

**ASSESSMENT OF INTERNATIONAL LAWS ON FEMALE GENITAL MUTILATION  
AND ITS IMPLICATIONS ON THE EAST AFRICAN REGION: A CASE STUDY OF  
NAMANGA, KENYA-TANZANIA BORDER.**



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**DECLARATION**

This research project is my original work and has not been presented for the award of a degree in masters this University or any other Institution of higher learning.

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## **DEDICATION**

I wish to dedicate this work to my dear family for their support, patience, understanding and sacrifice during my study.

## **ACKNOWLEDGEMENT**

I acknowledge my supervisor Ms. Nancy Wanjala Barasa for her guidance and input throughout the study. Her advice, insightful critiques, immense patience and encouragement aided the writing of this research project in innumerable ways.

I further wish to thank my fellow course participants for their efforts and support during the study.

And to the Almighty God, Thank you for your faithfulness.

## **ABSTRACT**

The study has assessed the impact of international laws on Female Genital Mutilation in the fight against the Cross-Border FGM in the study area, which is Namanga Township and the surrounding villages on both sides of the Kenyan-Tanzanian border.

The main purpose of the study has been to investigate the application of international, regional and national laws in the fight against Cross-Border FGM which has over time, faced jurisdictional challenges that requires collective regional and diplomatic approaches. The study's objectives were; to assess the efficacy of international laws on Female Genital Mutilation in East Africa, to evaluate the impact of Cross-Border FGM on women empowerment and to evaluate the trends of Cross-Border FGM and factors undermining the fight against the practice at Namanga Border.

According to Kenya Demographic and Health Survey report of 2014, the prevalence rate of FGM among the inhabitants of the study area was at 78%. The statistics and geographical location of the area of study ideal was ideal for the researcher to undertake the research on FGM which has adopted a transnational aspect in efforts by perpetrators to circumvent the legal regime in place.

The study employed both qualitative and quantitative approach. Qualitative research method focused on understanding the underlying reasons and motivations behind cross-border FGM by perpetrators and their victims, while quantitative data approach dealt with structured data collection approaches which involved the use of face to face interviews and filling of questionnaires. The data collected was compiled and arranged into easily interpretable formats by the use of charts, tables and graphs.

## **ACRONYMS AND ABBREVIATIONS**

AU-African Union.

ARVs-Anti Retro Viral Drugs.

ARP-Alternative Rights of Passage.

CBO's-Community Based Organizations.

CEDAW-Convention on the Elimination of Discrimination against Women.

CCPR-Covenant on Civil and Political Rights.

CRC-Convention on the Rights of the Child.

ECOSOC-Economic and Social Council.

EAC-East African Community.

FAWE-Forum for African Women Educationalists.

FGM- Female Genital Mutilation.

FGM/C-Female Genital Mutilation/Cutting.

GTZ-German Technical Cooperation Agency.

HIV/AIDS-Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome.

IAC-Inter African Committee on Traditional Practice.

INGOs – International Non-Governmental Organizations.

ICPD-International Conference on Population and Development.

KDHS - Kenya Demographic Health Survey.

KCSE-Kenya Certificate of Secondary Education.

KNBS- Kenya National Bureau of Statistics.

NGOs - Non- Governmental Organizations.

NRHP - National Reproductive Health Policy.

NRHS - National Reproductive Health Strategy.

PATH-Program for Appropriate Technology in Health.

PTSD - Post Trauma Stress Disorder.

SPSS-Statistical Packages for Social Sciences.

UNESCO-United Nations Educational, Scientific and Cultural Organization.

UNFPA - United Nations Population Fund.

UNICEF - United Nations International Children's Emergency Fund.

UNGA- United Nations General Assembly.

UNGEI-United Nations Girls Initiative.

USAID-United States Agency for International Development.

WHO - World Health Organization.

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## CHAPTER ONE

### INTRODUCTION AND BACKGROUND TO THE STUDY

#### 1.0 Introduction to the study

This chapter will provide information on the background of the study, statement of the problem, objectives of the study, research questions, justification and significance of the study. It will also highlight on the assumptions, scope and limitations of the study.

#### 1.1 Background to the Study

FGM as a violation of basic human rights of women and girls, has not been expressly captured in many international human rights instruments. This could have been attributed to the general approach in which, FGM as a human rights abuse issue, infringes on a broad spectrum of women rights in which, all these laws fit in. Failure to effectively combine forces both internationally and regionally to eradicate FGM has brought about Cross-Border FGM, which is an emerging challenge in the fight against FGM.

International and regional human rights instruments have been in place for many years, however, signatories to the treaties have been dragging behind in implementation. As a result, a huge mismatch which is in the contrary, has been created over time between the many existing sets of anti-FGM laws and the rising numbers of cases. This clearly indicates inefficacies in international approaches on eradication of FGM. The World Health Organization defines Female genital mutilation as; “All procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons”.<sup>1</sup>

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<sup>1</sup> WHO, UNICEF, UNFPA; *Female genital mutilation*: Interagency Joint Statement 1997. Pp. 9.

Laxity in the implementation of international treaties is likely to have exacerbated the situation in many countries whereby in Sub-Saharan Africa alone, 28 countries are in the watch list for having failed to contain the rising FGM prevalence rates. “There are 28 Countries in the Sub Saharan Africa practicing FGM/C, where national prevalence rates range from 5% in Kenya to 98 % in Somalia.”<sup>2</sup>

FGM as a rite of passage into womanhood, has over time been deployed as a tool of disempowerment to those who have undergone the rite, nevertheless, in a society where the vice is openly embraced, the same tool has also been used to discriminate against those who have not undergone the rite. “FGM is also considered to make girls ‘clean’ and aesthetically beautiful. Although no religious scripts require the practice, practitioners often believe the practice has religious support. Girls and women will often be under strong social pressure, including pressure from their peers and risk discrimination and stigma if they refuse to be cut.”<sup>3</sup>

In view of the above, the research critically interrogates the role of existing international legal instruments as well as national legislations in the fight against FGM. Failure by these laws occasioned by lack of uniformity in implementation has ushered in the Cross-Border aspect of FGM, which has been devised by perpetrators as a tact to evade punitive legal repercussions that accrue from commission of the crime in countries that have fully embraced and implemented local anti-FGM laws as required by international human rights instruments. Porous border points are crossed to jurisdictions where Anti-FGM laws are not strictly implemented, offering avenues for FGM to be committed with impunity. Since it is practically impossible to seal off all porous international borders in efforts to combat Cross-Border FGM, there is need to explore ways in

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<sup>2</sup>WHO et al. Female genital mutilation, 1997, Pp. 6.

<sup>3</sup> Ibid, Pp.8.

which the existing national, regional and international legal instruments can be utilized effectively to ensure perpetrators of the human rights are punished in all jurisdictions.

The study has endeavored to understand the Cross-Border Concept of FGM by identifying gaps in implementation of the existing legal frameworks and thereafter offer appropriate corrective mechanisms that will ensure help in eradicating the practice.

### **1.1.1 Global Perspective of International FGM Laws.**

An international legal regime with a comprehensive approach to FGM cannot achieve complete eradication of FGM unless complemented by a series of political consensus documents from international conferences where participating states reaffirm their commitment to the international law requirements. This requires that governments fully respect and implement the treaties through their domestication into national legislations. “Strong support for the protection of the rights of women and girls to abandon female genital mutilation is found in international and regional treaties and consensus documents.”<sup>4</sup>

*Convention against Torture and Other Inhuman and Degrading Treatment or Punishment (1984)* in Article 4 (1) states that; “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each state shall make these offences punishable by appropriate penalties which take into account their grave nature.”<sup>5</sup> This section places the responsibility of enacting laws on FGM as one of the offences under that category on individual states. It further states in Article 7(1) that: “The State Party in the territory under whose

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<sup>4</sup> WHO et al. *Eliminating Female Genital Mutilation*, 2008, Pp.9.

<sup>5</sup> UNGA: *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, Pp2.

jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for purposes of prosecution.”<sup>6</sup> . Finally, on diplomatic cooperation in the prosecution of such offences that fall in the category as stipulated in Article 4 of the treaty, all state parties have the following international obligation under Article 9(1): “State parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.”<sup>7</sup>

*Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979)* in Article 2 states as follows:

*“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*

*(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*

*(d) To refrain from engaging in any act or practice of discrimination against women and to*

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<sup>6</sup> Ibid, Pp. 3.

<sup>7</sup> Ibid, Pp. 4.

*ensure that public authorities and institutions shall act in conformity with this obligation;*

*(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*

*(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*

*(g) To repeal all national penal provisions which constitute discrimination against women.”<sup>8</sup>*

The above international legal instruments have not provided clarity on whether FGM fall in the category of offence of torture. However, due to the description of how FGM as a cultural procedure is carried out, the element of torture, inhumane and degrading treatment on the victims is clear and hence, the researcher is of strong belief that FGM is part of the offences enshrined in Article 4 of the *Convention against Torture and Other Inhuman and Degrading Treatment or Punishment (1984)* and Article 2 of the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979)*.

In view of the above, lack of clarity on FGM as an element of torture, inhuman and degrading treatment might have been one among many other reasons why state parties have not been fully compliant to the requirements on prevention of the vice. There is also a contradiction in the law where on one hand, the law grants women and girls the right to enjoyment of cultural practices but does not expressly define which cultural practices that should be enjoyed and those that should not. Women in communities practicing the vice have embraced it as a form of cultural participation and if one does not undergo FGM is considered an outcast and hence denied the opportunity of belonging and participating in their community’s cultural activities. This in itself is discrimination

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<sup>8</sup> UNGA; *Convention on the Elimination of All Forms of Discrimination against Women*, 1979, Pp. 2.



which denies women their right to participation, which under the above mentioned treaties, it falls in the category of “inhuman and degrading treatment”.

Contradiction raised above is noted in the *Convention on the Rights of the Child (1989)* Article 30. “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.”<sup>9</sup> In the same breath, states under Article 37(a) of the same treaty are obliged to ensure that; “no child shall be subjected to torture or other cruel inhuman and degrading treatment or punishment.”<sup>10</sup> Failure to clearly categorize all the possible harmful cultural practices that can be meted upon children including FGM is a big setback on the part of the treaty in offering all-round protection to girls at risk of being cut and subjected to early marriage. By all descriptions under international laws, FGM is torture on women and girls and also a tool often used to discriminate women who have undergone the cut as well as to those who have not.

The above notwithstanding, FGM is illegal in many jurisdictions around the world, however, how it is being performed vary in many forms. In Australia, the term ‘mutilation’ had to be clarified in court ruling where perpetrators had claimed they had performed a ‘symbolic FGM’ and not a real one on the victims. Their argument was that the clitoris was not cut and hence it was immaterial to claim that ‘mutilation’ happened. The trio claimed the girls did not have their clitoris cut, they argued that the ceremony was purely symbolic and basically involved “touching the edge of the genital area . . . allowing the skin to sniff the steel”<sup>11</sup>. The high court however, ruled that the clitoral

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<sup>9</sup> UNGA; *Convention on the Rights of the Child*, 1989, Pp. 9.

<sup>10</sup> *Ibid*, Pp. 10.

<sup>11</sup> Global Citizen, *Australian Rules Female Genital Mutilation Illegal in All Forms*, October 17, 2019.

hood constitutes part of the clitoris and that “this broader construction would best promote the purpose or object of prohibiting such procedures generally”.<sup>12</sup> As long as the victim had suffered a ‘painful and distressing experience’ in the hands of the perpetrators.

This is among many others are circumstances around the world are legal circumstances where no clarity is provided for by the law on the basic legal ingredients that constitutes the offence of FGM. However, in the United Kingdom, FGM law is robust in the protection of its citizenry against the vice within and outside its borders. According to FGM Act of 2003, criminal responsibility for the offence of FGM and other related offences includes the principal offender as the person who performs the cut and also other parties to the crime such as; persons who offer assistance to a girl to mutilate her own genitals, assisting a non-UK person to mutilate a girl’s genitals overseas and failure by a person to protect a girl from the risk of FGM.

