governments should consider either assigning criminal sanctions only to the practitioners of FGM themselves, or assigning lighter penalties to parents than to practitioners.

In addition, governments should seek to employ alternative legal approaches, including the use of civil rather than criminal mechanisms (see sub-section 5, Other Legal Protections Against FGM).

iv. Conditions of Consent

Some governments do not penalize the practice of FGM when an adult woman consents to undergoing it. While governments must respect women's autonomy in making decisions about their bodies, they should also take into account whether conditions are in place to allow women to give informed consent to undergoing FGM. Informed consent, according to the United Nations General Assembly, is consent to a medical intervention that is "obtained freely, without threats or improper inducements."⁴⁶ In the context of FGM, respect for women's autonomy requires a consideration of the impact of extreme social, cultural, and religious pressures on women's ability to decide freely to undergo FGM, with full knowledge of the consequences.

v. Effect on Minorities

Where FGM is practiced primarily by a minority ethnic group, criminal laws prohibiting FGM must not be used as a pretext for harassing or persecuting members of that group. In countries in which minority rights are vulnerable, governments should make it clear that their actions are not motivated by an interest in disrupting the lives of members of a minority ethnic group.

The governments of receiving countries should avoid allowing xenophobic forces in the majority population to use FGM as a pretext for discrimination against immigrants. Moreover, governments should engage in regular consultation with different immigrant groups and set up appropriate educational programs. Such measures would reflect government sensitivity to immigrant and refugee concerns.

5. Other Legal Protections Against FGM

In addition to criminal prosecution, there are a number of other legal mechanisms that can be employed to discourage FGM. For example, FGM can be recognized as an injury that gives rise to a civil lawsuit for damages or other remedies. Civil legal actions are a potentially effective means of influencing individual behavior and protecting girls and women from FGM.

Many countries have child-protection laws that could potentially be applied to prevent girls from undergoing FGM. Unlike criminal laws, child protection laws are concerned less with punishing parents than with ensuring that a child's interests are served. These laws permit government intervention when a child is abused by her parents or guardian. They provide mechanisms for removing a child from parental custody when there is reason to believe that abuse has occurred or is likely to occur. Where FGM is considered a form of abuse, these laws may help prevent girls from undergoing the procedure.

B. Regulatory Measures

1. Health Professionals

Medical ethics standards should make it clear that the practice of FGM upon children or non-consenting 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.

2. NGOs

NGOs should be permitted to organize and operate without government interference. NGOs play a crucial role in stopping the practice of FGM. They should be permitted to monitor government efforts to eliminate FGM and to hold governments accountable for failure to fulfill their international obligations. In

addition, governments should finance NGOs engaged in creating programs designed to prevent FGM.

C. Policy Measures

1. Education

Governments should devote resources to supplying information about the harmful effects of FGM to communities in which FGM is practiced. Governments should also support human rights education. Educational programs should

- emphasize the psychological and physical impact of FGM on women and girls;
- examine the history and purpose of FGM;
- promote human rights and demonstrate the manner in which these rights are affected by FGM; and
- focus on the needs of women and girls while involving the entire community.

Governments should rely on the assistance of NGOs, local leaders, and health-care professionals to bring together this information and generate dialogue at the community level.

It is especially important to ensure that governments of receiving countries work in cooperation with community-based immigrant NGOs in creating and executing these educational programs. This will enhance these governments' ability to reach girls and women affected by FGM and to disseminate appropriate information.

2. The Media

When the media are government-owned, or subject to considerable government influence, these outlets should be used as instruments to facilitate public dialogue on FGM and on the right of women and girls to be free to decide whether or not to undergo FGM.

3. Empowering Women to Make Their Own Decisions

Women cannot abandon the practice of FGM until they have the means to participate in all sectors of society. In countries in which FGM is a prerequisite for marriage, women and girls whose economic security depends upon their ability to be married are not able to make their own decisions about the procedure freely. Governments should work to ensure women's equal access to education, participation in public office, and access to credit. Women should also enjoy equality with men in the workplace, earning an equal salary for equal work.

There is much that governments of receiving countries can do to contribute to the empowerment of women. While governments should respect the community life of new immigrants, governments should also ensure that immigrant women are able to make informed choices about their own bodies and access all the life options available in their new country. For example, governments should support programs that offer job training, instruction in the language of the majority, and information regarding avenues for legal protection.

