



ACERWC
African Committee of Experts on
the Rights and Welfare of the Child



ACHPR
African Commission on
Human & Peoples' Rights

JOINT GENERAL COMMENT ON FEMALE GENITAL MUTILATION

June 2023

Organs of the
**African
Union** 

TABLE OF CONTENTS

(i)	Objectives.....	1
(ii)	Scope of the General Comment.....	4
B.	Principles underlying the interpretation of FGM.....	5
(i)	General principles of children’s rights.....	5
i.	Principle of the best interests of the child.....	5
ii.	Principle of non-discrimination.....	6
iii.	Principle of life, survival, and development.....	6
iv.	Principle of child participation	7
(ii)	The principle of gender equality.....	8
(iii)	Principle of intersectionality.....	9
(iv)	Principle of respect for bodily Integrity.....	9
C.	Relationship between children’s and women’s rights.....	9
D.	Regional policy and other measures related to FGM.....	11
E.	Normative Framework on elimination of FGM.....	13
a)	Relevant Provisions under the African Children’s Charter.....	13
b)	Relevant provisions under the Maputo Protocol.....	14
c)	Relevant provisions under the African Charter on Human and Peoples’ Rights.....	16
F.	State Obligations for the elimination of FGM.....	16
a)	General Obligations.....	16
b)	Specific obligations.....	18
(i)	Legislative measures.....	18
(ii)	Administrative and institutional measures.....	20
(iii)	Other measures for the elimination of FGM.....	24
G.	Partnerships and resources.....	28
H.	State Reporting obligations on FGM.....	30
I.	Implementation and dissemination of the General Comment.....	30

A. Objective and Scope of the Joint General Comment

(i) Objectives

1. Female Genital Mutilation (FGM) is a pervasive abuse of the rights of girls and women that is as old as human civilization. The practice is present in all regions of the world, though it is more prevalent within certain cultures and regions.¹ In Africa, the practice ranges in prevalence from minimal in some countries, to nearly universal in some other countries.² FGM permeates most social, economic, religious and cultural stratification in the African region. The age at which girls and women are most at risk of FGM may vary from one culture or community to another. Predominantly, however, FGM is undertaken either in early childhood, or as a rite of passage for girls, to mark the transition to puberty.³ Indeed, there is growing evidence that the age at which girls are subjected to FGM has continued to get lower in response to more restrictive laws aimed at eliminating the practice.⁴ This makes FGM a child rights issue. In other cases, however, including in situations where there have been intense efforts to protect girls from the practice of FGM, adult women are subjected to the vice. For these reasons, it is important that FGM is addressed as both a child and women's rights issue.
2. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) prohibits all forms of Female Genital Mutilation (FGM) and calls for their elimination.⁵ The African Charter on the Rights and Welfare of the Child (African Children's Charter) prohibits harmful social and cultural practices affecting the welfare, dignity, normal growth and development

1 UNFPA Bending the curve: FGM trends we aim to change, available at https://www.unfpa.org/sites/default/files/resource-pdf/18-053_FGM-Infographic-2018-02-05-1804.pdf (accessed 31 January 2023).

2 Saleema Initiative Africa Union Initiative On Eliminating Female Genital Mutilation Programme and Plan of Action 2019 – 2023, p5.

3 Saleema Initiative Africa Union Initiative On Eliminating Female Genital Mutilation Programme and Plan of Action 2019 – 2023 p5.

4 UNFPA Frequently asked questions available at https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#age_performed (accessed 30 January 2023)

5 Maputo Protocol, article 5(b).

of the child. In particular, the African Children's Charter prohibits those customs and practices prejudicial to the health or life of the child; and those customs and practices discriminatory to the child on the grounds of sex or other status.⁶ Such practices include FGM.⁷ FGM is embedded in the culture and customs of the communities that practice it.

3. This joint General Comment therefore responds to a pertinent need to provide specific and contextualised guidance, and to clarify and elaborate the measures necessary to fulfil State responsibility for the elimination of FGM to African countries that are State parties to the African Charter on Human and Peoples' Rights, The African Children's Charter, and the Maputo Protocol. The standards set out in these instruments have been augmented with advocacy initiatives, such as the Saleema Initiative⁸, hosted by the African Union. There is also other jurisprudence that seeks to interpret the respective protections and obligations, such as the Joint General Recommendation/Comment of the CEDAW and CRC Committees on harmful practices,⁹ and ongoing engagement with States on the practice through the treaty reporting process.

4. This General Comment seeks to clarify the scope and nature of State party obligations to eliminate FGM. In particular, the Joint GC seeks to clarify the duties arising under article 5(b) of the Maputo Protocol, Article 21(1) of the African Children's Charter, and other relevant provisions under both Instruments. This General Comment also elaborates the legislative, institutional, and other measures that State parties to the African Children's Charter and the Maputo Protocol ought to take to protect girls and women from FGM and to eliminate the practice. Specifically, this Joint General Comment highlights the legislative, institutional and other measures that should be taken to prevent and eliminate FGM; articulates the measures for accountability (individual and state level) in the context of human rights violations and gender-based violence resulting from FGM; elaborates on

6 African Children's Charter, Article 21(1).

7 The Committee, Agenda 2040, Aspiration 7.

8 See below, footnote 19.

9 UN CRC and CEDAW, *Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices* (2014).

medical, psychosocial, and other support services that should be made available for survivors of FGM; articulates measures that should be taken to prevent and ensure accountability for the cross-border practice of FGM; and the particular considerations to be taken into account in respect of asylum seekers fleeing from their countries due to the threat of FGM, or those who are internally displaced for the same reason.

5. The development of this joint General Comment acknowledges that, while there is a general acceptance of the legal, normative, and policy frameworks that prohibit FGM at the global, pan-African and national levels, the domestication and implementation of these norms has neither been sufficient, nor uniform across the African region. The disparity between principle and practice, and the failure of these measures to achieve the eradication of the practice testifies to the need for reflection on measures that are specific to the peculiar socio-cultural and economic context in Africa, which addresses both the causes and drivers of FGM in the African context. FGM is a multifaceted practice, with legal, social, cultural, economic, and religious dimensions. This General Comment underscores the need for comprehensive approach to effectively address FGM, beyond the law.
6. In this Joint General Comment,

“Female genital mutilation (FGM)” means ‘the practice of partially or wholly removing the external female genitalia or otherwise injuring the female genital organs for non-medical or non-health reasons.’¹⁰

“child” means a human being aged below 18 years of age, even if majority is attained earlier under national law.¹¹

“Harmful practices” means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health,

10 CEDAW and CRC Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices CEDAW/C/GC/31-CRC/C/GC/18, para 18.

11 Article 2 of the African Children Charter.

dignity, education and physical integrity.”¹²

“*Female Genital Cosmetic Surgeries (FGCS)*” involve alteration and/or manipulation of the female genitalia. FGCSs refer to procedures taken to alter female genitalia for aesthetic reasons.