The Act also covers how international evidence is gathered through police to police enquiries and use of prosecutorial powers to obtain identified evidence in the form of travel or flight records, medical records and many other means. The process is to be facilitated by the International Justice and Organized Crime Division of the CPS. However, legal gaps emerge in instances of ‘Cosmetic FGM’ where “piercing of female genitalia to adorn it with jewelry or other accessories purely for purposes personal decoration or in order to enhance the sensation of sexual contact as commonly understood is unlikely to involve excision, infibulation or mutilation”<sup>13</sup>

The two examples are part of many other FGM laws in force globally for purposes of eliminating the practice. Unfortunately, the legal frameworks in many jurisdictions do not exhaustively cover all aspects of the practice that qualify to be categorized as FGM.

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<sup>12</sup> Ibid,

<sup>13</sup> CPS; *Female Genital Mutilation Prosecution Guidance*, October 2019.

Probably, after the realization that FGM as a violation of women rights had been overlooked by other international legal instruments. Drafters of the *Declaration on the Elimination of Violence against Women (1993)* included FGM in the definition of violence against women which would automatically place an obligation on state parties to also include the same in their national legislations through domestication of the treaty, or through appropriate amendments to existing or in formulation of new sets of laws. Article 1 of the treaty states “For purposes of this Declaration, the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>14</sup> On the same breath, Article 2(a) describes violence against women shall be understood to encompass, but not limited to “physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.”<sup>15</sup>

The above highlighted international treaties and consensus documents therefore bring to forth international commitment in the fight against FGM which has now taken the cross border dimension. The researcher therefore believes there are gaps in International laws on FGM, but still, there is adequate jurisprudence and hence the need for a shift of focus to regional and national legislations that require a more practical approach in eradicating the vice.

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<sup>14</sup> UNGA; *Declaration on the Elimination of Violence against Women*, 1993, Pp. 2.

<sup>15</sup> *Ibid*, Pp. 2.

### 1.1.2 Regional Perspective on International FGM Laws.

The African Union (formerly Organization of African Unity) has come up with several treaties that are meant to safeguard women and girls from Female Genital Mutilation. The treaties are as follows;

*African Charter on Human and People's rights (1981)*, commonly referred to as The Banjul Charter, which was adopted on 27<sup>th</sup> June 1981 and came into force on 21<sup>st</sup> October 1986. Article 5 of the charter states; "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."<sup>16</sup>

*African Charter on the Rights and Welfare of the Child (1990)*, Article 21 provides protection on a child against harmful social and cultural practices as follows; "*State Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, 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 on the grounds of sex and other status.*"<sup>17</sup>

*Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)* (ACHPPRRWA), also known as the Maputo Protocol, Article 5 on Elimination of harmful practices. State parties to the treaty commit to 'Prohibit and condemn all forms of harmful practices

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<sup>16</sup> OAU, *African Charter on Human and People's Rights*, Pp. 4.

<sup>17</sup> OAU, *African Charter on the Rights and Welfare of the Child*, Pp. 8.

which negatively affect human rights of women and which are contrary to recognized international standards; “*State parties shall take all necessary measures to eliminate such practices, including;*

- a) *Creation of public awareness in all sectors of society regarding harmful practices through informal education and outreach programs.*
- b) *Prohibition through legislative measures backed by sanctions of all forms of female genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all practices in order to eradicate them.*
- c) *Provision of necessary support to victims of harmful practices 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.”<sup>18</sup>*

In order to operationalize the above treaties, the African Union came up with another additional treaty on the establishment of a Pan-African Human Rights Court to complement and reinforce the functions of African Commission on Human and people’s Rights through the *Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights (2003)*. Which established a court that would deal with cases of violation of human rights where Member States have proven incapable of holding a competent trial on violators of human rights in Africa.

Despite all these pieces of legislations being in place, Africa has continued to witness a rise in number of FGM cases with statistics indicating higher prevalence rates than in other parts of the

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<sup>18</sup> AU, *Protocol to the African Charter* 2003, Pp. 6.

World. “African countries that practice FGM include ;Guinea 97%,Djibouti 93% ,Sierra Leone 90% ,Mali 89%, Egypt 87% ,Sudan 87%, Eritrea 83% ,Burkina Faso 76% ,Gambia 75%,Ethiopia 74% ,Mauritania 69%,Liberia50%,Guinea Bissau45%,Chad44%,Cote d’Ivoire38%,Nigeria 25%,Senegal 25%,Central African Republic 24%,Kenya 21%,Tanzania,15%Benin9%,Togo 5% Ghana 4% Niger 2% Uganda1% and Cameron 1%.”<sup>19</sup>

Closer home, the enactment of the *East African Community Prohibition of Female Genital Mutilation Act (2016)* was to promote cooperation in the prosecution of perpetrators of FGM and develop common measures, strategies and programs for effective eradication of FGM in the East African region. The Act is more comprehensive on the offences and punitive measures. However, lack of goodwill to implement the law has brought about a lack of a unified approach in implementation by member states thus rendering it partially ineffective.

In view of the above, it is worth noting that a threat to FGM in one state is a threat to FGM in all other neighboring states, hence, when the vice is given a chance to thrive in a country, it poses an existential threat to girls and women in neighboring countries. A regional commitment should therefore be given priority in the fight by eliminating the ‘safe havens’ for perpetrators of Cross-Border FGM. Failure by one country to implement their international obligations waters down efforts by compliant countries in combating Cross-Border FGM.

### **1.1.3 Perspective on FGM Laws in Kenya.**

*Prohibition of Female Genital Mutilation Act No 32 of 2011* is an Act of Parliament that “prohibits the practice of Female Genital Mutilation, to safeguard against violation of a person’s mental or physical integrity through the practice of female genital mutilation and for connected purposes.”<sup>20</sup>

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<sup>19</sup>UNICEF, *Female Genital Mutilation*.

<sup>20</sup> KLR, *Prohibition of Female Genital Mutilation Act no 32 of 2011*, Pp. 5.

The law is robust and detailed on the offences and the resultant punishments for the same on Part IV of the Act. The law not only bans the practice in Kenya but also prohibits cross border FGM as well as medical care givers from carrying out the practice. In addition, the law holds that consent, irrespective of the girl or women's age cannot be cited as an excuse for conducting FGM.

In view of the above, implementation of the anti-FGM laws, Kenya has witnessed a growing trend of cross border FGM where girls and women are taken to Neighboring countries through the porous border points for the cut, so as to circumvent the laws and systems that have been put in place.

This is worsened by the fact that most communities that practice FGM are living along the Kenyan borders, hence, Cross-border FGM becoming a new normal in Namanga, Loitokitok, Isebania, Sirare, Mt Elgon, West Pokot and the Northern Frontier Counties.

The proportion of women who are circumcised varies by ethnic group. "The majority of women are: Somali 94%, Samburu 84%, and Maasai 78%. In contrast, 2% or less of women in the Luo, Luhya, Turkana and Mijikenda/Swahili ethnic groups are circumcised. There are large regional variations; the proportion of circumcised women range from 1% in western to 98% in North Eastern. Statistics show that circumcision in Embu is at 31%, Kalenjin 28%, Kamba 11%, Kikuyu 15%, Kisii 84%, Meru 31%, while Taita Taveta is at 22%."<sup>21</sup> These statistics serve as evidence that FGM is still being practiced by almost all communities in Kenya, it's only the prevalence rate that differs.

Namanga is an area sharing a common international border with the Republic of Tanzania. Both sides of the border is inhabited by the Maasai ethnic group, which despite their different

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<sup>21</sup> KNBS, *Kenya Demographic Health Survey* 2014.

nationalities, the community has strong historical social ties, some being blood relations. Therefore, the communities hold joint cultural ceremonies, FGM included, which adopts a cross border aspect and whose prevalence rate in Kenya alone, stands at 78%, according to the Kenya Demographic Health Survey of 2014.

## **1.2 Statement to the Problem**

Cases of Cross-border FGM in Kenya's Namanga area increased after the coming into force of the Prohibition of Female Genital Mutilation Act No 32 of 2011, which gives the criminal justice actors more jurisdiction and powers to punish perpetrators of the offence. Tanzania's Longido District became a safe haven for Kenyan Maasai women and girls who undergo the rite of passage with impunity. Since Kenyan law enforcers do not have jurisdiction over Tanzanian territory, and coupled by the absence of diplomatic cooperation on eradication of FGM, the law therefore does not serve its purpose.

Interventions and strategies that have been put in place by the Kenyan government is being undermined by the weaker anti-FGM laws and laxity in enforcement by the Tanzanian authorities. This has resulted in high prevalence rates of FGM in Namanga Town and the surrounding villages, as well as Longido District in Tanzania. FGM perpetrators are therefore able to have the girls cut without any legal repercussions within the study area to continue with the cut due to the conducive social and legal environment on the Tanzania side.

This study therefore is seeking the most appropriate interventions to solve the legal hurdles being encountered by law enforcers in combating the Cross-Border FGM thorough utilization of the existing diplomatic cooperation, legislations, and other international and regional mechanisms.



### **1.3 Research questions**

The study was guided by the following research questions;

1. What is the efficacy of international laws on Female Genital Mutilation in East Africa?
2. What is the impact of Cross-Border FGM on women empowerment?
3. What are the trends of Cross-Border FGM and factors undermining the fight against the practice at Namanga Border?

### **1.4 Objectives of the study**

The general objective of the study is to investigate and establish the gaps in the implementation of international and national anti FGM laws and come up with appropriate, actionable and collective approaches in seeking to minimize and eventually eradicate Cross-Border FGM in the East African Region.

#### **1.4.1 Specific objectives**

The specific objectives are:

1. To assess the efficacy of international laws on Female Genital Mutilation in East Africa.
2. To evaluate the impact of Cross-Border FGM on women empowerment.
3. To evaluate the trends of Cross-Border FGM and factors undermining the fight against the practice at Namanga Border.

### **1.5 Literature Review**

The literature review intends to look at the different literatures that address the broad subject of international and national laws on FGM. This will equip the researcher with an in-depth understanding of FGM related information that will enable study to come up with actionable solutions to the challenge of Cross-Border FGM. The review entails theoretical literature review

and empirical literature review on the current trends in cross-border FGM and factors affecting its eradication, the existing national and international laws effective in the fight against cross-border FGM and the impact of FGM as a form of gender-based discrimination tool against women.

Continuation of the practice despite enactment and enforcement of laws both locally and internationally can also be attributed to lack of public participation by the affected communities during the initial stages of developing the Anti-FGM laws. “Among supports of FGC, legal norms ran counter to social norms, and did little to deter the practice and in some instances incited reactance or drove the practice underground. Conversely, where FGC was being contested, legislation served to strengthen the stance of those contemplating or favoring abandonment. Legislation can complement other reform strategies by creating an enabling environment that support those who have or wish to abandon FGC.”<sup>22</sup>

The issue of nationalities of the practicing communities at the border towns and villages only helps during the implementation of the strategies which are in tandem with the existing laws, however those targeted by the laws are highly unaware of its existence, hence, creating confusion on which law is to be followed, the jurisdiction of the laws and other important legal considerations especially in a community where literacy levels are lowest. “FGM/C appears to be closely linked to ethnicity rather than nationality as FGM/C cross-border prevalence rates tend to align with one’s ethnic identity thus positioning ethnicity as a proxy for shared norms and values.”<sup>23</sup> The environment in which the practice is carried out should be considered during the formulation of the laws in order to create an enabling environment for its implementation. “Urbanization,

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<sup>22</sup> Shell-Duncan et al, *Legislating Change? “Responses to Criminalizing Female Genital Cutting in Senegal. Sex and Social Justice.”* 2013.