4. Ensure Access to Reproductive Health Services

Governments should ensure appropriate access to reproductive health services, whether or not a woman has undergone FGM. Women who have undergone FGM should have access

to the information and health care they need. In addition, reproductive health care services can be a source of information for women about their own reproductive health, making it easier to understand the harmful consequences of FGM. A better understanding of these health effects may make women less likely to choose to undergo FGM or to encourage others to do so.

International legal standards establish not only that a woman has the right to reject FGM, but that governments must take action to ensure that women and girls are empowered to make such a choice. In taking action against FGM, the measures that governments employ should themselves conform to accepted human rights norms. The recommendations in this chapter are intended to guide governments toward compliance with those norms. By adopting some of the recommendations presented, a government could take an important step toward promoting the well-being of its people.

V. Legal and Political Strategies for NGOs

Today it has become common wisdom that to affect social behavior, governments must work with NGOs. This section is devoted to NGOs that are working to engage their governments and civil society in efforts to address FGM.

Given the many differences amongst the countries and communities in which FGM occurs, it is impossible to identify one specific strategy for stopping the practice in all of them.

However, several general principles should be adopted:

- As for all other issues of social justice, it is essential that those who lead the process of change be those who are aggrieved and therefore stand to benefit most from the correction of the injustice. It is therefore essential that the movement to stop FGM and all other gender-based discrimination in Africa be led by African women. All other supporters must become allies and should not attempt to take leadership.
- Women cannot stand alone in their demand for social justice. They must involve other sectors of society. Women need allies among politicians, religious leaders, health professionals, and all other influential individuals and groups in society.
- Campaigns to stop FGM cannot be separated from broader efforts to promote women's reproductive and sexual rights. It is important to respect the totality of women's humanity and to recognize that women's right to bodily integrity entitles them to the full enjoyment of their sexuality without the threat of death, disease, social sanctions, or abuse in war and political conflict.

A. Programmatic Approaches to FGM

Before launching into recommendations for NGO action, this section provides a brief review of the programmatic approaches to FGM undertaken in many countries thus far. The foregoing discussion is intended to provoke thought, but does not recommend or discourage any particular approach.

1. The Health Risk or Harmful Traditional Practice Approach

The health risk approach is aimed specifically at the physical consequences of FGM. Because women's social status is not taken into consideration, the discriminatory and otherwise harmful nature of FGM itself is not deemed to necessitate stopping the practice altogether. This problem is illustrated by a survey conducted in Egypt, which revealed that FGM is increasingly being performed by doctors rather than traditional midwives.⁴⁷ Thus, as a result of the health risk/harmful traditional practice approach, families switched to doctors in order to avoid physical complications of FGM. They saw no reason, however, to stop the practice altogether.

2. Comprehensive Economic and Social Development Prioritizing Women's Empowerment

This long-term approach seeks to combine social and economic development with empowerment of women in order to persuade their communities to commit to abandoning FGM. These programs include income generation, health, and literacy training. This approach so far has yielded productive results in some settings, such as the village of Dir El Barsha and other communities and families in other parts of Egypt.⁴⁸

3. Participatory Educational Programs for Women's Empowerment

Participatory education programs include literacy training, analytical skills and problem solving, health information, and information about human rights principles. This approach seeks to empower women by providing them with the information and self-confidence that enable them to make the decision to stop FGM. The women then decide to make a public declaration in support of abandoning FGM. The success of this strategy was evident in Senegal, where this approach was tried over a period of two years in one village. The women in this village successfully negotiated support from their husbands and religious leaders and publicly declared their desire to stop FGM. This approach has two elements in common with the previous one in Egypt: the emphasis on women's empowerment and the involvement of the community, which culminates in a public commitment to abandon FGM.⁴⁹

4. Alternative Ceremonies for Rites of Passage for Girls

In determining alternative rites or ceremonies, NGOs usually consult with the community, particularly tribal and religious leaders. In some parts of Kenya, for example, the alternative ritual for girls is combined with a separate training that covers such topics as health, sexual behavior, marriage, and behavior towards the elderly. A noncutting ceremony is organized in which the community celebrates the rites of passage with gifts and food. While it is too early to assess fully the effectiveness of this approach, a number of Kenyan groups have already claimed success based on the increasing numbers of families enrolling in the rituals.⁵⁰

5. The "Positive Deviant" Approach

Persons who have abandoned the practice of FGM can be brought forward as role models. These role models can be parents,

teachers, religious leaders and others who have abandoned the practice or encouraged others to do so. Documenting the stories of how these individuals reached their positions on FGM enhances the effectiveness of this strategy.