(ii) ***Scope of the General Comment***

7. This General Comment elaborates the legislative, institutional, and other measures that State parties to the African Children’s Charter and the Maputo Protocol ought to take to protect girls and women from FGM and to eliminate the practice. Specifically, this Joint General Comment highlights the legislative, institutional and other measures that should be taken to prevent and eliminate FGM; articulates the measures for accountability (individual and state level) in the context of human rights violations and gender-based violence resulting from FGM; elaborates on medical, psychosocial, and other support services that should be made available for survivors of FGM; articulates measures that should be taken to prevent and ensure accountability for the cross-border practice of FGM; and the particular considerations to be taken into account in respect of asylum seekers fleeing from their countries due to the threat of FGM, or those who are internally displaced for the same reason. The Joint General Comment also clarifies how the four principles of children’s rights (the best interests of the child, life, survival and development, participation, and non-discrimination) as well as the principles of non-discrimination and equality of women ought to be interpreted in the context of FGM.

B. Principles underlying the interpretation of FGM

8. The African Committee of Experts on the Rights and Welfare of the Child applies four (4) general principles through which interpretation of all provisions on the Rights and Welfare of the Child, and all issues relating to the protection of the rights and welfare of a child, are addressed. These principles are: (1) the best interest of the

12 Article 1(g) of the Maputo Protocol.

child; (2) the child's right to freedom from discrimination; (3) the right to survival, development, and protection; and (4) the child's right to participate in matters affecting them. The African Commission on Human and Peoples' Rights aligns itself with these principles, in formulating this Joint General Comment.

(i) *General principles of children's rights*

As indicated in its General Comment on Article 1¹³, the Committee has adopted general principles for the interpretation of all the rights under the African Children's Charter. These general principles are:

i. Principle of the best interests of the child

9. Article 4(1) of the African Children's Charter provides that the best interest of the child shall be the primary consideration in all actions undertaken by any person or authority concerning the child. There is a duty on the States to ensure that all actors, including parents and guardians, are aware and respect the principle when dealing with children. The best interests of the child overrides any other competing considerations, including cultural, social or religious norms. Mindful of the fact that FGM has harmful consequences to the health and wellbeing of affected girls, the application of this principle means that there can be no justifiable reason for the practice.

ii. Principle of non-discrimination

10. Both the Maputo Protocol and the African Children's Charter make provision for the right to freedom from discrimination based on sex or gender. The principle of non-discrimination requires states parties to ensure that children are not discriminated against in the context of access to rights on the basis of prohibited grounds. FGM is a form of gender discrimination and is rooted in gender inequality. Similarly, certain groups of girls are at higher risk of FGM, due to factors such as literacy, economic and social status, religious beliefs, ethnic identity, or rurality. In applying the principle

13 African Children's Committee, General Comment No. 5 On "State Party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection" available at https://www.acerwc.africa/sites/default/files/2022-09/GENERAL_COMMENT_ON_STATE_PARTY_OBLIGATIONS_UNDER_ACRWC_%28ARTICLE%201%29_%26_SYSTEMS_STRENGTHENING_FOR_CHILD_PROTECTION_0.pdf

of non-discrimination, states ought to actively identify individual and groups of children at higher risk of FGM, and pay particular attention to girls in particularly vulnerable situations. This also means that states must designate specific resources to meet the higher needs of some groups in order to effectively eradicate FGM.¹⁴

iii. Principle of life, survival, and development

11. The principle of life, survival, and development requires that all actions taken in the implementation of rights must guarantee their survival, life and optimal development.¹⁵ FGM threatens the life of girls and women in some cases, and undermines their physical and psychological development. The Committee has previously noted that all rights contribute to the achievement of this principle. The Committee therefore reiterates a system approach to the protection of children, including in dealing with the practice of FGM. This approach calls for a coordinated approach to FGM, that is anchored in law, defined in a national strategy and accompanied by a clear action plan.¹⁶ Measures proposed towards the eradication of FGM should be holistic and integrated into every aspect of girls' wellbeing.

iv. Principle of child participation

12. The principle of participation protects the right of the child to freely express their opinions, and to be heard.¹⁷ A child who is capable of forming an opinion about a matter must be availed the opportunity to express such opinion, and for their views to be taken into account in decision making. Children's participation depends on access to relevant information and the availability of opportunities to express such opinions. Measures to address FGM should recognize the agency of girls against the backdrop of existing social and cultural contexts, facilitate their access to relevant information related to the practice, and take into account their views in defining measures to eradicate the practice.

14 Committee General Comment No. 5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, para 4.1.

15 African Children's Charter article 5.

16 Committee General Comment No.5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, para 6.1.

17 African Children's Charter, article 7.

(ii) *The principle of gender equality*

13. FGM is a practice that only affects people of the female sex. The practice is however driven by gender norms which are often anchored in custom, culture or religion. This reality does not in any way validate the legitimacy of the customary, cultural or religious credentials of the practice. The reasons for the practice of FGM are widely documented, and are mostly aimed at controlling women's sexuality and reproductive function.¹⁸ It is, in this way, an expression of patriarchal power, which seeks to control women's sexuality for patriarchal interests. This control undermines women's autonomy and perpetuates inequality between men and women in the exercise of their sexual and reproductive rights. Accordingly, it is essential that measures taken to address FGM are targeted not only at the practice itself, but the underlying social interests, structures and systems which undermine women's equality to men in society. States are required to incorporate gender equality indicators in national responses to end FGM. Further, all measures taken towards ending FGM must be gender sensitive and transformative.

(iii) *Principle of intersectionality*

14. The principle of intersectionality is derived from the theory of intersectionality, which provides a frame for analysis of difference, and hence the varied experience of people based on their respective identifying characteristics.¹⁹ In the context of FGM, the principle of intersectionality requires duty bearers to be mindful of the impact of the interaction of various identities amongst women and girls on their risk of being subjected to FGM and to apply this consciousness to the effectiveness of measures taken to address the practice. For instance, while FGM generally feeds off the power dynamics created by gender inequality in society, girls are further disempowered by the status of childhood as compared adult women in the same society.