<sup>23</sup> Shell-Duncan et al, *A State-of-the-Art Synthesis on Female Genital Mutilation /Cutting: What Do We Now Know,* 2016.

household wealth and education have been found to be associated with the decline or abandonment of FGM/C. In rural areas, the lack of cultural diversity makes it challenging to change long-standing social norms and traditional practices.”<sup>24</sup>

High poverty levels is also attributed to high prevalence of the practice. Poverty stricken parents perceive their girls as a source of wealth and their desire to acquire it pushes them to perform FGM on their girls in readiness for marriage with haste especially if they are to be married off to wealthy families. This argument is supported by the fact that “Increases in wealth are associated with a decline in FGM/C, or can serve as a predictor of the practice”.<sup>25</sup> In furtherance to that “there is a diminished participation in school related activities as a result of FGM/C. Girls tend to drop out of school to get married and this therefore has contributed to high levels of illiteracy in the female gender in practicing communities.”<sup>26</sup> Which therefore explains the relationship between FGM and illiteracy levels in a community, where marriage and medical complications are common occurrences on girls who have undergone FGM/C and which forces them to terminate their education.

Both the facilitators of FGM and the victims conspire to cover their trails from authorities simply because some of them are blood relations or their families share long historical family ties. Therefore, prosecution of FGM cases is a challenge due to witness intimidation and harassment as well as the unwillingness by victims to serve as prosecution witnesses. In addition, some of the local administrators and law enforcers subscribe to the same ideologies as their community and do not want to be perceived as disloyal to their people by betraying them to the authorities. This supports an observation that; “the practice of FGM has gone underground and possibly stronger in

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<sup>24</sup> Ibid.

<sup>25</sup> Modrek and Liu; *Exploration of Pathways Related to the Decline in Female Circumcision in Egypt, 2013.*

<sup>26</sup> Anumanka and Sironka; *Female Genital Mutilation and Girl's Participation in School, 2014.*

reaction to criminalization.”<sup>27</sup> Girls who think they are ready for marriage succumb to peer pressure from older girls, aunts, sisters, grandmothers and other female members of the community who pile pressure to have them comply to the societal demands of undergoing the cut and getting married. Failure to meet the girls’ demands results in them organizing for the cut without the knowledge and consent of their parents. The unawareness of the parents about the performance of the practice by the girls willfully absolves them from criminal responsibility.

Being a deeply rooted cultural practice, FGM has been there for many years as part and parcel of the norms and traditions of practicing communities. This makes it difficult to convince communities who also have their own reasons for performing the rite to abandon, hence “social acceptability of FGM/C may undermine the effectiveness of the law.”<sup>28</sup> Therefore, the practicing communities are forced abandon the practice out of fear of legal repercussions and heavy penalties and not for moral reasons. Laws and policies being formulated require input from the target communities in order to address their concerns as well as provide alternative solutions because “if arrest, prosecution, conviction and punishment for violations cause deterrence, there have been few such actions in these countries.”<sup>29</sup> The adoption of anti-FGM international laws by states is one thing but willingness to implement and enforce the law is a different story altogether. Implementation and enforcement of law depends on the goodwill and commitment of states which some do not have but only commit to the international treaties in order to be in good books with international organizations and hence attract donor funding.

The fight against FGM cannot be won through the legal approach alone. It requires that the legal measures are supported by initiatives such as community empowerment programs to run in hand

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<sup>27</sup> Boyden et al; *Child protection and Harmful Traditional Practices*, Pp. 510-522.

<sup>28</sup> Platteau, J. P; *Redistributive pressures in Sub-Saharan Africa*, 2010, Pp. 15-17.

<sup>29</sup> Berer M; *The History and Role of the Criminal Law in Anti-FGM Campaigns*, 2015, Pp. 145-157.

with the enforcement of FGM laws. “Legislation reinforces initiatives that underscore the adverse health effects of FGM and also provides legal justification and support for those who choose not to subject their daughters to the practice.”<sup>30</sup> Therefore enactment of legislation that is not accompanied by robust monitoring and supported by adequate mechanisms and institutions to enforce the legislation as well as lack of backing by the targeted community unlikely to be effective in eliminating FGM or accelerating its abandonment. “Advocates for legal reforms argue that laws against harmful practices can strengthen the stance of those favoring abandonment and complement other reform strategies by creating an enabling environment for advocacy work and also for those who do not wish to abandon FGM.”<sup>31</sup>

The need to integrate social and legal needs is observed in situations where ‘legal norms run to counter social norms, there is a risk of both reactance and increased disrespect of laws in general. Contempt, disregard, reluctance and opposition of laws is a common feature in practicing communities’.<sup>32</sup> The laws in place which are meant to cure problems facing the society, must therefore require the input of the community and also sensitization in order to gain the much needed traction in terms of social acceptance. Failure to incorporate views from the community would lead to a state of anarchy where the laws are disregarded. “Rigid enforcement of FGM laws can be counterproductive in efforts to prevent the practice. Evidence from cross-national comparisons suggests that stricter laws or more rigorous enforcement may not necessarily result in a decrease in the practice.”<sup>33</sup>

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<sup>30</sup> Ruizet et al, *Dismantling the Man-made Myths upholding Female Genital Mutilation*, 2017, Pp. 478-491

<sup>31</sup> Rahman and Toubia, *A Guide To Law and Policies Worldwide*, 2000.

<sup>32</sup> Mackie G, *Effective Rule of Law Requires Construction of a Social Norm of Legal Obedience*, 2017.

<sup>33</sup> Boyle E, *Law and Culture in a Global Context*, 2010.

Empowerment of women is also vital in the fight against FGM. The awareness created by education and exposure has helped women in understanding the dangers associated with undergoing FGM and as a result, more educated women have sacrificed FGM and early marriages at the altar of education and career development. “As a woman’s level of education increased, the likelihood that she herself was cut decreased. Women who had experienced FGM/C were more likely to favor continuation of the practice compared to those who had not been cut.”<sup>34</sup> Empowerment of women and girls should also include men as they are vital in decision making in a patriarchal society like the Maasai community. The more men are involved in the fight against FGM, the lesser the pressure on women to be cut to boost their marriageability chances. “A girl is twice as likely to be cut if the father has no education.”<sup>35</sup> Sensitization of the health dangers as a result of FGM should be reinforced by the legal and human rights aspect where parents, relatives and the girls at risk of being cut are all educated on the illegality of the practice and the penal consequences for the offence. The created awareness on all aspects of the dangers of FGM would have a double impact and therefore should not be separated. “Approaching FGM/C from a human rights’ angle along with creating a base for social action helped increase positive individual and community health behaviors and lay the ground for efforts to abandon FGM/C.”<sup>36</sup>

### **1.5.1 Theoretical Literature Review**

The study is guided by three theories namely: Female Legal Theory, the Dualist theory and the Monist theory.

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<sup>34</sup> Achia T, *Spatial Modelling and Mapping of Female Genital Mutilation in Kenya*, 2014.

<sup>35</sup> Tamire and Molla, *Prevalence and belief in the continuation of Female Genital Cutting among High School Girls*, 2013.

<sup>36</sup> Berg and Denison, *Intervention to Reduce Female Genital Mutilation/Cutting in African Countries*, 2013.

### **1.5.1.1 Female Legal Theory**

Feminist Legal Theory, also known as **Feminist Jurisprudence**, the proponents hold the belief that the law has been fundamental in women's historical subordination.

### **1.5.1.2 Dualist theory**

The **Dualism Theory** explains the relationship between international laws and national laws on FGM. In a dualist state, international law has to be translated to the national law in order for the law to be functional. Without translation of the international law to national law, the former rendered inapplicable. International law in dualist states, has to undergo a rigorous legislative process to operationalize it and it therefore entirely depends on the political goodwill of the country to adopt it.

The East African Community Prohibition of Female Genital Mutilation Bill 2016 partner states include the Republic of Uganda, the Republic of Kenya, the United Republic of Tanzania, the Republic of Burundi, the Republic of Rwanda, the Republic of South Sudan and any other country that is granted membership to the Community under Article 3 of the Treaty. Currently, no country has made any official pronouncement on the Bill. Thus, failure to assent to the Bill into law by Heads of States of member States has rendered it inapplicable, a situation that continues to exacerbate cross-border FGM. "The objective of this Bill is to prohibit the practice of female genital mutilation in the East African Community, promote cooperation in the prosecution of perpetrators of female genital mutilation and develop common measures, strategies and programs for the effective implementation of this Act and other related matters."<sup>37</sup>

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<sup>37</sup> *East African Community Prohibition of Female Genital Mutilation Bill 2016.*

Dualists believe in the separation of powers between international and domestic laws on the basis of sovereignty of states. “Dualists regard international law and domestic law as two completely different systems of law. According to Malenovsky, international and municipal law are based not only on different jurisdictions and sanction bodies, but also on different subject matter and sources.”<sup>38</sup>To assert the difference between the two sets of laws, dualists therefore hold the view that international law is founded on the common willingness a group of states through the creation of duties and rights, of which, each member state must determine the manner in which it will comply with those laws.

Tanzania is traditionally a dualist state therefore treaty provisions and obligations do not have immediate effect on domestic or national law nor do they provide a basis upon which an action may be commenced in domestic courts. For international law to become part and parcel of national law, incorporation is necessary either by new legislation or amendments of existing legislations.

Negligence or unwillingness to implement international and national laws can only pose a problem in dualist States. States are free to choose the way in which they want to respect international laws, but they are always accountable if they fail to adapt their national legal system in a way that they can respect international law. Either they adopt a constitution that implements a monist system so that international law can be applied directly and without transformation, or they do not. But then they have to translate all international law into national law.

Cross-border FGM on the Kenya-Tanzania border at Namanga and Isebania is on the increase. The international treaty on FGM in East Africa has to be ratified in Tanzania in order for it to become legally enforceable in courts of competent jurisdictions across the region as per the law. The Kuria

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<sup>38</sup> Ololade O; *Monism/Dualism or Self Executory*, Pp. 6.



community in Isebania border have an FGM prevalence of 98% while the Masaai Community of Namanga border area have an FGM prevalence of 78%.

Due to the legal loopholes of legislation in Tanzania, perpetrators in Kenya border towns take advantage of the legal lacuna to sneak girls and women into Tanzania, by doing so, they circumvent the laws and systems that have been put in place to eradicate the practice.

The failure of Tanzania to ratify into law the East Africa Community Prohibition FGM bill 2016 frustrates efforts to coordinate and catalyze efforts to end FGM. There is lack of regional mechanism for harmonization of policies and laws, sharing of information, conducting of researches, collection of data and information and document findings. There is no conducive environment to foster the development of common measures, strategies and programs to fight cross-border FGM between Kenya and Tanzania.

### **1.5.1.3 Monist Theory**

Monism Theory most famous proponent was Hans Kelsen. The theory explains the hierarchical relationship between international law and national law under which international law is superior to national law. International law prevails over national law.

“Monists believe that international law represents a bigger legal order and is therefore supreme. Being derived from the practice of states, these two sets of laws are components of a single body of knowledge called law. They assert on the belief in the hierarchy of legal orders where it starts from natural law, followed by international law and lastly domestic law. In regards to the supremacy of international law over domestic law, they believe that international law ‘offers the best guarantee for the human rights of individuals.’”<sup>39</sup>The constitution of a country would generally

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<sup>39</sup> Ibid.

determine the question of whether the country is monist or dualist by prescribing the manner in which international law is implemented. In monist states, the constitution will allow automatic implementation while in dualist states, the laws will have to undergo a process of domestication them before implementation.

After the Promulgation of the Kenyan constitution 2010, Kenya became a monist state. Article (2) in regards to the Supremacy of the Constitution sub-section (5) and (6) states as follows; “(5) *The general rules of international law shall form part of the law of Kenya.* (6) *Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.*”<sup>40</sup>

In view of the above, The *East Africa Community Prohibition of Female Genital Mutilation Bill 2016* was automatically adopted into law by Kenya in reference to the above provisions of the constitution. It is worth noting that the above borrowed heavily from the Kenyan, *Prohibition of Female Genital Mutilation Act 2011*, hence, there is no question of conflict on the said laws. Also the *Sexual Offences Act of 2006*, the *Constitution of Kenya 2010* and the *Children’s Act 2001(Revised 2012)* are all in conformity with the existing international laws pertaining to human rights, specifically on FGM.