6. “Social Marketing” to Community Leaders

This approach involves reaching out with a social-marketing message to the power holders of a community, showing them through a cost/benefit analysis that FGM is not good for the community. The purpose is to encourage the power holders to make a public declaration denouncing FGM. This outreach plan was initiated by an NGO in Uganda in a Sabini community in which girls are circumcised at the age of 16, just before marriage. In the first circumcision season after commencement of the program, the majority of the girls avoided being circumcised. Evidence suggests, however, that in the second year, the leaders’ opposition to the practice was not sustained and most of the girls were circumcised. This failure may be explained by the lack of involvement of the girls themselves in the decision to stop the practice of FGM.⁵¹

7. Educational Programs for Circumcisers

These programs are focused on involving circumcisers in education programs and training them for alternative sources of income that would make it possible for them to abandon FGM. Without action to address the desire of communities for the continuation of the practice, these programs may do little to eliminate demand for the services of the circumcisers.

B. Action at Different Levels

This section suggests strategies for NGOs working to stop FGM and to advance women’s rights at four levels: community, national, regional, and international.

1. Community Level

NGOs working at the community level are the most effective in undertaking awareness and outreach programs designed to provide women with the necessary tools to abandon FGM. Governments should be aware of the role of NGOs in this domain and should make every effort to support them and learn from their experience. Governments should facilitate NGOs' access to media wherever this may assist broader application of successful strategies.

The role of NGOs is of particular importance in receiving countries and in African countries where FGM is practiced by minorities. Because NGOs in these settings are likely to have ties to the community, they can create an atmosphere that is welcoming and non-threatening to immigrant and minority women seeking information or support.

2. National Level

These recommendations for NGOs working at the national level are focused on ensuring legal and policy change.

i. Lobby for Effective Legislation and Policy on FGM

Because they have unique experience and expertise, NGOs can play a crucial role in developing effective legislation addressing FGM and advocating for its adoption. In countries in which those who practice FGM are in the minority, NGOs can represent the interests of minority women and advocate on their behalf before the majority population. However, undertaking national lobbying efforts to influence laws, policy and public opinion is a long-term goal that requires numerous resources, including financial resources, knowledge of the legislative process, and access to government officials.

ii. Build Broad Coalitions to Support an End to FGM

NGOs should build broad national coalitions composed of individuals and groups from diverse fields, including human rights groups, community level NGOs, health professionals, and religious communities. Members of these different sectors can bring diverse expertise, and their joint participation could influence policy makers. In the context of FGM, it is particularly important to convince providers of the practice and religious leaders to speak out against FGM.

iii. Monitor Government Action

NGOs should monitor the actions that governments are taking to stop the practice of FGM. To undertake such activities, NGOs have to identify the government agencies and departments conducting activities focusing on FGM and determine the manner in which such branches are working together. It is important for NGOs to maintain a dialogue with the government about FGM. When government actions are inappropriate or not forthcoming, NGOs should consider whether additional dialogue or public criticism is more useful.

iv. Collect Data and Disseminate and Information Regarding FGM

NGOs should ensure that the information they have regarding FGM in their country is as complete as possible. NGOs working to end the practice of FGM should collect data on a regular basis on such matters as prevalence rates of FGM; who is affected by the practice; FGM-related activities at different levels of governments; and the legal framework and policies. NGOs may then determine the strategies by which they will present and disseminate this information, which may be made available in publications, short briefing papers and, where appropriate, on the Internet.

v. Engage in Litigation

NGOs should consider ways to use the judicial branch in their efforts to stop FGM. Litigation may be pursued for a number of different purposes. Lawyers may use the courts to attract publicity to the continued practice of FGM, to obtain compensation for an individual who has undergone the practice, to enforce a law intended to prevent FGM, or to challenge an existing law that is detrimental to the struggle against FGM. It should be noted that for lawyers in many countries, litigation may not be an effective strategy for upholding women's rights. Where legal protections are weak, judges are subject to political pressures, or lawyers' resources are limited, NGOs may achieve greater success through other forms of advocacy.⁵² NGOs should explore the availability of alternative dispute mechanisms that may advance NGO efforts to stop FGM.

vi. Undertake Public Information and Media Campaigns

NGOs should undertake public information and media campaigns on an ongoing basis. Such work is key to ensuring that FGM remains on the public agenda. Public education campaigns can involve conducting training workshops, producing easily understandable education materials, such as videos or publications in different languages, and using the Internet as a tool for education.