¹⁸ CEDAW & CRC Joint General Recommendation/Comment on Harmful Practices, para 18; UNFPA, Frequently asked questions on FGM, available at <https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#why> (accessed 30 January 2023).

¹⁹ Cho, S et al "Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis" *Journal of Women in Culture and Society* (2013) 787.

15. Law policy, and practice against FGM must reflect and specifically respond to the particular vulnerability factors through the life cycle of women and girls, ranging from infancy, early childhood, pre-pubescence, adolescence and adulthood stages. Furthermore, women and girls from particular groups, such as those living in rural areas, women and girls from religious or cultural backgrounds where FGM is prevalent, women and girls from indigenous communities, women and girls in situations of conflict and crisis, women and girls who are displaced or refugees, and migrant communities interact with FGM differently. Women and girls with disabilities, and girls without parental care, may in some cases have a higher risk of experiencing FGM. The differences implicit in these identities may not always translate into higher risk for a particular group.

16. Furthermore, the factors of risk may change in the course of a girl or woman's lifetime, thereby changing their vulnerability to FGM. For instance, in communities that practise FGM as part of initiation rites, girls' vulnerability to FGM increases gradually as they approach puberty. Similarly, where a woman from a community that does not practise FGM marries into a community that practices FGM, her vulnerability to being subjected to FGM increases instantly. It is therefore important measures designed to eliminate FGM are nuanced to the peculiar circumstances and needs of each group. States must, as a matter of policy, articulate specific measures in respect of each vulnerable group present in their jurisdiction.

(iv) Principle of respect for bodily Integrity

17. FGM violates the physical integrity of the victim, and undermines their dignity. Most forms of FGM entail a certain measure of pain and permanent alteration. In most cases, the procedure is undertaken in conditions that are unhygienic and or demeaning to the affected women and girls. The reasons for the practice, particularly those related to controlling sexual desire, undermine the bodily autonomy and dignity of women, by reinforcing unequal relationships with men, and centering the role of women in society exclusively or predominantly around their sexuality and reproduction. The approaches taken to eliminate FGM therefore ought to frame FGM as an affront to the bodily integrity of women, and to affirm the dignity of women, the protection of which is inconsistent with the practice of FGM.

C. Relationship between children's and women's rights

18. FGM is a practice that affects people of the female sex at all ages. In Africa, FGM is practiced in childhood, whether at infancy, early childhood, or as a rite of passage from childhood into adulthood. This means that a majority of girls and women in African undergo FGM while still children. In some cases, however, adult women are subjected to the practice, either at the point of marriage, during the subsistence of the marriage, and in some cases, at the point of child birth.
19. This General Comment therefore straddles two specialist normative areas, that is, children and women's rights, which have respective specialist principles and standards. A child rights perspective is essential in understanding how the tender age of children (girls) contributes to heightened risk of violation and vitiates their consent. Childhood, as a form of contextual vulnerability, creates a higher duty for states parties to balance the requirements for protection from abuse and violation through FGM in childhood.
20. The Maputo Protocol advocates for equality between men and women. From this perspective, measures taken to address FGM ought to be cognizant of the underlying social dynamics that perpetuate inequality of men and women, and be designed to address such inequalities. This also means that addressing FGM is not just about the practice itself, but also about the recognition of women's equal dignity and rights, and the dismantling of a system of gender inequality anchored in patriarchy. The response to FGM must therefore be about the affirmation of equal dignity and rights, and of the agency and autonomy of women.
21. FGM is a pervasive abuse of the rights of girls and women that is as old as human civilization. The practice is present in all regions of the world, though it is more prevalent within certain cultures and regions.²⁰ In Africa, the practice ranges in prevalence from minimal in some countries, to nearly universal in some other countries.²¹ FGM permeates most social, economic, religious and cultural stratification in the

20 UNFPA Bending the curve: FGM trends we aim to change, available at https://www.unfpa.org/sites/default/files/resource-pdf/18-053_FGM-Infographic-2018-02-05-1804.pdf (accessed 31 January 2023).

21 Saleema Initiative Africa Union Initiative On Eliminating Female Genital Mutilation Programme and Plan of Action 2019 – 2023, 5.

African region. The age at which girls and women are most at risk of FGM may vary from one culture or community to another. Predominantly, however, FGM is undertaken either in early childhood, or as a rite of passage for girls, to mark the transition to puberty.²² Indeed, there is growing evidence that the age at which girls are subjected to FGM has continued to get lower in response to more restrictive laws aimed at eliminating the practice.²³ This makes FGM a child rights issue. In other cases, however, including in situations where there have been intense efforts to curb FGM of girls, adult women are subjected to the vice. For these reasons, it is important that FGM is addressed as both a child and women's rights issue.

D. Regional policy and other measures related to FGM

22. A number of initiatives have been instituted at the African Union and UN levels in response to FGM. The AU Agenda 2063 calls for action to eliminate FGM as part of the roadmap for the attainment of its goals.²⁴ Aspiration 7 of the AU Agenda 2040 for Children calls for the prohibition of FGM as one of the measures for the protection of children against violence. To give life to these policy commitments, the African Union convened an international conference on FGM in 2018, which adopted the Ouagadougou Call to Action on Eliminating Female Genital Mutilation.²⁵ In 2019, the African Union Initiative on Eliminating Female Genital Mutilation (the Saleema Initiative) was launched.²⁶ The goal of the Saleema Initiative is to galvanise political action to accelerate the elimination of FGM through strong legislation, increased allocation of financial resources, and strengthening of partnerships, particularly within communities most impacted by FGM.²⁷ The Saleema Initiative further seeks to address the negative gender and social norms that perpetuate FGM in Africa.

22 Saleema Initiative Africa Union Initiative On Eliminating Female Genital Mutilation Programme and Plan of Action 2019 – 2023, 5.

23 UNFPA Frequently asked questions available at https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#age_performed (accessed 30 January 2023).

24 AU Agenda 2063 The Africa We Want, Aspiration 6, priority 6.1.2.

25 African Union, Ouagadougou Call to Action on Eliminating Female Genital Mutilation (2018).

26 AU Assembly Decision 737/2019: Decision on Galvanizing Political Commitment Towards the Elimination of Female Genital Mutilation in Africa.