In addition, *The Protocol to the African Charter on Human and Peoples ‘Rights on the Rights of Women in Africa*, enjoins States Parties, East African Community Partner States included, to prohibit and condemn all forms of harmful practices which negatively affect the rights of women and are in contravention of globally acceptable standards. “Universal jurisdiction is a principle in international law whereby states claim criminal jurisdiction over people whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country

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<sup>40</sup> KLR; *The Constitution of Kenya 2010*.

of residence or any other relationship to the prosecuting country. The state backs its claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish.”<sup>41</sup>

“A monist state is less at risk of violating international rules because its judges can apply international law directly.”<sup>42</sup> These laws serve complementary purposes to national laws especially in addressing existing domestic legal gaps, a common occurrence in commonwealth countries. ‘The transformation of international norms into domestic law is not necessary from the point of view of international law...the necessity of transformation is a question of national, not of international law’.<sup>43</sup> This is because transnational crimes pose a threat to the international community as a whole, and hence, it’s upon the local community to act in order to provide local solutions to international challenges.

FGM in Tanzania is illegal only for girls below 18 years. Women above 18 can undergo the as long as they consent to it. This permissive environment is a fertile ground for Cross-Border FGM to flourish. The country is a dualist state, and international and regional laws such as The East African Prohibition of Female Genital Mutilation Bill 2016 and many others have to be domesticated in order to be enforced. Failure by the authorities to act as expected, and the lack of elaborate legal mechanisms and structures to extradite perpetrators of FGM from Tanzania to face criminal proceedings for Cross-Border FGM related offences is a major headache for Kenyan authorities.

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<sup>41</sup>Weiss P, *Universal Jurisdiction: Past, Present and Future*, 102: Pp. 406-409

<sup>42</sup>Kooijmans P, *International public krecht in vogelvucht*, Pp. 83.

<sup>43</sup>Cassess A, *International Law in a Divided World*, Pp. 221-222.

### **1.5.2 Current Trends in Cross-Border FGM and Factors Affecting its Eradication**

Cross-border FGM cases in East Africa has been a growing concern, despite national and regional efforts to eradicate the practice. In Kenya FGM is deeply rooted as a social norm amongst the Communities especially the Maasai who occupy Namanga area of Kenya and Tanzania with 78% prevalence rate. The cross-border aspect being an exacerbating factor mainly employed as a strategy to evade prosecution.

“Key factors reported in the Kenyan baseline survey and by stake holders in the countries include; Shared traditions, especially intermarriage that contributes to perpetuate FGM and child marriage, Fear of arrest in native country and feeling of limited prosecution in neighboring countries, lack of proximity to circumcisers in native countries, quality and affordability of FGM services in the neighboring countries, income sources for circumcisers encouraging them to continue and, absence of strong regional monitoring mechanisms for reporting. A multi-sectoral approach, intergovernmental initiatives/collaboration in addition to community level engagements are required to address these factors.”<sup>44</sup>

The rising numbers of cross-border FGM occasioned the setting up of tripartite initiatives to set up some tripartite initiatives to catalyze eradication of Cross-border FGM in the Region. This was done during an inter-Ministerial meeting held in Nairobi. “The declaration and Action plan to End Cross-Border FGM adopted at the inaugural regional inter- ministerial meeting held on 17<sup>th</sup> April 2019 will be remembered as the day that 5 countries came together in a land mark meeting to declare an end to FGM, particularly cross-border dimensions of FGM. Game changing joint actions were recommended for immediate implementation. The meeting, which is the first of its

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<sup>44</sup> UNFPA; *Beyond the Crossing*: “Female Genital Mutilation across Borders,” Pp. 25.

kind in the history of global efforts to eradicate FGM, put forward bold recommendations that reaffirmed the need for strong partnerships at all levels to end the harmful practice.”<sup>45</sup>

The action plans resulting from the meeting highlighted the improvement of legislative and policy frameworks and environment, effective and efficient coordination of member states, communication and advocacy and generation of accurate information to help in the fight against cross-border FGM.

### **1.5.3 Impact of FGM as a form of Gender-Based Discrimination tool against Women.**

School going girls being subjected to FGM are likely to drop out of school as the practice is mostly a preparation for marriage. Once circumcised, girls are forced to drop out of school to get into early marriages. Illiteracy and lack of proper educational and professional qualifications lock women and girls out of employment opportunities. Early marriages and lack of employment in the formal sector leads to poverty and a surge in cases of domestic violence. Such women and girls suffer health, psychological and economic challenges as explained by one of the victims in the following extract. “It was during her first year of high school in rural Western Kenya that Mary Kuket says she was 'sacrificed to tradition' and her dreams of becoming a doctor shattered forever. With no explanation, the 15year old was given away to another family, who forced her to undergo Female Genital Mutilation (FGM) then married off to a middle-aged man. “I kept asking my parents why I was being taken and begged them not to send me away-but my father pushed me away saying that soon I would understand,” Kuket, now 46, told Thomson Reuters Foundation by phone from Baringo County.”<sup>46</sup>

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<sup>45</sup> UNFPA; *Ending Cross Border FGM*, Pp. 2.

<sup>46</sup> Bhalla N; *How FGM is pushing Girls out of Schools in Kenya*.

Girls are never informed of the parent's intention to have them undergo the cut and also to have them married off prematurely. Therefore, victims are left with no option but to accept fate and move on with life albeit psychological and physical trauma as a result of the procedure. The victims find social comfort in the prestige associated with entering womanhood and also freedom from fear of being considered as outcasts in their societies. Cross-Border FGM therefore interferes with the dreams and aspiration of women and girls by denying them the opportunities provided through education.

#### **1.5.4 Policy and Legal Frameworks on Female Genital Mutilation in Kenya and Tanzania**

##### **1.5.4.1 Kenya**

At the national level, the *Constitution of Kenya 2010* Article 43 (1) (a) guarantees the rights of an individual to the highest attainable standard of health, including reproductive health. It underscores the importance of prioritizing the needs of vulnerable and marginalized groups in provision of health care. There are also a number of policies and strategies on sexual and reproductive health addressing the practice of FGM including the *National Reproductive Health Policy, 2007* and the *National Reproductive Health Strategy 2009-2015*.

*The Children's Act No. 8 of 2001* Section (14) on protection of the child from harmful cultural rites states that "No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development."<sup>47</sup>

*The Prohibition of FGM Act 2011* Section (19) to (29) provides for offences and punishments in matters related to Female Genital Mutilation as follows;

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<sup>47</sup> KLR; *The Children Act revised Edition 2012*, Pp. 16.

- 19) *Offence of Female Genital Mutilation,*
- 20) *Aiding and abetting Female Genital Mutilation,*
- 21) *Procuring a person to perform FGM in another country,*
- 22) *Use of premises to perform FGM*
- 23) *Possession of tools or equipment*
- 24) *Failure to report commission of offence*
- 25) *Use of derogative language*
- 26) *Entry into premises*
- 27) *Measures by government*
- 28) *Extra-territorial jurisdiction and,*
- 29) *Offences (three years or a fine of not less than Ksh 300,000 for all offences except for section 19 (2) which attracts a life imprisonment)*

*The East African Community Prohibition of Female Genital Mutilation Act 2016* Section (4) to (13) stipulates for offences and punishments which are similar to those of *The Prohibition of FGM Act No 32 of 2011*.

#### **1.5.4.2 Tanzania**

The Tanzanian constitution (1977) does not directly prohibit FGM but offers a general protection from any form of discrimination, torture, inhuman and degrading treatment as well as equality before the law. These constitutional protections are offered in articles 9, 13 and 16 as follows;

9) (1) *“That dignity and other human rights are respected and cherished*

*(f) That human dignity is preserved and upheld in accordance with the spirit of the Universal declaration of Human Rights.*

13)(1) *All persons are equal before the law and are entitled without any discrimination, to protection and equality before the law.*

16)(1) *Every person is entitled to respect and protection of his person, property of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.*”<sup>48</sup>

However, *Sexual Offences Special Provisions Act 1998 (SOSPA)* Section 169A provides protection to girls under 18 years against FGM and other harmful cultural practices, however, women above 18 years are not protected from the vice. The Section states as follows;

1. *“Any person who, having the Custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person or causes female genital mutilation or procures that person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of sight, hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.*
2. *Any person who commits the offence of cruelty to children is liable on conviction to imprisonment for a term not less than five years and not exceeding fifteen years or a fine not exceeding three hundred thousand shillings or both fine and imprisonment, and shall be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person.*”<sup>49</sup>

Therefore, *The East African Community Prohibition of Female Genital Mutilation Act 2016* is yet to be domesticated and implemented in regards to boosting the fight against Cross-Border FGM

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<sup>48</sup> Government Printer; *The Constitution of the United Republic of Tanzania* (1977), Pp. 16.

<sup>49</sup> Government Printer; *The Tanzanian Sexual Offences Special Provisions Act (1998)*, Pp. 14.



within the Tanzanian territory, which therefore waters down efforts by Kenya in eradicating the vice by providing safe haven for perpetrators to commit FGM related offences with impunity.

### **1.5.5 Gaps in the Literature Review**

Literature reviewed includes research on the theoretical and empirical evidence of cross-border FGM. The study through the review, has increased the level of understanding on ways in which the cross-border FGM can be tackled by sealing off all legal and social loopholes exploited by perpetrators in exacerbation of Cross-Border FGM.

It has been observed through the review that legal environment is conducive as both international and local FGM laws are ‘sufficient’, however, lack of political as well as social goodwill in dealing with Cross-Border FGM rolls back the legislative gains made through formulation of legislation and treaties.

The role of society in the fight should not be underestimated as it plays a big role in either eradicating or deeply entrenching the vice. Inculcation of the right change of attitude is important for the communities. The research has also focused into ways of influencing a change of attitude in the community by identifying ways of disseminating the right information to the community which will also act as an asset in the eradication of Cross-Border FGM.

### **1.6 Hypotheses**

H1: International laws have helped in the fight against Cross-Border FGM.

H2: International laws have not helped in the fight against cross-border FGM

H3: Cross-border FGM has implications on women empowerment at Namanga border town.

## **1.7 Justification of the Study**

In the study, there are three justifications, which are as follows; -

### **1.7.1 General justification**

This study is crucial in helping the general public to understand their role in the fight against Cross-Border FGM. It will enable the formulation and implementation of legal frameworks as well as coming up with most appropriate community friendly approaches such as promotion of alternative rites of passage (ARP), and encouraging timely sharing of crucial information with main stakeholders in the fight against FGM which will enable proactive responses amongst many other suitable methods of curbing Cross-Border FGM.

### **1.7.2 Academic justification**

The study will address knowledge gaps pertaining to international FGM laws, its responsiveness to domestic challenges in regards to Cross-Border FGM and other forms of approaches, other than legislations that can be employed in solving the challenge.

It will also be beneficial in addressing existing gaps in implementation of some provisions in international laws that require setting up and operationalization of institutions, their sources of funding among many other gaps that remains unsolved.

### **1.7.3 Policy justification**

The findings of this study will inform policy makers on appropriate diplomatic approaches to be used in enhancing the fight against Cross-Border FGM and other transnational crimes. Diplomatic goodwill is required while seeking solutions to International legal challenges due to jurisdictional

challenges. Therefore, sharing of information and enforcement of both national and international laws and statutes should be informed by appropriate policy decisions.