3. Regional Level

At the regional level, the strategies pursued by NGOs are different from those at the community and national levels, and more closely resemble the work undertaken at the international level.

i. Work through Regional Human Rights Monitoring Bodies

In three regions around the world, nations have established regional human rights organizations and have adopted regional human rights treaties containing provisions similar to those in international conventions. The Banjul Charter, which has been ratified by members of the African Union, creates the African Commission of Human Rights (African Commission). The Banjul Charter requires States Parties to submit reports to the African Commission every two years to document compliance with human rights norms. The African Commission also may receive and review communications from other sources, including victims of violations or anyone acting on behalf of such victims.⁵³ As noted above, the African Protocol on Women's Rights, which supplements the Banjul Charter, calls for the prohibition of harmful traditional practices such as FGM through legislative and other measures. States Parties to the protocol, which are obligated to ensure the implementation of the protocol at the national level, are required to submit periodic reports to the African Commission on their compliance with the protocol.

In the context of FGM, the work of NGOs within these regional institutions should focus on advocacy for the adoption of measures that promote women's ability to abandon the practice. NGO advocacy at the regional level should also include providing the regional bodies with as much information as possible about FGM. Before the African Commission, for example, NGOs can supplement information contained in states' reports and can influence the Commission in its questioning of government representatives. Moreover, groups can engage in dialogue with members of the Commission attending its sessions.

ii. Create Greater Awareness amongst Other Regional Institutions

Several UN commissions work at the regional level to assist governments to address population issues. These organizations include the Economic Commissions for Africa, Asia, Europe, and Latin America and the Caribbean. In addition, WHO has six regional sub-offices, which are based in Africa, the Americas, Asia, Europe, and the Middle East.

The United Nations' regional efforts to stop FGM have been underway for at least 25 years. In 1979, WHO organized the first regional conference on FGM in Sudan, which condemned the practice in all its forms. NGOs that are focused on these commissions and organizations, particularly those in Africa and Europe, should work to integrate the recommendations of the international community into the policies and procedures of these regional institutions.

4. International Level

i. Work through the UN Human Rights System

There are two general categories of mechanisms: bodies created pursuant to an international treaty or convention, and bodies that exist independently of such treaties and conventions.

National compliance with international human rights treaties is monitored by United Nations committees. Nations that are parties to these treaties are required to submit periodic reports to these committees. The committees then study these reports and issue recommendations and general comments. Committees have been established pursuant to CEDAW, the Economic, Social and Cultural Rights Covenant, the Civil and Political Rights Covenant, and the Children's Rights Convention, among others.

The other set of human rights bodies consists of the various commissions that have been created outside of the treaty framework to review state compliance with human rights norms. These commissions have jurisdiction over all nations. The United Nations Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights receive information from governmental and nongovernmental sources and, if warranted, adopt public resolutions on abuses or human rights violations in a given nation. When necessary, the Commission can also establish a body to study country conditions in greater depth and then issue a report.

Other non-treaty mechanisms, known as “thematic mechanisms,” have been established by the Human Rights Commission and Sub-Commission to address specific types of violations. The Special Rapporteur on Violence Against Women and the Special Rapporteur on Harmful Traditional Practices, for example, have a mandate to receive and seek information from governments and NGOs and submit annual reports containing recommendations for national and international actions.