27 African Union, Saleema Initiative Africa Union Initiative on Eliminating Female Genital Mutilation: Programme and Plan of Action 2019 – 2023, available at https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-Saleema_Initiative_Programme_and_Plan_of_Action-ENGLISH.pdf

In 2019, a five year strategy for the Saleema Initiative was adopted which makes critical recommendations on what can be done to accelerate efforts to eliminate FGM.²⁸ These initiatives are complemented by extensive partner efforts across the continent.²⁹

23. Both the Committee and the Commission through their jurisprudence and previous General Comments have addressed the issue of FGM in their engagement with State Parties. For instance, in their Joint General Comment on Child Marriage, the Committee and Commission highlighted FGM as one of the harmful practices that contribute to the prevalence and impact of child marriage which needs to be prohibited and condemned.³⁰ Subsequently in General Comment No. 5, the Committee emphasized that the nature of responsibility on State parties in respect of addressing harmful practices, including FGM, leaves no room for defending such practices on the basis of custom, tradition, religion or culture.³¹ The Commission's Guidelines on Combatting Sexual Violence and its Consequences in Africa³² recognises FGM as a form of sexual violence that can constitute torture or cruel, inhuman and degrading treatment. The Guidelines thus urges States parties to implement specific policies for gender equality and to combat sexual violence, including FGM.

24. At the UN level, the Joint General Comment/Recommendation of the CEDAW and CRC Committees on Harmful Practices was adopted to:

“clarify the obligations of State parties to the Conventions by providing authoritative guidance on legislative, policy and other appropriate measures that must be taken to ensure full compliance with their obligations under the

28 African Union, Saleema Initiative Africa Union Initiative on Eliminating Female Genital Mutilation: Programme and Plan of Action 2019 – 2023, available at https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-Saleema_Initiative_Programme_and_Plan_of_Action-ENGLISH.pdf

29 Other related frameworks include the Mombasa Declaration on Cross Border FGM (2019).

30 Commission & Committee Joint General Comment on Child Marriage, para 48-49.

31 Committee General Comment on Article 5: General Comment No. 5 on “State party obligations under the African Charter on the Rights and Welfare of the Child (article 1) and Systems Strengthening for Child Protection” para 7.1

32 Commission Guidelines on Combating Sexual Violence and its Consequences (2010) available here <https://www.ty.org/legalinstruments/detail?id=4>

Conventions to eliminate harmful practices.”³³

With respect to FGM, the Joint General Comment/Recommendation recognises the gender discriminatory foundations, as well as the socio-cultural and religious foundations of the practice. Hence, the Joint General Comment/Recommendation underscores the need for State responses to adopt an approach that goes beyond individual behavioural change, to address the underlying social norms that drive the practice.³⁴

E. Normative Framework on elimination of FGM

State obligations set out in this Joint General Comment have been informed by the following normative framework:

a) Relevant Provisions under the African Children’s Charter

25. Article 21(1) of African Children’s Charter is the main article embodying the protection of girls from FGM. The article directs State parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity and normal growth of the child and in particular, those practices which are prejudicial to the health or life of the child and those practices which are discriminatory to the child on the grounds of sex or other status. Article 1(3) of the African Children’s Charter also requires State parties to discourage any custom, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the African Children’s Charter to the extent of such inconsistency

26. Article 3 prohibits non-discrimination and guarantees every child the enjoyment of the rights and freedoms recognised in the charter irrespective of the child or his or her parents or legal guardians race, ethnic group colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status. Article 5 obliges State parties to ensure to the maximum extent possible, the survival,

33 CEDAW and CRC Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices CEDAW/C/GC/31-CRC/C/GC/18, para 1.

34 CEDAW and CRC Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices CEDAW/C/GC/31-CRC/C/GC/18, para 18.

protection, and development of the child. Additionally, it gives the child the inherent right to life which shall be protected by law.

27. Article 16(1) protects children against child abuse and torture. State parties are obligated to take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhumane or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while the case of a parent, legal guardian, or school authority or any other person who has the care of the child. The Article goes further to provide protective measures which include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who care for the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child abuse and neglect.

b) Relevant provisions under the Maputo Protocol

28. The principal article addressing FGM under the Maputo Protocol is article 5. This article makes it mandatory for State parties to the Maputo Protocol to prohibit and condemn all forms of harmful practices which negatively affects the human rights of women and which are contrary to recognised international standards. In doing so, State parties are required to take all necessary legislative and other measures to eliminate such practices including prohibition through legislation backed by sanctions, of all forms of FGM, scarification, medicalisation and para medicalisation of FGM and all other practices in order to eradicate them. Article 5 also calls for creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes; provision of necessary support to victims of harmful practices through basic services such as health services, legal judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting; and the protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.³⁵

29. Article 4 provides for the respect for the life, integrity and security of the person of every woman. Specifically, the protocol prohibits all forms of exploitation, cruel,

35 Article 5 (a), (b) and (c) of the Maputo Protocol.

inhumane or degrading punishment and treatment. State parties to the Protocol are also required to take appropriate and effective measures to amongst other things identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence.

30. Article 8 of the Maputo protocol calls for the recognition of women's equality before the law, and in particular, the duty of states parties to adopt measures to ensure the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone on the rights of women; to equip law enforcement organs at all levels to effectively interpret and enforce gender equality rights; and to review and reform existing discriminatory laws and practices in order to promote and protect the rights of women. This article speaks to the social foundations of gender inequality from which FGM derives legitimacy and support. Measures aimed at eliminating FGM should be part of, and consistent with the wider agenda of eliminating gender inequality in society.