## **1.8 Theoretical Framework**

The study has been guided by the *Feminist Legal Theory*, also known as *Feminist Jurisprudence*. FLT proponents hold the belief that the law has been fundamental in women's historical subordination.<sup>50</sup>

### **1.8.1 Female Legal Theory (FLT)**

“FLT critiques law as constitutive and a cause of discrimination against women. The theory is twofold whereby it seeks to explain ways in which the law played a role in women's former subordinate status and also, it is dedicated to changing women's status through rework of the law and its approach to gender.”<sup>51</sup> The theory critiques the American legal system that was created to change the way women were created and how judges had applied the law in order to keep women in the same position they had been for years. Martha Fineman founded the Feminism and Legal Theory Project at the University of Wisconsin Law School to explore the relationships between feminist theory, practice and law which has been instrumental in the development of the feminist legal theory.<sup>52</sup>

The Asia Pacific Forum on Women, Law and Development, a women empowerment advocacy group established by women lawyers, social scientists and activists in a 1985 Third World Forum on Women held at Nairobi. In their concept paper named Legal Feminist Theory and Practice of 2009, the advocacy group aimed at addressing social repression on women through working on

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<sup>50</sup> Fineman, M. A.; *Feminist Legal Theory*, Journal of Gender, Social Policy and the Law. 13 (1): 13–32, 2015

<sup>51</sup> Scales A, *Legal Feminism: Activism, Lawyering, and legal Theory*. New York: University Press, 2006

<sup>52</sup>, Emory University, *Feminism and Legal Theory Project*, | Atlanta, GA". *Emory University School of Law*, 2017-10-07.

legal framework transformation. “APWLD believes that law can be transformative as well as repressive, seeking to dissect, engage with and transform laws, legal practices and the systems that shape and inform them”.<sup>53</sup>

“Feminist legal theory is based on the feminist view that law’s treatment of women in relation to men has not been equal or fair.”<sup>54</sup> “The goals of feminist legal theory, as defined by leading theorist Claire Dalton consists of understanding and exploring the female experience, figuring out if law and institutions oppose females, and figuring out what changes can be committed to.”<sup>55</sup> “This is to be accomplished through studying the connections between the law and gender as well as applying feminist analysis to concrete areas of law.”<sup>56</sup>

Female legal theory argues on the legal loopholes that discriminate and fail to defend and protect women from the retrogressive and horrible practice of FGM. Only Kenya and Uganda have ratified the East Africa Community Prohibition of FGM Bill 2016 into law. Other member states namely Tanzania, Rwanda, and South Sudan have not ratified the bill into law and therefore it cannot be effected in those countries, hence providing fertile grounds for Cross-Border FGM.

Some states and governments are not very keen on laws related to issues of women. Women are overlooked and generally discriminated against. Their social roles are vital but issues that directly affect their lives are overlooked rendering them helpless despite too much expectation from them by the society.

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<sup>53</sup> Erite; *Feminist Legal Theory and Practice*, Pp. 137.

<sup>54</sup> Dalton C; *Where We Stand: Observations on the Situation of Feminist Legal Thought’ in Feminist Legal Theory*, 1993.

<sup>55</sup> Dalton C; *Deconstructing Contract Doctrine in Feminist Legal Theory: Readings in Law and Gender*, 1992.

<sup>56</sup> Barlett T.K, Kennedy R; *Feminist Legal Theory: Readings in Law and Gender* (1992).

Laws and criminal procedures on FGM have not been streamlined to reflect the current social and legal environment. The wheels of justice grind extremely slowly thereby denying women the much needed justice. Clearly, FGM is a violation of women's human rights, to dignity and privacy and hence, discrepancies in laws among states on FGM challenge need urgent attention.

Tanzanian *Sexual Offences Special Provisions Act 1998* only offer protection from FGM to girls below the age of 18 years. It is however, turns a blind eye on women above 18 years who at times might be coerced to unwillingly undergo FGM. This law is discriminates women and reverses the gains made in the fight against FGM in Kenya and other neighboring countries. The Kenyan, *Prohibition of Female Genital Mutilation Act no 32 of 2011* completely outlaws FGM regardless of age, nationality, consent or any other factor within the Kenyan territory. Weak legal environment complicates the war on Cross-Border FGM. Judicial processes are also bureaucratic due to legal technicalities and are also unaffordable to many making it difficult for women and girls from poor families to access justice.

Female Legal Theory therefore aims at understanding how laws have perpetrated gender inequality against women where in the face of Cross-Border FGM, weak anti-FGM laws make women powerless, vulnerable, disadvantaged and oppressed. FGM is seen as a private affair which cordons off the public, making women and girls suffer silently due to the retrogressive cultural and legal regime.

Laws affecting women and which do not address concerns raised by the society can be misinterpreted to mean they are against the wellbeing of targeted population. "A civil case was filed by a Kenyan Female Doctor seeking to annul the *Prohibition of Female Genital Mutilation Act 2011*, terming it unconstitutional and an outright violation of Women's rights to exercise her cultural beliefs, where she argues that the term "mutilation" is offensive to women who have

already undergone the rite of passage and waters down the cultural significance of the practice. ‘Women who took their daughters for circumcision were not taking them there to destroy them. Those children were not thrown away afterwards; they were celebrated as respected members of the society. To use the word in our context suggests that it is malicious and that we are intentionally damaging our female. To me, this is very wrong.’<sup>57</sup> A ruling on the above case is yet to be made and can turn either way and a ruling in favour of the plaintiff would mean a complete reversal of the gains made in the fight against FGM. It also a wake-up call on legislators of such important laws to ensure public participation is prioritized in order to secure their support during implementation.

The researcher therefore seeks to apply Female Legal theory in relation to the study by looking for ways in which the already existing laws could be re-engineered to become effective in the war against cross-border FGM. The researcher is of the view that the laws in place are adequate but lack effective implementation mechanisms and diplomatic goodwill to ensure success in the fight against the vice. FLT fights for women equality in matters of law, justice and liberalism.

These setbacks tend to roll back the gains made in formulating the laws with a target of eliminating women repression, on the contrary women continue to suffer the implications of FGM perpetrated on them with total disregard to the existing laws. It is in that regard that feminists should increasingly fight for the improvement of legal laws and procedures on anti-FGM laws both at the international, regional, and national levels.

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<sup>57</sup> Bukola A; *A Kenyan doctor is seeking to legalize Female Genital Mutilation*. CNN. October 25, 2019.

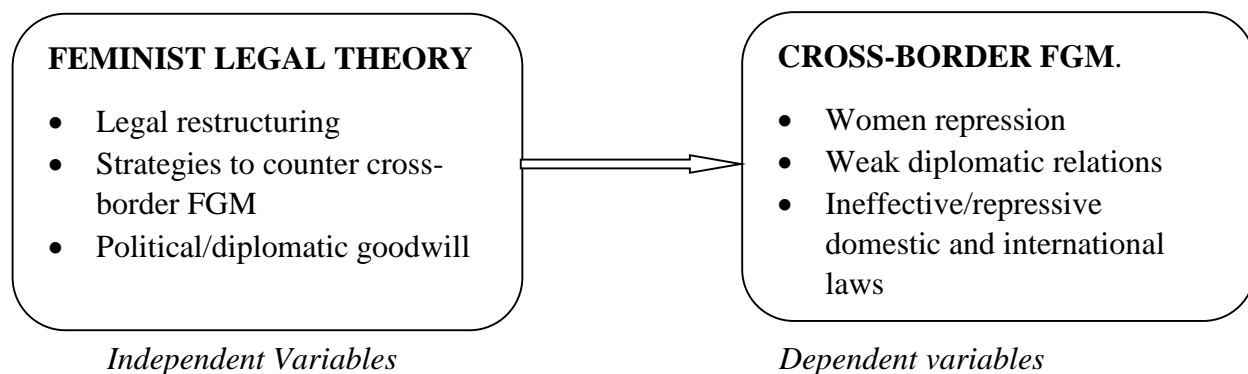


FIG 1.1 THEORETICAL FRAMEWORK

## 1.9 Research Methodology

This chapter presents the methodology adopted by the study. This includes the study design, the target population, sampling design, data collection methods, and data analysis methods.

### 1.9.1 Research Design

The study employs both qualitative and quantitative approach. Qualitative research method focuses on understanding the underlying reasons and motivations of cross-border FGM. Qualitative approach involves collection of data through focus groups and observations, which directed the researcher to targets of focus in statistical data collection.

Quantitative data collection on the other hand involved data collection through online surveys, telephone interviews and video conferencing. Face to face interviews was also be arranged for respondents.

### 1.9.2 Research Site

The researcher sought to undertake the study in Namanga area along the Kenya-Tanzania Border. The area is inhabited by the Maasai community on both sides of the border and despite being of

different nationalities, they share blood relations, language and cultural practices. The community prides itself as having deep-rooted traditional values and practices and therefore practices FGM with a prevalence rate of 78%.

### **1.9.3 Target Population**

The target population was 1,000 members of the Maasai community and other communities residing within the study area categorized as Medical practitioners, 20 politicians and legal practitioners (30), Activists (50), Religious leaders (80), Community, opinion and religious leaders (100), Scholars, teachers and peer educators (150), parents (250) and students (400) who are above the age of 12 years. The choice of the population was informed by the fact that the respondents are either involved in the fight against, or are personally affected by the practice.

### **1.9.4 Research Sampling Procedure**

The desired sample size was calculated using the Taro Yamane formula as follows;

$$n = \frac{N}{1 + N(e)^2}$$

Where;

$n$  -The sample size.

$N$  - The *population size*

$e$  – The acceptable sampling error.

- 95% confidence level and  $p=0.05$  are assumed.



For this study, the researcher has employed stratified random sampling, which means the targets were broken down into social strata, and within each stratum, all respondents stood equal chances for selection to participate in the survey as shown below;

<b>Category</b>	<b>Target</b>	<b>Sample</b>
Medics	20	19
Politicians/Legal practitioners	30	27
Activists/advocacy group members	50	44
Religious/Opinion/ Community leaders	100	80
Scholars/ Teachers/ Peer educators	150	109
Parents	250	154
Students	400	200
Total	1,000	633

TABLE 1.1 SAMPLE DISTRIBUTIONS

### **1.9.5 Data Collection**

The researcher has employed both primary and secondary data in data collection. In collection of primary data, the researcher prepared questionnaires as well as interview schedules and also arranged for face to face, telephone and online interviews. On secondary data, the researcher got information from journals, newspaper extracts, pieces of legislations, both domestic and international, and other available published data on Cross-Border FGM.

### **1.9.6 Data Analysis**

During the study, the researcher has collected both qualitative and quantitative data. The quantitative data from questionnaires will be analyzed using in the subsequent chapters using descriptive statistics such as frequencies and percentages.

### **1.9.7 Data Presentation**

The quantitative data from questionnaires has been presented using graphs, tables and percentages.

### **1.9.8 Ethical Considerations**

Ethics as of major concern in data collection, has been key in the collection of data for this study. The researcher ensured high moral and ethical values were upheld during the process of data collection. The researcher also ensured that voluntary participation, informed consent, privacy, confidentiality and anonymity of the respondents was observed.

### **1.10 Chapter Outline**

The study has five chapters as outlined below:

**Chapter One:** Introduction to the Study

**Chapter Two:** The Efficacy of International Laws on Female Genital Mutilation in East Africa.

**Chapter Three:** Impact of Cross-Border Female Genital Mutilation on Women Empowerment.

**Chapter Four:** Trends in Cross Border Female Genital Mutilation and Factors Undermining the Fight against the Practice at Namanga Border.

**Chapter Five:** Summary, Conclusions and Recommendations.

## **1.11 Conclusion**

This chapter dealt in the background of international, national and local anti-FGM laws with a specific reference to anti-FGM laws in Kenya and Tanzania. The researcher has identified legal gaps in the fight against Cross-Border FGM, which needs both legal, diplomatic and other applicable approaches. These approaches will be exhaustively be dealt with in the subsequent chapters of this study.

## CHAPTER TWO

### THE EFFICACY OF INTERNATIONAL LAWS ON FEMALE GENITAL MUTILATION IN EAST AFRICA.

#### 2.0 Introduction

This chapter will focus on the effectiveness of existing International, regional and national legal structures on FGM and its implication in the fight against Cross-Border FGM within the study area. The researcher employed structured random sampling to include both literate and semi-literate respondents. This was to accord the researcher a chance to collect data from respondents with some level of understanding on the legal requirements in regards to FGM in the area of study.