These bodies can be very useful in efforts undertaken by the NGOs to eliminate FGM. In particular, NGOs can work within these UN mechanisms by undertaking three types of actions:

- providing the relevant body with independent factual information regarding government action at the national level to combat FGM; for example, writing a “shadow report” on a given country. These reports can be used as means of monitoring the progress made by a government in eliminating FGM;
- lobbying the different commissions for policy recommendations and general comments on the necessity of abandoning FGM; and
- supporting individual complaints regarding FGM that are

brought before either treaty monitoring committees or the thematic reporters.

ii. Increase Activities in Other UN Contexts

Other bodies within the UN system can be called upon to support efforts to stop FGM. For example, the General Assembly adopted the Declaration on the Elimination of Violence Against Women, which specifically cites FGM as a form of violence against women that should be eliminated.⁵⁴

The UN specialized agencies are also engaged in efforts to eliminate FGM in Africa. In 1997, WHO, the United Nations Children's Fund (UNICEF), and the United Nations Population Fund (UNFPA) issued a joint statement committing their support for policies to prevent the practice of FGM.⁵⁵ In their statements, all three agencies declare their intention to work with NGOs in their efforts to eliminate FGM.⁵⁶ NGOs should encourage these agencies to engage in further dialogue with governments. NGOs can also provide these agencies with valuable ideas for effective programs to eliminate FGM.

VI. Conclusion

Efforts to address FGM are part of a long-term process aimed at ensuring greater government involvement in the protection of women's rights. Characterizing FGM as a violation of the human rights of women and girls has significant consequences both for NGOs and for governments. By invoking human rights standards, advocates can hold governments accountable for their inaction in response to FGM.

The experience of nations around the world in addressing FGM reveals that no single approach can eliminate FGM. Criminal laws by themselves will not change people's behavior. Likewise, educational efforts, while often effective, cannot entirely eliminate support for the practice. Governments must be willing to undertake a multi-strategy approach to eliminating FGM. They should be receptive to the efforts of NGOs and international organizations that are also engaged in the struggle. All of these activities must be guided by a respect for the human rights of women and girls.

TABLE I
PREVALENCE RATES OF FGM AND OFFICIAL
ACTION AGAINST FGM

- ◆ Criminal law ✕ Constitutional law ★ Ministerial decree
 ○ Child protection law ■ Civil law ❖ Reproductive health law

Country (% prevalence rate ⁵⁷)	Specific FGM Laws/ Regulations	Existing Laws Recognized as Applicable to FGM
Australia	◆ ⁵⁸	
Belgium	◆	
Benin (17)	◆ ❖	
Burkina Faso (77)	◆	
Cameroon (1)		
Canada	◆ ○	
Central African Republic (36)	◆	
Chad (45)	❖	
Côte d'Ivoire (45)	◆	
Democratic Republic of Congo (5)		
Denmark	◆	
Djibouti (98)	◆	
Egypt (97)	★	◆
Eritrea (89)		
Ethiopia (80)	◆ ✕	
France		◆ ○
The Gambia (80)		

Country (% prevalence rate ⁵⁷)	Specific FGM Laws/ Regulations	Existing Laws Recognized as Applicable to FGM
Germany		◆
Ghana (5)	◆ ×	
Guinea-Bissau (50)		
Guinea (99)	◆ ❖	
Italy	◆	
Kenya (32)	○ ■ ◆	
Liberia (60)		■ ■
Mali (92)	★	◆
Mauritania (71)		◆
The Netherlands		◆
New Zealand	◆	
Niger (5)	◆	
Nigeria (19)	◆ state laws only (multiple states)	
Norway	◆	
Senegal (28)	◆	
Sierra Leone (90)		
Somalia (98)		
Spain	◆	
Sudan (90)		
Sweden	◆	■ ■
Tanzania (18)	◆	
Togo (50)	◆	
Uganda (5)	○ ×	■ ■
United Kingdom	◆ ○	
United States	◆ ○	