31. Article 17 of the Protocol recognises the right of women to live in a positive cultural context and to participate at all levels in the determination of cultural policies. FGM is propagated by cultural beliefs and practices. Hence, States are obligated to ensure that the cultural context underlying the practice evolves in order to eradicate FGM. A positive cultural context is one that is consistent with the values of equality, peace, freedom dignity, justice, solidarity and democracy.³⁶ States are also reminded of the duty to regularly review the customs and traditions of their society with the view to determine whether they jeopardise the rights of girls and women to be protected from FGM.³⁷

32. The review of customary norms should be aimed at aligning such norms with human rights norms and standards. National measures to eliminate FGM must include steps to protect women and girls who are at risk of harmful consequences including ostracism, stigma, economic exclusion, and the risk of injury or even death as a result of defying social norms and customs on FGM. Such measures must also reinforce the autonomy of women to make their own decisions regarding FGM, particularly in contexts where

36 See Preamble of the Maputo Protocol.

37 Preamble, Maputo Protocol.

social norms defer decision making on women's bodies to men. Respect for girls' and women's autonomy is integral to the protection of their dignity.

c) Relevant provisions under the African Charter on Human and Peoples' Rights

33. Article 18(3) of the African Charter on Human and Peoples' Rights (Banjul Charter) requires States Parties to 'ensure the elimination of every discrimination against women' and to ensure 'the protection of the rights of the woman and the child as stipulated in international declarations and conventions.' This provision empowers the Commission to review the compliance of states parties with obligations to eliminate FGM, even where such obligations arise from other international and regional human rights treaties and instruments.³⁸ This provision is reinforced by article 60 of the Banjul Charter, and 46 of the African Children's Charter, which mandate the Commission and Committee respectively, to draw inspiration from international and regional human rights law instruments, to which states parties to the Banjul Charter and African Children's Charter are party. Accordingly, by virtue of these provisions, all states parties to the Banjul Charter are bound to implement the obligations to eliminate FGM under the Maputo Protocol and the African Children's Charter, and as guided under this Joint General Comment in their respective jurisdictions.

F. State Obligations for the elimination of FGM

a) General Obligations

34. In terms of article 1 of the African Children's Charter, the duty to eliminate FGM, is that of the state. That duty requires "the adoption of legislative or other measures as may be necessary to give effect to the provisions of this Charter."³⁹ Such legislative measures are to be adopted in accordance with the constitutional processes of the respective countries. The African Children's Charter also requires states to discourage "any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter."⁴⁰ FGM is one of such practices that is rooted in customary, traditional, cultural, religious beliefs and practices.

38 Commission Guidelines for National Periodic Reports, part VII.

39 African Children's Charter, Article 1(1).

40 African Children's Charter, article 1(3).

35. Article 21(1) of the African Children’s Charter calls for states parties to “adopt all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and 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.” FGM has no health benefits, but has proven negative impact on the victims, including the loss of life in some instances. The reference to ‘all appropriate measures’ means that a multifaceted response is envisaged in response to FGM, and that legislative measures alone would be insufficient to meet the obligations under article 21(1).⁴¹

36. Article 2 of the Maputo Protocol provides that states “shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.” The reference to institutional measures includes the obligation on states parties to put in place the necessary administrative and governance structures that would make it possible to achieve the right in question.⁴² In the case of FGM, these include focal points within government with the responsibility for leading the state party’s efforts to address FGM.⁴³ Importantly, non-discrimination is an immediately realisable right, with immediate obligations for states parties. Accordingly, any plans or measures taken to address the practice cannot defer interventions to a future or later date.

b) *Specific obligations*

(i) *Legislative measures*

37. Article 1(1) of the African Children’s Charter obliges states to take adopt legislative measures necessary to give effect to the rights under the Charter, in accordance

41 See the Committee’s guidance on a systems approach to child protection in General Comment No.5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, para 6.1.

42 Maputo Protocol article 4(i).

43 See the Committee’s guidance on the importance of a systems approach to child protection and effective coordination in General Comment No.5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, para 6.1 – 6.2.

with their constitutional processes. Article 5 of the Maputo Protocol requires states parties to prohibit and condemn of all forms of FGM through legislative and other measures. The obligations arising under these two articles are specific and prescriptive in nature. The Maputo Protocol requires states to ensure that national legislation specifically prohibits and condemns FGM, and further that it prescribes sanctions for perpetrating the practice. It is therefore not enough to address FGM in omnibus provisions related to crimes of assault. The legislation must set out clear parameters for the enforcement of prohibition, including clearly defining FGM. States parties must also ensure that the framing of the law does not expose victims of FGM to prosecution, or otherwise characterize them as having participated in committing the crime. Legislation that targets victims risks unfairly criminalising people who are already victims.

38. Further to the foregoing articles, states parties are reminded to the overarching duty under both the Maputo Protocol and the African Children's Charter. In particular, article 2 of the Maputo Protocol requires states parties to adopt legislative measures, and in particular, to recognize gender equality in their constitutions as a starting point, and to reflect the same ideal in other legislation. States parties also have to ensure that the laws are effectively implemented. In terms of the African Children's Charter, the ACERWC has stated that legislation to underscore the right of girls to be protected from FGM is a necessary element for the fulfilment of the right provided under article 21(1) of the Charter.⁴⁴ States are also reminded of the guidance by the ACERWC in General Comment No. 5, that national laws must specify that the protection under article 21(1) of the Charter overrides any religious, cultural or social justifications for FGM. States are therefore obliged to ensure that the prevalence of the prohibition of FGM over customary and social norms is explicitly captured in the law.

39. There is a further responsibility to ensure enforceability of the protection from FGM by victims, including by ensuring that courts are easily accessible to all. It is important that national laws clarify the parameters for accountability for FGM, including specification of reporting responsibilities in the case of children, and the differentiated nature of criminal culpability for each of the parties involved in the

44 Committee General Comment No. 5, para 5.3.1

practice. In particular the law should distinguish the culpability of the perpetrator(s), including medical professionals, and others that may have aided or abetted the act such as parents, spouses or other relatives, from that of the victim. In addition, national laws should make it possible to have private prosecution of the perpetrators of FGM.⁴⁵ States should also ensure that national laws are harmonised with each other, and with human rights standards, to facilitate coherence across all relevant policies, programmes and services, such as FGM related healthcare.

40. In cases where sub-national governance structures exist, legislative steps taken ought to guarantee that laws, policies and practices of the sub-national level of government do not undermine the state's duty to eliminate FGM. As the Committee has previously stated, the principle of a unitary state with responsibility for implementation must be stressed. It is the responsibility of the State Party to institute overarching coordination mechanisms in federal systems which can ensure equal implementation of the rights contained in the Charter across all parts of a territory, without discrimination.⁴⁶

41. Specific measures should be taken to address the medicalisation and para-medicalisation of FGM. Medicalisation and para-medicalisation of FGM refers to situations in which FGM is practised by any category of health-care provider, irrespective of the location where it is performed, and includes the procedure of re-infibulation at any point in time in a woman's life⁴⁷. The use of medical and paramedical professionals to perform FGM is often intended to reduce the incidence of health complications arising from the practice. Medicalisation and para-medicalisation does not eliminate the harmful consequences of FGM. It is inconsistent with the goal of eradication of the practice, and must be prohibited in law and practice.

