

## LAWS RELATING TO FGM



### INTERNATIONAL LAWS

#### Universal Declaration of Human Rights (1948)

- Article 2: *'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex'*
- Article 3: *'Everyone has the right to life, liberty and security of person'*
- Article 5: *'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'*
- Article 25 (1): *'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including...medical care'*

#### International Covenant on Civil and Political Rights (1966)

- Article 9(1): *'Everyone has the right to liberty and security of person'*

#### International Covenant on Economic, Social and Cultural Rights (1966)

- Preamble: *'...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'*
- Article 12: *'The States Parties to the present Convention recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'*

#### Convention on the Elimination of all Forms of Discrimination against Women (1979)

Article 1: *"...discrimination against women" shall mean 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'*

- Article 2: Calls on countries to *'embody the principle of equality'*, to adopt appropriate legislation *'prohibiting all discrimination against women'* to *'establish legal protection of the rights of women'* and refrain from any act or practice of discrimination against women.
- Article 3: State Parties must take appropriate measures, including legislation to guarantee *'the exercise and enjoyment of human rights and fundamental freedoms'*
- Article 5(a): *'States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'*
- Article 12(1): *'States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning'*
  - General Recommendation No.24, Committee on the Elimination of Discrimination against Women (1999) expands on the content of Article 12, and its inherent obligation to protect rights, which, *'requires States Parties...to take action to prevent and impose sanctions for violations of rights by private persons and organisations. Since gender-based violence is a critical health issue for women, States Parties should ensure...d) the enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children'*

*'Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability...Harmful traditional practices, such as female genital mutilation...may also expose girls and women to the risk*

*of contracting HIV/AIDS and other sexually transmitted diseases'*

- General Recommendation No.19 on Violence Against Women, Committee on the Elimination of Discrimination against Women (1992) expands on the content of Article 12: *'States Parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include...female circumcision or genital mutilation'*

#### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**

- Article 16: *'Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture...when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'*

#### **Convention on the Rights of the Child (1989)**

- Article 2: *'(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's...sex...national, ethnic or social origin; (2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members'*
- Article 3(1): *'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'*
- Article 3(2): *'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being'*

- Article 19: *'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse'*
- Article 24: *'States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health'*
- Article 37: *'The States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'*

#### **General Recommendation No.14, Committee on the Elimination of Discrimination against Women (1990)**

- *'Noting with satisfaction that Governments...national women's organisations, non-governmental organisations, and bodies of the United National system...remain seized of the issue having particularly recognised that such traditional practices as female circumcision have serious health and other consequences for women and children...Noting with grave concern that there are continuing cultural, traditional and economic pressures which help to perpetuate harmful practices, such as female circumcision'*
- *'Recommends that States Parties:*

*(a) Take appropriate and effective measures with a view to eradicating the practice of female circumcision... [including]...the encouragement of politicians, professionals, religious and community leaders at all levels, including the media and the arts, to co-operate in influencing attitudes towards the eradication of female circumcision...[and] include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel, including traditional birth attendants, to explain the harmful effects of female circumcision'*

### **REGIONAL LAWS IN AFRICA**

#### **African Charter on Human and Peoples' Rights (1981)**

- Article 2: *'Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present*

*Charter without distinction of any kind such as...sex'*

- Article 4: *'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right'*
- Article 5: *'...All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'*
- Article 16: *'(1): Every individual shall have the right to enjoy the best attainable state of physical and mental health. (2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick'*
- Article 18(3): *'The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions'*
- Article 27 (2): *'The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest'*

#### **African Charter on the Rights and Welfare of the Child (1990)**

- Article 1(3): *'Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged'*
- Article 3: *'Every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians'...sex'*
- Article 4(1): *'In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration'*
- Article 14(1): *'Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health'*
- Article 16(1): *'States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment'*

- Article 21(1): *'States Parties...shall take 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'*

#### **African Charter on Human and Peoples' Rights, Protocol on the Rights of Women in Africa (2003)**

- Article 1(f): *"Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, or human rights and fundamental freedoms in all spheres of life'*
- Article 1(j): *"Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm'*
- Article 5: *'States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including...(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'*
- Article 14(1): *'States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted'*

#### **African Union: Solemn Declaration on Gender Equality in Africa (2004)**

Paragraph 6: The States Parties hereby agree to:  
*'Ensure the active promotion and protection of all human rights for women and girls including the right to development by raising awareness or by legislation where necessary'*