

Talking Points KOGS Conference by Dr. Meroka

1. FGM is prohibited under International, regional and national laws because it constitutes a violation of the fundamental rights and freedoms of women. FGM is also a violation of the rights of children when it is performed on persons below the age of 18. In particular, FGM violates the right to health, and especially the right to reproductive health, and this is because FGM leads to medical and sexual health complications in both women and men who have sexual relations with women who have undergone the procedure.
2. Under International Law, the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), requires state parties to take all measure to end all forms of discrimination against women. FGM constitutes a form of discrimination against women because it is rooted in norms that are themselves discriminatory in nature, for example female sexuality needs to be curbed in order to avoid immoral sexual behavior, or that the female genitalia are ugly and can cause certain types of calamity if felt intact. Similarly, FGM leads to discriminatory outcomes, for example girls who undergo the procedure are more likely to drop out of school and get married at an early age. Thus, in order to end discrimination against women in their borders, state parties to CEDAW must take measures to abandon FGM.

The Convention on the Rights of the Child prohibits all forms of violence against children; cruel and inhumane treatment and torture. FGM constitutes a form of violence against women and girls and it also has a negative impact on the girl child's education.

3. Regionally, we have the Protocol Additional to the African Charter on Human and People's Rights on the Rights of Women (Maputo Protocol), categorizes FGM as a harmful cultural practice and prohibits it expressly.
4. At the National level, the Constitution of Kenya prohibits discrimination on the basis of sex, and it also provides for the freedom from torture and the right to bodily integrity. FGM constitutes a violation of all these constitutional rights.

Flowing from the Constitution, Kenya enacted the Prohibition of FGM Act. It prohibits FGM and other associated offences. The Act also provides for aggravated FGM, which is whereby FGM leads to death. This offence carries a life sentence. Other offences associated with FGM and which the Act prohibits include using one's premises for purposes of FGM; being in possession of tools used in FGM; insulting a woman who has not undergone FGM or a man who marries such a woman. Non-aggravated FGM and the associated offences carry a three year jail term and/or a fine of Kshs. 200,000.