45 Committee General Comment No. 5 para 7.2

46 Committee General Comment on article 1:General Measures of Implementation and Systems Strengthening, p17.

47 WHO, Global Strategy to Stop Healthcare Providers from Performing Female Genital Mutilation (2010) 2.

42. States must ensure that their laws prohibit and sanction the direct and indirect involvement of medical and paramedical professionals in FGM. The law should specify professional designations covered under the rubric of medical and paramedical professionals. States parties must also ensure that the code of conduct and other regulatory frameworks for medical and paramedical professionals specifically preclude them from practising FGM. Measures taken in this regard shall not outlaw or make it unduly risky or difficult for medical and paramedical professionals to provide post-FGM care to survivors.

(ii) ***Administrative and institutional measures***

43. States should establish measures to provide support to girls and women who experience FGM. The nature of support envisaged under article 5(c) of the Maputo Protocol include “health services, legal and judicial support, emotional and psychological counselling, and vocational training to make them self-supporting.” The package of health services available to survivors of FGM should include emergency healthcare services in the immediate aftermath of the cutting, and long-term care as may be necessary. It must also include obstetric and reproductive care that may be necessitated by the effects of FGM. Services to physically reconstruct victim shall be promoted. Post-FGM health care shall not be subject to the consent of third parties, including parents.

44. Considering the prevalence of FGM amongst the economically marginalized communities, such health care services should be provided free of cost within public health facilities. States should explore collaborations with non-governmental facilities to expand the scope of services available to girls and women at risk of or who have been victims of FGM. States must also guard against rural-urban disparities in the distribution of services aimed at elimination of FGM, by taking steps to reach communities in remote areas, including through the use of mobile healthcare services.

45. To facilitate access to justice, states parties should avail functional and effective legal aid to women and girls who wish to pursue legal action in respect of the

perpetrators of FGM. States should also facilitate the training and sensitization of law enforcement, prosecution and judicial officers on handling matters related to FGM, including appropriate and gender sensitive approaches to evidence gathering and preparation, which safeguard the integrity, dignity and safety of the girls and women involved.⁴⁸ This includes ensuring that law enforcement are accessible and have sufficient personnel, training and facilities to provide survivors, women and girls at risk of FGM and others who make reports with responsive, survivor-centred support.

46. States parties are particularly required to reform their laws related to standards and nature of evidence to recognise potential difficulty in obtaining evidence in FGM related crimes, due to the close connections that the victim might have with the perpetrators and the fact that the FGM is practised in private, which makes it difficult to track or obtain evidence of. State should adopt legislation to ensure that frontline child care and/or protection workers, including teachers, health and social workers are obligated to exercise due diligence in reporting and collecting and/or corroborating evidence of FGM encountered in the ordinary course of their duties. Any action taken in this regard must respect the dignity of the child affected. States parties must ensure that the national law makes it possible for women and girls to pursue civil action within the national justice system for violations resulting from FGM, and that the full range of civil remedies is available to them, including payment of damages.

47. FGM has serious and negative psychological effects on the affected women and girls. Such psychological impact can be long-term, and have a deleterious effect on other aspects of their lives, thereby limiting their ability to function optimally in the society and undermines long-term outcomes of their lives. It is therefore important to ensure that psychological counselling, care and support services are provided to girls and women who undergo FGM, free of charge and in proximity to them. The state should ensure the availability of such services through schools, community health structures, and where necessary, in collaboration with CSOs, religious institutions,

48 United Nations, The Theory and Practice of Women's Access to Justice Programming: A Practitioner's Toolkit on Women's Access to Justice Programming (2018) available at https://www.ohchr.org/sites/default/files/WA2J_Module1.pdf

and other private actors providing such services. Initiatives to support peer-to-peer learning and mentorship should form part of the broader efforts to eradicate FGM.

48. States should ensure that administrative machinery, including community and local government structures, such as village councils, chiefs and other local administrative posts are empowered to monitor FGM practices at the local level. This is particularly important because of the prevalence of the practice in rural areas, and their close proximity to affected communities, which makes them accessible to girls and women at risk or who have been subjected to the practice. The approach to collaboration with these structures should take cognizance of the potential for individuals within such structures to be complicit in the practice, and hence ensure accountability measures are in place where this could arise.

49. The state should ensure that there is effective coordination between the institutions and measures put in place to address FGM. A mechanism is recommended, to provide oversight and coordination, including in integrating FGM into educational, health, social services, judiciary and law enforcement, and facilitating effective coordination and optimum functioning of local administrative and community service structures working on FGM.

50. The African Children's Committee and the Commission note that in some cases, girls and women are taken across borders to a neighbouring country for FGM, in an effort to evade the consequences of the law prohibiting FGM in their country of residence. This is especially prevalent where there are different legal standards applicable in the neighbouring country, in respect of FGM. Measures should be taken to ensure that the protection from FGM applies to cases where a girl or woman has been taken across the border, and that there is accountability for parties involved in such cases. The framework for accountability in this regard may also be articulated within the legal and policy framework of the Regional Economic Communities (RECs), due to the freedom of movement that RECs facilitate, and which is a significant enabler of the practice. States should sign judicial cooperation agreement to enable prosecution of cross border FGM.

51. States parties should also ensure that their laws prohibit FGM in respect of all girls and women within the jurisdiction of the state, irrespective of the citizenship

or residential status of the victim. This is important to address the practice where girls and women from countries where the laws are strict on FGM, are trafficked to less restrictive countries, specifically to have FGM done. Lack of uniformity in the law and its enforcement across borders creates a conducive environment for cross-border practice of FGM and undermines efforts for universal elimination of the practice. States parties should therefore, through legislation, assert authority to prosecute FGM related offences even when committed outside their borders, so long as the perpetrator and or victim is a citizen of the state.

52. States shall recognise the particular vulnerability of girls and women to FGM in situations of conflict, crisis, and emergencies. These situations are often characterised by breakdown of the rule of law and the collapse of institutions and infrastructure, exposing girls and women to illegal and harmful practices, including FGM, with impunity. States shall ensure that the design and implementation of humanitarian responses in such situations, including humanitarian response by third parties, prioritises measures for the protection of girls and women from FGM. Humanitarian response shall also include access to comprehensive care consistent with measures set out in other parts of this General Comment for victims.