TABLE II
TREATY RATIFICATION BY COUNTRY⁵⁹

	<i>CEDAW</i> ⁶⁰	<i>Children's Rights Convention</i> ⁶¹	<i>Civil and Political Rights Covenant</i> ⁶²	<i>Economic, Social and Cultural Rights Covenant</i> ⁶³	<i>Banjul Charter</i> ⁶⁴	<i>African Charter on the Rights and Welfare of the Child</i> ⁶⁵	<i>African Protocol on Women's Rights</i> ⁶⁶	<i>European Convention</i> ⁶⁷
Australia	●	●	●	●				
Belgium	●	●	●	●				●
Benin	●	●	●	●	●	●	●	
Burkina Faso	●	●	●	●	●	●		
Cameroon	●	●	●	●	●	●		
Canada	●	●	●	●				
Central African Republic	●	●	●	●	●			
Chad	●	●	●	●	●	●		
Cote d'Ivoire	●	●	●	●	●			
Democratic Republic of Congo	●	●	●	●	●			
Denmark	●	●	●	●				●
Djibouti	●	●	●	●	●		●	
Egypt	●	●	●	●	●	●		
Eritrea	●	●	●	●	●	●		
Ethiopia	●	●	●	●	●	●		
France	●	●	●	●				●
The Gambia	●	●	●	●	●	●	●	
Germany	●	●	●	●				●

	<i>CEDAW⁶⁰</i>	<i>Children's Rights Convention⁶¹</i>	<i>Civil and Political Rights Covenant⁶²</i>	<i>Economic, Social and Cultural Rights Covenant⁶³</i>	<i>Banjul Charter⁶⁴</i>	<i>African Charter on the Rights and Welfare of the Child⁶⁵</i>	<i>African Protocol on Women's Rights⁶⁶</i>	<i>European Convention⁶⁷</i>
Ghana	●	●	●	●	●			
Guinea-Bissau	●	●		●	●			
Guinea	●	●	●	●	●	●		
Italy	●	●	●	●				●
Kenya	●	●	●	●	●	●		
Liberia	●	●	●	●	●			
Mali	●	●	●	●	●	●	●	
Mauritania	●	●		●	●		●	
The Netherlands	●	●	●	●				●
New Zealand	●	●	●	●				
Niger	●	●	●	●	●	●		
Nigeria	●	●	●	●	●	●	●	
Norway	●	●	●	●				●
Senegal	●	●	●	●	●	●	●	
Sierra Leone	●	●	●	●	●	●		
Somalia			●	●	●			
Spain	●	●	●	●				●
Sudan		●	●	●	●			

	<i>CEDAW⁶⁰</i>	<i>Children's Rights Convention⁶¹</i>	<i>Civil and Political Rights Covenant⁶²</i>	<i>Economic, Social and Cultural Rights Covenant⁶³</i>	<i>Banjul Charter⁶⁴</i>	<i>African Charter on the Rights and Welfare of the Child⁶⁵</i>	<i>African Protocol on Women's Rights⁶⁶</i>	<i>European Convention⁶⁷</i>
Sweden	●	●	●	●				●
Tanzania	●	●	●	●	●	●		
Togo	●	●	●	●	●	●	●	
Uganda	●	●	●	●	●	●		
United Kingdom	●	●	●	●				●
United States			●					

Endnotes

1. ANIKA RAHMAN & NAHID TOUBIA, *FEMALE GENITAL MUTILATION: A GUIDE TO LAWS AND POLICIES WORLDWIDE* (2000).
2. While the term “female genital mutilation” is commonly used by advocates of women’s rights and health who wish to emphasize the damage caused by the procedure, many organizations have opted to use local terminology or more neutral terms such as “female circumcision” or “female genital cutting.”
3. NAHID TOUBIA, *A CALL FOR GLOBAL ACTION* 9 (2d ed. 1995).
4. *Id.*
5. *Id.*
6. *Id.* at 29.
7. UNICEF, *FEMALE GENITAL MUTILATION/ CUTTING: A STATISTICAL EXPLORATION* (2005), at 32 [hereinafter UNICEF, *STATISTICAL EXPLORATION*].
8. FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS* 23 (2d ed. 1996); LOUIS HENKIN ET AL., *INTERNATIONAL LAW, CASES AND MATERIALS* 617 (3rd ed. 1993).
9. Universal Declaration of Human Rights, *adopted* December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*].
10. International Covenant on Civil and Political Rights, *adopted* December 16, 1966, 999 U.N.T.S. 171 (*entry into force* March 23, 1976) [hereinafter *Civil and Political Rights Covenant*].
11. International Covenant on Economic, Social and Cultural Rights, *adopted* December 16, 1966, 999 U.N.T.S. 3 (*entry into force* January 3, 1976) [hereinafter *Economic, Social and Cultural Rights Covenant*].
12. Convention on the Elimination of all Forms of Discrimination against Women, *adopted* December 18, 1979, 1249 U.N.T.S. 14 (*entry into force* September 3, 1981) [hereinafter *CEDAW*].
13. Convention on the Rights of the Child, *adopted* November 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th session, Supp. No. 49, U.N. Doc. A/44/49, *reprinted in* 30 I.L.M. 1448, (*entry into force* September 2, 1990) [hereinafter *Children’s Rights Convention*].
14. African Charter on Human and Peoples’ Rights, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev. 5 (1981), *reprinted in* 21 I.L.M. 59 (1982) (*entry into force* October 21, 1986) [hereinafter *Banjul Charter*].
15. European Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* Nov. 4, 1950, 213 U.N.T.S. 222 (*entry into force* Sept. 3, 1953) [hereinafter *European Convention*].
16. United Nations General Assembly, Declaration on the Elimination of Violence Against Women, art. 2(a), U.N. Doc. A/RES/48/104 (1993).
17. *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, September 5-13, 1994, U.N. Doc. A/CONF.171/13/Rev. 1 (1995) [hereinafter *ICPD Programme of Action*].
18. *Beijing Declaration and Platform for Action, Fourth World Conference on Women*, Beijing, China, September 4-15 1995, U.N. Doc. A/CONF.177/20 (1995) [hereinafter *Beijing Platform for Action*].
19. CEDAW, *supra* note 12, art. 1.
20. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2nd