#### 2.1 Overall response rate

##### 2.1.1 Respondents Conversant with Basic Legal Matters

For this chapter, the response rate was 40.9% as shown in the table below, the remaining 59.1% could not be achieved due to lack of understanding of legal provisions by the respondents and also, due to restriction of movements, ban on social gatherings and curfew imposed by the both Kenyan and Tanzanian governments as containment measures for the spread of Covid-19.

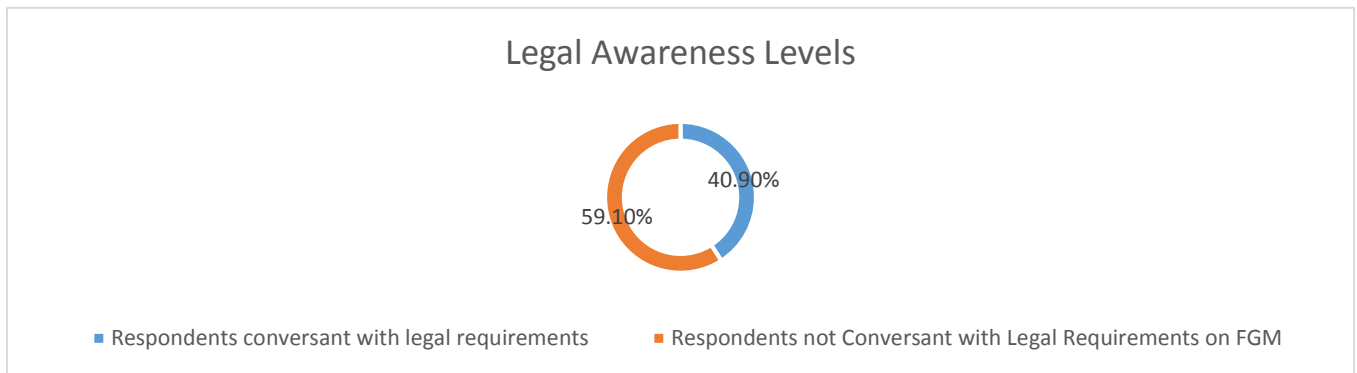


FIG 2.1 AWARENESS LEVELS ON LEGAL PROVISIONS AGAINST FGM

Category	Targeted Sample (Total)	Respondents
Medical practitioners	19	15
Politicians/legal practitioners	27	22
Activists/advocacy group members	44	35
Religious/ Opinion/ Community Leaders	80	53
Scholars/Teachers/ Peer educators	109	66
Parents (literate and semi-literate)	154	25
Students (upper primary, secondary and tertiary education levels)	200	43
Total	633	259

TABLE 2.1. RESPONSE RATE FOR CHAPTER TWO

### 2.1.2 Response Rate According to Nationality and Gender.

Out of the 259 respondents for purposes of this chapter, the researcher split the respondents according to their nationalities and gender as shown below.

Nationality	Male	Female	Total
Kenyans	65	95	174

Tanzanians	32	67	85
<b>Total</b>	<b>97</b>	<b>162</b>	<b>259</b>

TABLE 2.2 RESPONSE RATE ACCORDING TO NATIONALITY AND GENDER

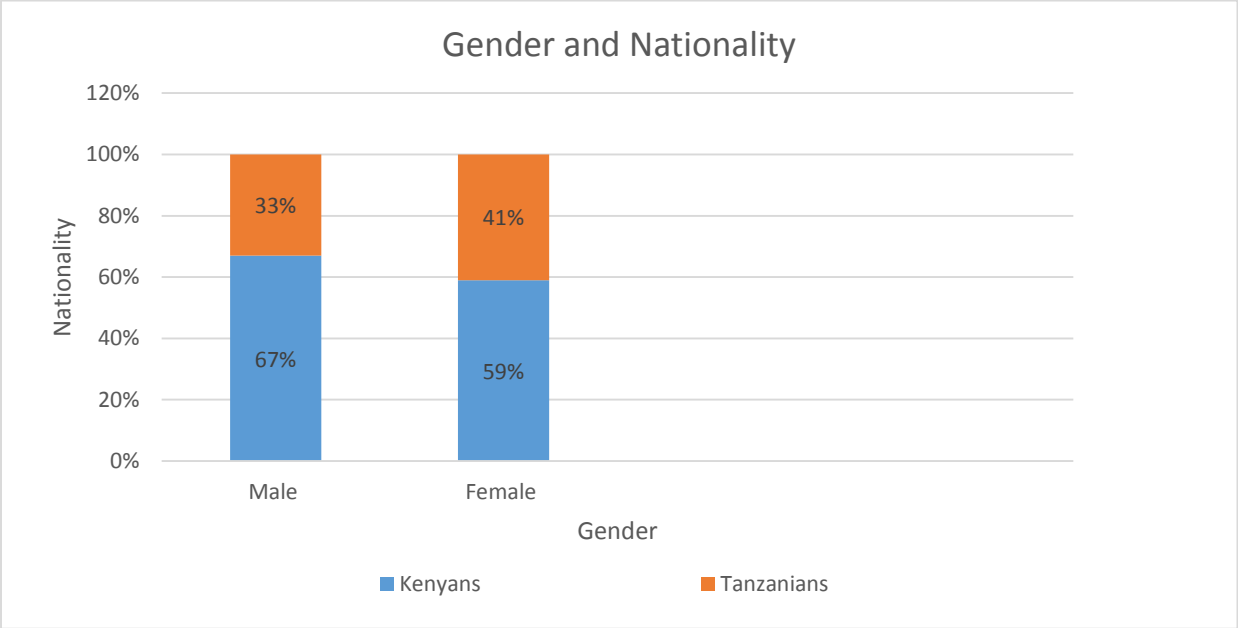


FIG 2.2 RESPONSE RATE ACCORDING TO GENDER AND NATIONALITY

**2.2 Effectiveness of International Anti-FGM Laws in the Prevention of Cross-Border FGM.**

International legal provisions are in form of treaties and declarations which are adopted by countries that are signatories to the process. However, ways of implementing such provisions may differ from one country to another and also due to different circumstances. “International law differs in many respects from the legal system of a well-functioning modern state. The rules of international law do not come from a global legislature but from bilateral and multilateral treaties and from customary rules that crystalize evolving state practice. State consent plays a fundamental

role in shaping and legitimizing international law. Even, the International Criminal Court, whose jurisdiction involves crimes of the greatest concern to the international community, such as crimes of aggression and crimes against humanity, still largely depends on states' submission to its authority.”<sup>58</sup>

In the Kenyan context, International laws are deemed to be part of the Kenyan laws. This is according to *The Constitution of Kenya 2010* Article 2 (6) which states that; “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.”<sup>59</sup> In the Tanzanian context, International treaties require ratification by the legislature. This is according to Chapter 3 Article 62 of *The Constitution of the United Republic Of Tanzania 1977* states that; (3) “For purposes of discharging it’s functions the National Assembly may; (e) deliberate upon and ratify all treaties and agreements to which the United Republic is a party and the provisions of which require ratification.”<sup>60</sup> Therefore, both countries have constitutional mandates to implement international laws to which they are party to.

Equipped with the above knowledge, the researcher therefore sought to understand the levels of awareness and implementation of international legal instruments in the prevention of Cross-Border FGM, which is a constitutional mandate bestowed upon the two countries within the study area. A total of 174 Kenyans and 85 Tanzanians responded on the effects of International law in the prevention of Cross-Border FGM within the study area.

58 respondents which is 33% of Kenyans, mostly consisting of legal practitioners, scholars and anti-FGM crusaders were aware of international legal instruments on the prevention of FGM. The

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<sup>58</sup> Carmen E, David L; *Skeptical Challenges to International Law*. May 24, 2018.

<sup>59</sup> KLR. *The Constitution of Kenya 2010*.

<sup>60</sup> The Tanzanian constitution 1977.

remaining 67% had no information on any existing international treaties on the prevention of FGM. They perceived FGM as a local problem and not an international one and for that reason, they could not understand why there were existing international mechanisms in place to fight a ‘small African problem’. On the other hand, out of the 58 respondents aware of such provisions, 31% of them could clearly name and articulate a legal provisions. The remaining 69% are aware of existing provisions but had very little to share on the contents.

On the means in which the 33% of the respondents used to acquire the information, majority claim to have either done personal research on it while a few learned of from workshops and discussion forums organized by Non-Governmental Organizations and Community Based Organizations. None of the respondents got access of such information from government sources.

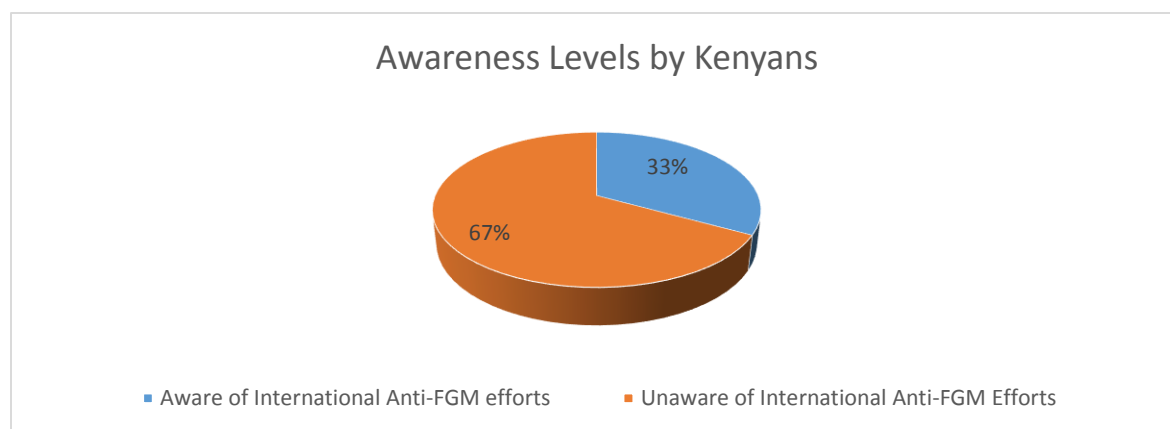


FIG 2.3 AWARENESS LEVELS OF KENYANS ON INTERNATIONAL ANTI-FGM PROVISIONS

Out of 85 Tanzanian respondents, 14 of them which is 16% consisting a legal practitioner, scholars and Anti-FGM crusaders were able to articulate legal issues surrounding international legal requirements in relation to FGM. The remaining 84% of the respondents were unaware of any international efforts to eradicate FGM. Like their counterparts in Kenya, majority of them held the opinion that FGM is a local challenge and hence international approach was unnecessary.



On the means in which the 16% of the respondents got information on existing international Anti-FGM laws, one claim to have accessed the information through personal initiative, the rest got informed through forums organized by NGOs and CBOs operating in their localities.