53. Girls and women fleeing the prospect of FGM may sometimes find refuge in a country other than their own. A reasonable fear of FGM can constitute a threat to one's safety, sufficient to warrant the pursuit of protection beyond one's borders. States Parties are thus encouraged to ensure that their laws make it possible for girls and women fleeing the threat of FGM to obtain asylum in their jurisdiction.

(iii) *Other measures for the elimination of FGM*

54. Beyond legislative and administrative measures, the implementation of both the Maputo protocol and the African Children's Charter recognise the need for additional measures to give full effect to the rights in both instruments. FGM is a complex social problem, with tentacles in various aspects of the life of practising communities. The dimensions of the practice impact on social identity and belonging (including access to means of production), personal security, political currency, and faith, amongst others. Accordingly, while legal provisions establish a strong basis for the fight against FGM, they are grossly inadequate to achieve

eradication. Instead, measures towards eradication of FGM must be similarly multi-pronged and cross-sectoral.

55. The Maputo Protocol embeds measures such as “political empowerment, education, sensitisation, outreach, public awareness and resource allocation” into the legal guarantees of the Protocol.⁴⁹ This approach is intended to facilitate realization of the rights beyond adoption of laws. The ACERWC has also indicated the importance of additional or other measures to ‘breathe life into the principle legal sources.’⁵⁰ Such measures may include “policies, regulations, directives, subsidiary legislation, and implementing tools.”⁵¹ As part of their national strategy to tackle FGM, states parties must specifically elaborate the other measures, additional to legislative and administrative action, taken towards eliminating FGM in their jurisdiction.

56. Specific to FGM, the Maputo Protocol specifies some additional for states parties to take in order to protect women who are at risk of FGM (Maputo Protocol article 5(d)). Such measures include provision of state funded shelters and places of safety for girls and women at risk, and ensuring that information about such measures is made available to the general population, and particularly amongst girls and women at risk.⁵² Such shelters must be accessible to the women and girls, including in terms of geographic proximity, disability inclusivity, and free of charge. They must also be equipped with, or have strong referral mechanisms that ensure access to adequate, quality physical and mental health services. Places of safety should be coordinated with other protection services, including law enforcement services.

57. States parties should institute measures to educate the public on FGM, with

49 Viljoen, F *International Human Rights Law in Africa* 2nd Edition (2012) 258.

50 Committee General Comment on Article 1: General measures of implementation and systems strengthening, p31.

51 Committee General Comment on Article 1: General measures of implementation and systems strengthening, p31.

52 The Commission and Committee have note instances where states parties establish shelters and places of safety, but fail to provide necessary resources necessary to make them effective. This stresses for adequate planning and regular monitoring of resource allocation to ensure sufficiency.

a view to countering the justifications of the practice, educating communities about documented harms and risks of the practice, and changing social norms and practices around it. In particular, states parties are required to create public awareness in all sectors of society, through formal and informal education and outreach programmes (Maputo Protocol, article 5(a)). The sectors of society crucial to the elimination of FGM in particular include the communities that practice FGM, cultural and traditional leaders, religious institutions, healthcare workers, law enforcement, and the judiciary. Such education should target changes in attitudes to counter the trend of obscuring the practice by subjecting girls to FGM in infancy.

58. Public education may be delivered through the integration of FGM related content into the formal education curriculum offered in the state party. Formal education curricula must be designed to equip boys and girls with accurate information regarding their sexual and reproductive rights, including science-based information on FGM, and its gendered origins and impact. Public education should also be based on sound scientific evidence, and be delivered from a human rights perspective. The content of public education programmes should be appropriately targeted, with nuanced messaging for different groups, and be delivered from a gender responsive and human rights perspective. States should ensure that public education material is provided in local languages to ensure accessibility and wider reach.

59. Education aimed at eliminating FGM should be integrated into the formal education curriculum, and be consistent with the aims of education.⁵³ States parties should ensure that the curriculum is not used to deliver misinformation or disinformation on FGM. The information included in the curriculum should be nuanced and phased appropriately, to facilitate age and context appropriate training for learners. For instance, such information should also correspond with the time when girls are most vulnerable to FGM in particular communities.

60. States parties should also adopt other channels for public education, including the use of mass media, new media (such as social media, blogs, positive social

53 See CRC General Comment No. 1: the aims of education (2001).

influencers, etc.), faith based institutions and programmes, medical personnel/ professionals, and community-based education programmes targeting out-of-school children and youth. The use of multiple channels of education would amplify the need for elimination of the practice and accelerate the transformation of social norms. The need for early intervention through education is supported by emerging evidence that opposition to FGM is strongest amongst adolescent girls who have received appropriate information about the practice.⁵⁴

61. States parties should address the causes and drivers of FGM by focusing their efforts at discouraging the customs, traditions and cultural practices that are inconsistent with the goal of elimination of FGM (article 1 of the African Children’s Charter. In General Comment on article 1 of the African Children’s Charter, the Committee clarified that the duty to discourage, when read together with the duty to eliminate FGM as under article 21(1) of the African Children’s Charter means that “there is no leeway for defending harmful cultural practices on the basis of custom, tradition, religion or culture.”⁵⁵ This position is echoed in General Comment No. 5 of the ACERWC, that “customs, traditions, cultural and religious practices should be kept under continuous review, as it has been known to happen that customs and practices become distorted over time and no longer resemble what used to take place, or no longer function positively.”⁵⁶

62. States should take note of and encourage progressive practices that are effective in the elimination of FGM, particularly where such practices increase societal buy in on the goals of eliminating FGM. Where such practices are adopted, states must ensure that alternative rites of passage do not violate other rights of girls and women, particularly by reinforcing discriminatory gender norms or exposing the girls and women to other violations of their bodily integrity and dignity. States should also ensure that interventions aimed at offering alternatives to FGM are consistent and specific to community belief systems to enhance reception. In proposing alternative rights, states must ensure that such measures are preceded by credible research and engagement with respective communities to minimise negative consequences

54 UNICEF Delivering the Global Promise: End FGM by 2030, para 23.

55 Committee General Comment on Article 1 of the African Children’s Charter, para 7.1.

56 Committee General Comment on Article 1 of the African Children’s Charter, Para 7.1 – 7.2.

that undermine efforts to curb FGM.

63. All measures to end FGM should be anchored in sound and credible research and data, which is population and context specific, and nuanced to the particularities of practicing communities. This is necessary to understand the gaps that affect the effectiveness of some proposed measures, and inform the design and scaling of programmatic interventions aimed at ending FGM. States are required to ensure regular collection of FGM data, which should be appropriately disaggregated for age, location and other factors that influence FGM trends in their respective context. Research and data collection should also inform monitoring, evaluation and reporting and progress towards the elimination of FGM.