- Ordinary Sess., Assembly of the Union, *adopted* July 11, 2003, art. 5 [hereinafter African Protocol on Women's Rights].
21. Human Rights Committee, *General Comment No. 6: The right to life* (art. 6), para. 5 (1982).
 22. Economic, Social and Cultural Rights Covenant, *supra* note 11, art. 12.
 23. Children's Rights Convention, *supra* note 13, art. 1.
 24. *Id.* art. 3.
 25. *Id.* art. 24(3).
 26. African Charter on the Rights and Welfare of the Child, *adopted* July 11, 1990, art. 21, OAU Doc. CAB/LEG/24.9/49 (1990) (*entry into force* November 29, 1999) [hereinafter African Charter].
 27. Civil and Political Rights Covenant, *supra* note 10, art. 2(1).
 28. CEDAW, *supra* note 12, art. 2(e).
 29. Article 2(f) requires States Parties to "[t]ake all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women . . ." *Id.* art. 2; Article 5(a) requires States Parties to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women . . ." *Id.* art. 5(a).
 30. *Vienna Declaration and Programme of Action, World Conference on Human Rights*, Vienna, Austria, June 14-25, 1993, U.N. Doc. A/CONF.157/23 (1993).
 31. *ICPD Programme of Action, supra* note 17.
 32. *Beijing Platform for Action, supra* note 18.
 33. African Protocol on Women's Rights, *supra* note 20, art. 5.
 34. Children's Rights Convention, *supra* note 13, art. 24(3).
 35. For example, Concluding Observations of the Children's Rights Committee: Ethiopia, para. 6, U.N. Doc. CRC/C/15/Add.67 (1997); Sudan, para. 13, U.N. Doc. CRC/C/15/Add. 10 (1993); Togo, para. 24, U.N. Doc. CRC/C/15/Add.83 (1997).
 36. African Charter, *supra* note 26, art. 21.
 37. Economic, Social and Cultural Rights Covenant, *supra* note 11, art. 12(2); CEDAW, *supra* note 12, art. 12; Children's Rights Convention, *supra* note 13, art. 24(1); Banjul Charter, *supra* note 14, arts. 14(2), 16(2); *Beijing Platform for Action, supra* note 18, para. 106.
 38. Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), *General Recommendation 24: Women and Health*, para. 13 (1999); *see also* Donna Sullivan, *The Nature and Scope of Human Rights Obligations Concerning Women's Rights to Health*, 1 HEALTH AND HUMAN RIGHTS 369, 377 (1995).
 39. According to the United Nations Resolution on Principles for the Protection of People with Mental Illnesses and the Improvement of Mental Health Care, informed consent is "consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language