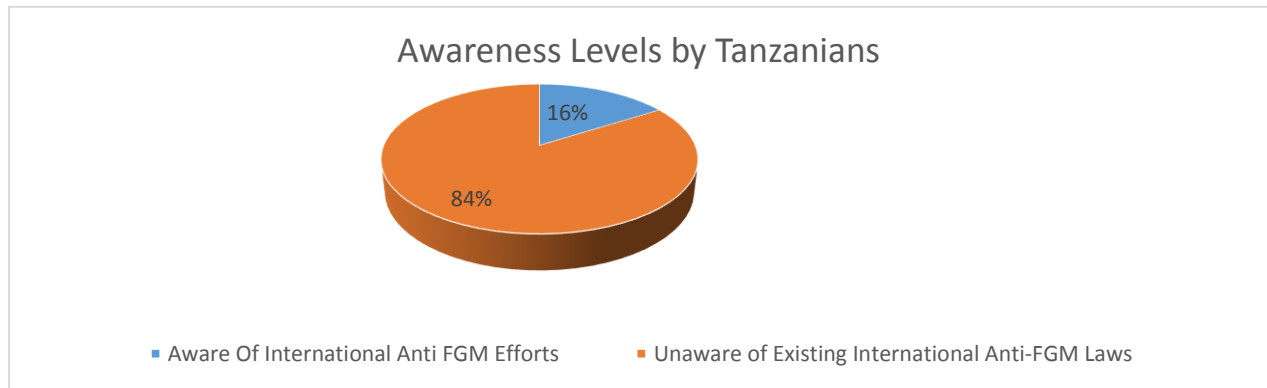


FIG 2.4 AWARENESS LEVELS OF TANZANIANS ON INTERNATIONAL ANTI-FGM LAWS

The overall awareness of respondents from both countries of the existing international efforts to eradicate FGM was at 28% against 72% of those unaware of such efforts. This is because, as a standard practice, governments cannot be compelled under international law to Implement and enforce the provisions. “The question of whether international law is law was raised most incisively in the 19<sup>th</sup> century by the legal philosopher John Austin, who famously maintained that it was not. On Austin’s account, law exists as the command of the sovereign, where commands are understood as orders backed by the threat of coercive sanctions in the event of none compliance (Austin, 2012, p.36). A sovereign is someone who is habitually obeyed by others but does not habitually obey anyone else. Because international law does not possess a sovereign that issues commands, Austin concludes that it does not qualify as law (2012,Pp. 188-89,231-32).”<sup>61</sup>

<sup>61</sup> Carmen E, David L: *Skeptical Challenges to International Law*, 2018.

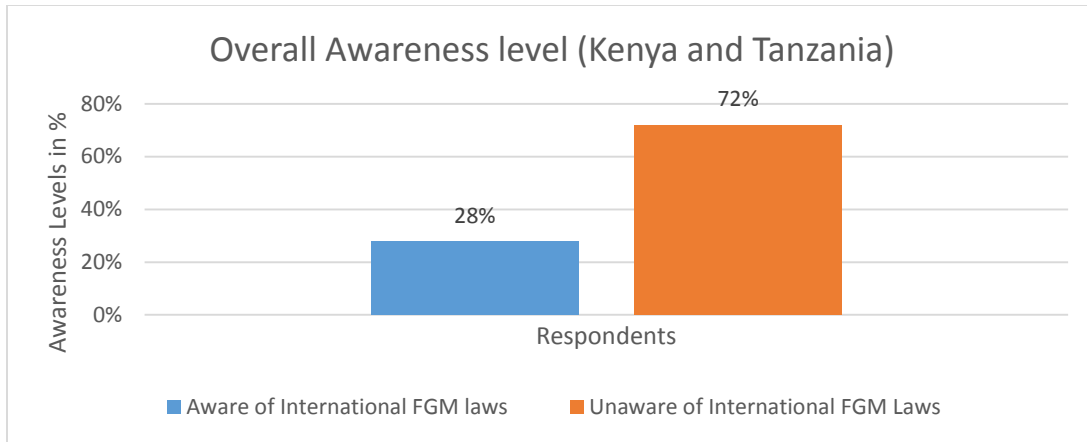


FIG 2.5 OVERALL AWARENESS OF KENYA AND TANZANIANS ON INTERNATIONAL ANTI-FGM LAWS

The most practicable way to ensure effectiveness of international law within the study areas majority of the respondents observed is through strengthening of NGOs and CBOs in the grassroots to carry to conduct awareness to the people through outreach programs. Through such initiatives, international laws will work effectively by influencing attitude change and not through enforcement “The socialization of legal human rights norms is the most effective method for guaranteeing obedience to human rights laws, and is identified by Goodman and Jinks as “acculturation”- defined as the “general process by which actors adopt the beliefs and behavioral patterns of the surrounding culture’ (2004:621). In an increasingly liberal democratic international society, and within predominantly liberal regional organizations, the acculturation of societies within each state is inevitable –peer pressure and socialization, coupled with the increase in communications, INGOs, and globalization lead to an assimilation of beliefs about human rights and the power of international human rights law. The acceptance of human rights norms into popular culture, political society, and behavior is the most powerful method of enforcement.”<sup>62</sup>

<sup>62</sup> Hannah Moscrop; Enforcing International Human Rights Law: Problems and Prospects. April 29, 2014. <https://www.e-ir.info/2014/04/29/enforcing-international-human-rights-law-problems-and-prospects/>

### **2.3 Effectiveness of Regional Anti-FGM Laws in the Prevention of Cross Border FGM**

The existing regional laws that in the form of treaties and declarations. The most notable laws that address FGM issues include the *Protocol to the African Charter on Human and peoples' rights on the rights of women in Africa*. The regional law has no enforcement mechanisms but bestows upon member states the responsibility of ensuring that the rights of women are safeguarded. ' The Protocol to the African Charter on Human and peoples' rights on the rights of women in Africa enjoins State Parties, which includes all EAC Partner states to prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards.'<sup>63</sup>

Further, the protocol under Article 5 specifically addresses the FGM issue but does not dictate how and when such laws should be made and enforced. It is therefore the discretion of member states to decide how, when and if they will adhere to the requirements of the treaty. Article 5 States as follows;

“State 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, medicalization and paramedicalization of female genital mutilation and all other practices in order to eradicate them.’<sup>64</sup>

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<sup>63</sup> *The East African Community Gazette No. 8 of 19<sup>th</sup> August, 2016*. Pp. 12.

<sup>64</sup> *Ibid*, Pp. 12

In response to the requirements of the protocol, Kenya enacted *The Children's Act of 2001* and *The Prohibition of Female Genital Mutilation Act of 2011*. Tanzania on its Part enacted *The Sexual Offences Special Provisions Act of 1998*.

The protocol also prompted the East African Community member states through the East African Legislative Assembly to legislate on *The East African Prohibition of Female Genital Mutilation Bill of 2016* to address FGM which had already turned into a transnational crime. However, the bill required presidential assent by all member states to come into force, which is a requirement according to the *Treaty for the Establishment of the East African Community of 1999*. Article 63 on *Assent to Bills* states that;

1. *"The Heads of State may assent to or withhold assent to a Bill of the Assembly.*
2. *A Bill that has not received assent as provided for in paragraph 1 of this Article within three months from the date on which it was passed by the Assembly shall be referred back to the Assembly, giving reasons, and with a request that the Bill or a particular provision thereof be reconsidered by the Assembly.*
3. *If the Assembly discusses and approves the Bill, the Bill shall be re-submitted to the Heads of State for assent.*
4. *If a Head of State withholds assent to a resubmitted Bill, the Bill shall lapse."*<sup>65</sup>

Therefore, the progress on the implementation status of the Bill has since remained unclear and details on the same scanty. In 2018, The Uganda Association of Women Lawyers (Fida-Uganda) petitioned the East African Legislative Assembly over the delay by the East African Community Heads of States to assent to the anti-FGM Bill two years after it was passed by the assembly. 'The

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<sup>65</sup>East African Community; *The Treaty for the Establishment of the East African Community*. Arusha. EAC 2002. Pg 45.

Uganda Association of Women Lawyers (Fida-Uganda) met with the East African Legislative Assembly's Committee on Legal, Rules and Privileges at the EAC headquarters in Arusha, Tanzania on Monday in a bid to push for the revival of debate and assentation of the Prohibition of Female Genital Mutilation Bill, 2016<sup>66</sup>. Ms Dora Byamukama, who happens to be the drafter of the Bill was quoted saying; "We find it really necessary for the community leaders to sign the anti-FGM Bill into law to totally ban the practice in the Community."

Equipped with the above information, the researcher sought to understand the level of awareness and status of implementation of the above highlighted regional Anti-FGM laws. The researcher also sought any other information on existence of other Anti-FGM initiatives by the regional body carrying out as an alternative to the Bill. A total of 174 Kenyans and 85 Tanzanians responded on the effects of regional anti-FGM laws in the prevention of Cross-Border FGM within the study area and the results were as follows. The researcher found out that 17 Kenyans consisting mostly of legal practitioners and Anti-FGM crusaders were aware of the contents in the East African Prohibition of Female Genital Mutilation Bill 2016. They were, however not sure of its assentation status by the President of Kenya as they are yet to get any official communication on the same. Only 7 respondents consisting of legal practitioners, peer educators and Advocacy group members from Tanzania were aware of the Bill, and as is the case with their counterparts, they could not tell on the assentation status by their Head of State as they are yet to get official communication from their government.

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<sup>66</sup> Moses Havyarimana; *women decry delay in assenting to regional anti-FGM Bill*. The East African, Nov 6, 2018.

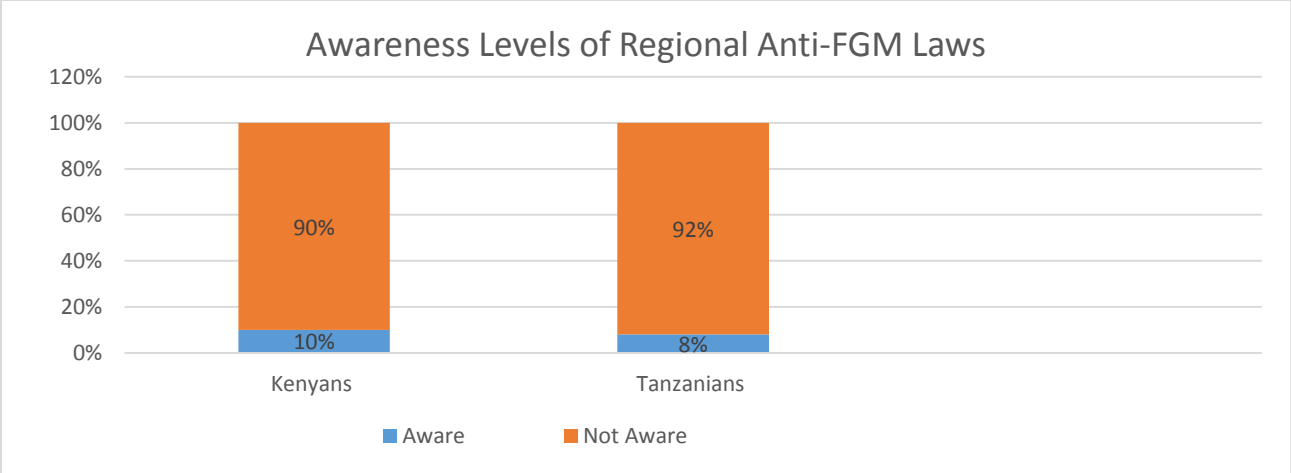


FIG 2.6 AWARENESS LEVELS OF REGIONAL ANTI-FGM LAWS.

The above results clearly shows the very little efforts by the regional body and the commitment by states in providing solution for Cross-Border FGM. Regional efforts would lay the foundation for seamless diplomatic engagements aimed at eradicating the practice in all member states. FGM is not the only challenge in relation to regional imbalance of implementation of the treaty. The common market protocols has also faced similar challenge as observed. ‘The full implementation of the common market is a challenging task since it calls for strong implementation by all parties, particularly Partner States, so as to deliver the rights and freedoms enshrined in the East African Common Market Protocol. The Partner States are under obligation to make sure that their existing laws and regulations in their respective countries are in conformity with the common market provisions’.<sup>67</sup>

<sup>67</sup> Alfred M; Viateur B; *Legal challenges to the implementation of the EAC Common Markets Protocol*. July, 2016, Pp. 36.

## **2.4 Effectiveness of National Anti-FGM Legislations in the Prevention of Cross-Border FGM.**

### **2.4.1 Kenyan Laws**

Kenya has two Acts of Parliament that provides for the protection of women and girls against Female Genital Mutilation. The two sets of legislation are the *Childrens Act of 2001*, revised in 2012 and the *Prohibition of Female Genital Mutilation Act of 2011*.