G. Partnerships and resources

64. The success of states in eliminating FGM largely depends on the capacity of states to leverage integrated and multisectoral approaches which build on strategic partnerships with a range of stakeholders who have various forms of influence and contribution. Such partners include civil society organisations (CSOs), national human rights institutions (NHRIs), judiciaries, UN Agencies, the media, religious organisations and institutions, cultural leadership structures, and community leaders. States are encouraged to strategically engage each of these structures and institutions to amplify state led measures to address FGM and to ensure sustainability of interventions.

65. States parties should leverage the mandate of the NHRIs to advise them on harmonising national laws on FGM with the Maputo Protocol and the African Children's Charter, to monitor the implementation of FGM related laws and policies, and to facilitate public awareness and education on FGM and its impact.⁵⁷ NHRIs are encouraged to seek observer /affiliate/associate Status with the Committee and Commission, and to utilise the audience that the status gives them with the Committee and Commission, to report on progress made towards the elimination

⁵⁷ These duties are consistent with the Paris Principles Regulating the Status of National Human Rights Institutions (1993).

of FGM in their respective jurisdiction, including reflections on their own role in this regard. As the Committee has indicated previously, NHRIs that are established in accordance with the Paris Principles are necessary for monitoring implementation of rights, particularly at the sub-national levels where the reach of central government may be limited.⁵⁸

66. Responding to the challenges posed by FGM, and the full implementation of the measures proposed in the Joint General Comment demands a substantial amount of resources. In terms of article 26(2) of the Maputo Protocol, states parties undertake to provide budgetary and other resources for the full and effective implementation of the rights under the Protocol. Similarly, article 1 of the African Children's Charter requires State parties to adopt such measures as are necessary to give effect to the provisions of the Charter. These provisions create an obligation for States to provide specific and targeted budgets for efforts to eliminate FGM. It is necessary that measures to address FGM are articulated, prioritised and sufficiently provided for within the national budget of states parties.

67. States parties are also encouraged to explore additional resources, including resources under the framework of international cooperation, and from the private sector, to complement resources available domestically. Disaggregated data on FGM is essential for proper allocation of resources. Accordingly, seeking additional resources should be preceded by a clear articulation of the scope of FGM in the country, as supported by current and reliable data, and provision of the precise interventions necessary to address the incidence of FGM in the country. States parties should actively pursue and support social and technical innovations with the capacity to amplify efforts for the eradication of FGM.

68. In recognising the role of economic deprivation as one of drivers of FGM, states must take specific measures to mitigate poverty through the empowerment of girls and women. Improved socioeconomic status and education are correlated with declining levels of support and practice of FGM. Specific effort must also be made to alleviate the opportunity cost for traditional (and often poor) practitioners,

⁵⁸ Committee General Comment on article 1: General Measures of Implementation and Systems Strengthening, p.50.

who regard the practice as a source of income. This may be achieved through the multifaceted interventions that include skills building for alternative forms of livelihood for the practitioners.

69. States should recognise and strengthen the agency of girls and women as advocates against FGM, and to contribute to measures adopted to address the practice. In line with the principle of child participation, the design and implementation of measures to respond to FGM should include girls. Similarly, efforts to eliminate FGM affecting women should incorporate contributions by women. This will improve responsiveness, relevance, and support for the proposed measures. States are further required to engage men and boys in the fight against FGM, and to leverage the social capital of men and boys to dismantle harmful social and gender norms.

H. State Reporting obligations on FGM

70. The Maputo Protocol and the African Children's Charter require that States Parties submit initial and periodic reports on the implementation of the rights and freedoms guaranteed under each of the treaties. The Commission and Committee strongly encourage States Parties to use state reporting as an opportunity and platform to indicate progress and share best practices in the implementation of their obligation to eliminate FGM. In their reports, States Parties to the Maputo Protocol shall report on measures taken to implement article 5, as read together with articles 4, 8, and 17 of the Maputo Protocol, and articles 18(3) and 62 of the Banjul Charter. States parties to the African Children's Charter shall report on measures taken to eliminate FGM in terms of article 21(2), as read together with articles 1(3) and 46 of the African Children's Charter and the general principles of children's rights.

71. State reports under both the Maputo Protocol and the African Children's Charter must provide specific information as to the steps that the respective state party has taken to comply to the measures elaborated in this General Comment. The reports shall describe the national context related to FGM, include disaggregated statistics and trends on the prevalence of FGM, indicate challenges and barriers in realising the goal of eliminating FGM, and provide an assessment of the effectiveness of the measures taken. States Parties may also share factors for success in their efforts

to eradicate FGM, particularly where there is potential for learning by other states parties.

I. Implementation and dissemination of the General Comment

72. This joint General Comment proposes a range of measures towards the elimination of FGM. These measures are legislative, administrative and institutional in nature. It is important that states parties regularly monitor their progress in formulating and implementing these measures, so as to meet the targets for the elimination of FGM under both the African Children's Charter and the Maputo Protocol. These measures are co-dependent and include legal reforms, policy development, compliance and promotion. Alongside legislative reforms, implementing the prohibition on FGM requires that States Parties undertake institutional measures, ensure the enforcement of criminal provisions and effective awareness raising plans and mechanisms.

73. States Parties are encouraged to distribute this Joint General Comment widely, including in local languages, and to make its contents well known in their respective jurisdictions. States parties shall collaborate with other stakeholders, including National Human Rights Institutions, Regional Economic Communities, regional and international intergovernmental agencies, and civil society organisations to disseminate the General Comment. The goal of dissemination shall be to enhance awareness and use of the General Comment amongst in the general public, and amongst professionals such as law enforcement, judicial officers, teachers, lawyers, social workers and others who are at the frontlines of engaging girls and women at risk of, or who have survived FGM. The Committee and Commission's secretariats will also propose a dissemination plan for the General Comment.

JOINT GENERAL COMMENT ON FEMALE GENITAL MUTILATION



www.acerwc.africa
www.achpr.au.int

Nala House, Balfour Road,
Maseru - Kingdom of Lesotho
Email: acerwc-secretariat@africa-union.org

31 Bijilo Annex Layout, Kombo North District,
Western Region P.O. Box 673 Banjul, The Gambia
Email: au-banjul@africa-union.org