- understood by the patient on a) diagnostic assessment; b) the purpose, method, likely duration and expected benefit of the proposed treatment; c) alternative modes of treatment, including those less intrusive, and d) possible pain or discomfort, risk and side-effects of the proposed treatment.” United Nations General Assembly, *Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care*, Principle 11(2), G.A. Res. 46/119, U.N. Doc. A/46/49 (1991). This definition was approved by the Committee for the Study of Ethical Aspects of Human Reproduction, FIGO RECOMMENDATION ON ETHICAL ISSUES IN OBSTETRICS AND GYNECOLOGY (1997).
40. Universal Declaration, *supra* note 9, art. 28.
 41. Joan Fitzpatrick, *The Use of International Human Rights Norms to Combat Violence Against Women*, in HUMAN RIGHTS AND WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 532-541 (Rebecca Cook ed. 1994).
 42. Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am. Ct. H.R. (Ser. C) No. 4 (1988).
 43. *Id.*
 44. France, for example, prosecutes cases of FGM on the basis of article 222-9 of the Penal Code, which prohibits acts of violence resulting in the mutilation of a minor under the age of 15.
 45. Vienna Convention on the Law of Treaties, *adopted* May 22, 1969, art. 2(d), U.N. Doc. A/Conf.39/27 (1969), *reprinted in* 8 I.L.M. 679.
 46. United Nations General Assembly, *Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care*, *supra* note 39, Principle 11(2).
 47. Egypt, National Population Council, Egypt Demographic and Health Survey (EDHS) (Press Release) EDHS/2 (1996).
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 49. TOSTAN, BREAKTHROUGH IN SENEGAL: A REPORT ON THE PROCESS USED TO END FEMALE GENITAL CUTTING IN 31 VILLAGES (1998).
 50. PROGRAM FOR APPROPRIATE TECHNOLOGY IN HEALTH (PATH), IMPROVING WOMEN’S SEXUAL AND REPRODUCTIVE HEALTH: REVIEW OF FEMALE GENITAL MUTILATION ERADICATION PROGRAMS IN AFRICA (1998).
 51. Elaiha Eliah, *REACHing for a Healthier Future*, POPULI, March 1996, at 12; Tom Masland, *The Ritual of Pain*, NEWSWEEK, July 5, 1999, at 61.
 52. CLAUDE E. WELCH, JR., PROTECTING HUMAN RIGHTS IN AFRICA: STRATEGIES AND ROLES OF NON-GOVERNMENTAL ORGANIZATIONS 56-57 (1995).
 53. *Id.* at 59.
 54. United Nations General Assembly, *Declaration on the Elimination of Violence Against Women*, art. 2(a), December 20, 1993, G.A. Res. 48/104.
 55. WORLD HEALTH ORGANIZATION (WHO) FEMALE GENITAL MUTILATION: A JOINT WHO/UNICEF/UNFPA STATEMENT (1997).
 56. *Id.* at 17-19.
 57. Sources for this table include NAHID TOUBIA, CARING FOR WOMEN WITH CIRCUMCISION (1999); UNICEF, STATISTICAL EXPLORATION, *supra* note 7; UNICEF INNOCENTI RESEARCH CENTRE, CHANGING A HARMFUL SOCIAL CONVENTION: FEMALE GENITAL MUTILATION/CUTTING (2005).

58. Six of eight states have enacted legislation. Two have indicated that existing penal code provisions are applicable.
59. Sources for this table include:
United Nations websites
 <<http://www.un.org/womenwatch/daw/cedaw/states.htm>>,
 <<http://www.ohchr.org/english/countries/ratification/11.htm>>,
 <<http://www.ohchr.org/english/law/ccpr-ratify.htm>>,
 <<http://www.ohchr.org/english/countries/ratification/3.htm>>;
the University of Minnesota Human Rights Library website
 <<http://www1.umn.edu/humanrts/instreet/ratz1afchar.htm>>;
the African Commission on Human and Peoples' Rights website
 <http://www.achpr.org/english/_info/index_ratifications_en.html>;
and the Council of Europe website
 <<http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/Dates+of+ratification+of+the+European+Convention+on+Human+Rights+and+Additional+Protocols/>>.
60. CEDAW, *supra* note 12.
61. Children's Rights Convention, *supra* note 13.
62. Civil and Political Rights Covenant, *supra* note 10.
63. Economic, Social and Cultural Rights Covenant, *supra* note 11.
64. Banjul Charter, *supra* note 14.
65. African Charter, *supra* note 26.
66. African Protocol on Women's Rights, *supra* note 20.
67. European Convention, *supra* note 15.