*The Children Act 2001* offers protection exclusively to girls below the age of 18 years from FGM. Section 14 of the Act states as follows: “No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child’s life, health, health, social welfare, dignity or physical or psychological development.”<sup>68</sup> The penal provisions of this Act are stipulated in Section 20 which states; “Notwithstanding penalties contained in any other law, where any person willfully or as a consequence of culpable negligence infringes any of the rights of a child as specified in sections 5 to 19, such person shall be liable upon summary conviction to a term of imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine.”<sup>69</sup>

*The Prohibition of Female Genital Mutilation Act No 32 of 2011* on the other part is robust and thus offers full protection of both girls and women from FGM regardless of age, consent and location of the victim as long as they are subject to this law. The Act is the main point of reference for all offences relating to FGM due its comprehensive nature as follows;

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<sup>68</sup> KLR; Children Act, Revised Ed 2012. Pp.16.

<sup>69</sup> Ibid, Pp. 16.

- i. *“Offence of female genital mutilation*
  - ii. *Aiding and abetting female genital mutilation*
  - iii. *Procuring a person to perform FGM in another country*
  - iv. *Use of premises to perform FGM*
  - v. *Possession of tools or equipment.*
  - vi. *Failure to report commission of offence(FGM)*
  - vii. *Use of derogatory or abusive Language(against a viction or a woman who has not undergone FGM)*
- Other miscellaneous provisions include;*
- viii. *Powers of entry into premises without a court warrant into premises suspected of being used by perpetrators to conduct FGM (for purposes of making arrest by law enforcement officers)*
  - ix. *Undertakings by the government to*
    - *Protect women and girls from FGM*
    - *Provide support services to victims of FGM and,*
    - *Undertake public education and sensitize the people of Kenya on the dangers of FGM*
  - x. *Extra-territorial jurisdiction (offence of FGM committed outside the country)*

*The above offences in the anti-FGM Act are punishable as stated in Section 9 as follows; ‘A person who commits an offence under this Act is liable, on conviction, to imprisonment for a term of not less than three years, or to a fine of not less than two hundred thousand shillings.’<sup>70</sup>*

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<sup>70</sup> KLR; *Prohibition of Female Genital Mutilation Act no 32 of 2011*. Rev Ed 2012. Pp. 10-12.



It is therefore clear that the Act addresses the question of Cross-Border FGM, and therefore, the researcher sought to understand the impact of the laws in the fight against FGM within the study area.

A total of 174 Kenyan respondents were able to submit their views on the question of assessing the impact of the Kenyan Laws in the eradication of Cross-Border FGM. The researcher also saw the need to include Tanzanian respondents who were willing to submit their views in regards to the impact of the Kenyan laws as it also affects them directly or indirectly. The figures were computed into percentage in order to ensure accuracy in data presentation.

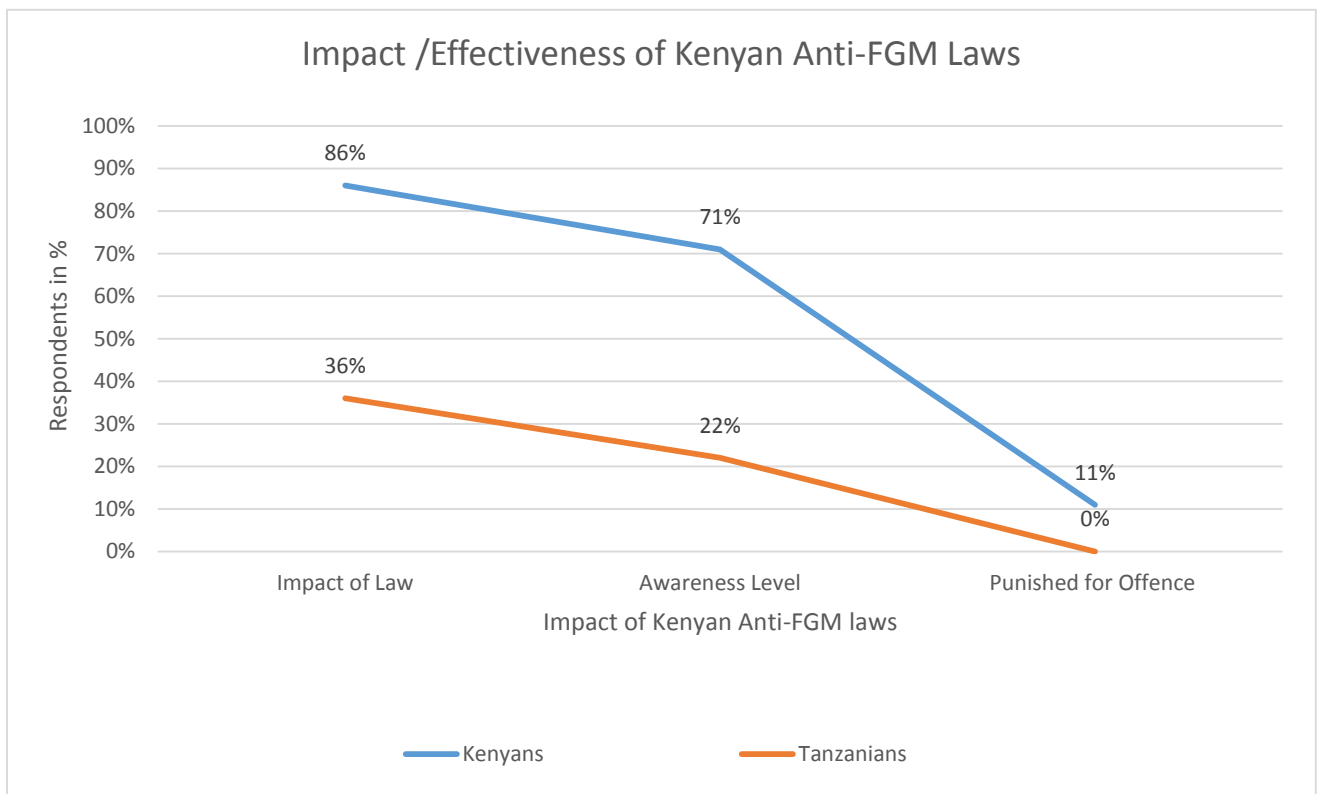


FIG 2.7 IMPACT ASSESSMENT OF KENYAN ANTI-FGM LAWS.

The impact of the Kenyan anti-FGM laws according to the study is the disruption of the traditional rite of passage occasioned by the law, which stands at 86% for Kenyans and 36% in Tanzania. On

knowledge of the existence and conversance with a part or whole of the provisions of the law, 71% of Kenyans could at least spell out some provisions of the law. 22% of Tanzanian legal practitioners, advocacy group members and scholars were also aware of some contents in the law. While no Tanzanian was punished for breach of the Kenyan anti-FGM laws, 11% of Kenyans faced legal action for breach of the laws. This is better explained by Tanzania being used as safe haven by victims and perpetrators of FGM, a situation that exacerbate Cross-Border FGM.

#### **2.4.2 Tanzanian Laws**

*Sexual Offences Special Provisions Act 1998 (SOSPA)* under Section 169A states as follows; “Subsection (1) Any person who, having the Custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person or causes female genital mutilation or procures that person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of sight, hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.”<sup>71</sup> The penalty for the offence is provided for in Sub-section (2) as follows “Any person who commits the offence of cruelty to children is liable on conviction to imprisonment for a term not less than five years and not exceeding fifteen years or a fine not exceeding three hundred thousand shillings or both fine and imprisonment, and shall be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for the injuries caused to that person.”<sup>72</sup>

*SOSPA 1998* contains many legal gaps, one being not able to offer protection to women above 18 years of age. The law also turns a blind eye on the aspect of such women being forced to undergo

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<sup>71</sup> Government Printer; *The Tanzanian Sexual Offences Special Provisions Act (1998)*, Pp. 14.

<sup>72</sup> *Ibid*, Pp. 14.

the rite without their consent. Further to that, the law does not address the transnational aspect of FGM.

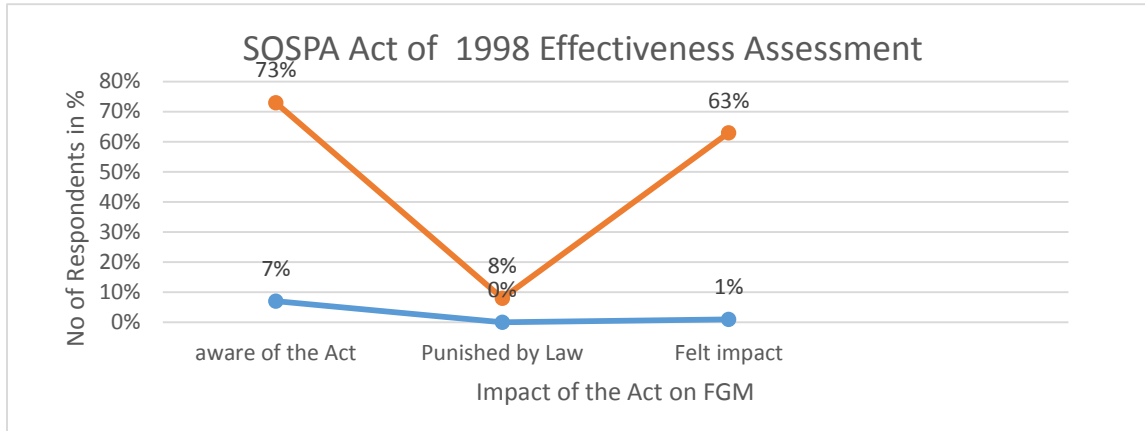


FIG 2.8 EFFECTIVENESS OF SOSPA ACT OF 1998 ON CROSS-BORDER FGM.

Fig 2.8 presents findings by the researcher after conducting an assessment on the effectiveness of SOSPA Act of 1998 in the prevention of Cross-Border FGM. 174 Kenyan respondents and 85 respondents from Tanzania participated in the study from all categories as listed at the beginning of the chapter.

The outcome demonstrates the little contribution SOSPA 1998 in fight against FGM and as compared to the Kenyan Anti-FGM laws which cover a wide scope. The Tanzanian law has a 7% popularity as opposed to 73% amongst Tanzanians. There was 0% conviction of Kenyans for offences under SOSPA 1998 as opposed to Tanzanians at 8%. Also, 1% of Kenyans are said to have been affected by the law indirectly as opposed to Tanzanians at 63%.

### 2.5 Local Authorities By-Laws and County Legislations on Prevention of FGM

On 5<sup>th</sup> December 2019, Kajiado County Government launched anti-FGM policy with the aim of eradicating FGM at the community level by creating decentralized structures both at the county

level, the sub-county and also at the ward level. “The policy further calls for the creation of three management committees namely the County Anti-FGM Management Committee, Sub-County Anti-FGM committees and Ward Anti-FGM Management Committees. These committees shall serve at various levels with the County Anti-FGM committee tasked with designing, supervising and coordinating programs against the practice of FGM. It shall comprise of various county government officials, law enforcement agents, county level law makers, a representative of a non-governmental organization, youth among others.”<sup>73</sup>

The program is funded and coordinated by the county government and other stakeholders. *“The policy provides systems through which multi-sectoral interventions geared towards accelerating the eradication of FGM in the County will be strengthened. These interventions will be anchored on coordination, networking, partnership and community participation and includes;*

- *Community sensitization campaigns highlighting FGM as a human rights violation.*
- *The establishment of alternative sources of income for reformed cutters.*
- *Research and data collection at county level as a means of driving the management of FGM;*
- *Continuous community dialogues to ensure that no one is left behind;*
- *The establishment and equipping of rescue centers and safe houses for girls at risk of FGM and child marriage;*
- *The development of community-based surveillance systems to protect girls from the practice;*
- *Psychological support and mentorship programs will be offered to girls;*
- *Reconciliation and re-integration of rescued girls with their families and community; and*

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Millicent Kwambai; *Kajiado County becomes the first county in Kenya to launch FGM policy.* Equality Now, Dec 5, 2019. Pp.1.

- *Link FGM survivors to information resource centers and vocational training centers for access to information on sexual and reproductive health, skills development, and economic empowerment.*”<sup>74</sup>

Tanzania on its part does not have local by-laws to deal with FGM and only relies on the SOSPA 1998 in the fight against FGM. At the local level, the authorities rely on goodwill from the people and advocacy groups with little or no government support and, despite having the will and spirit to fight for their right not to be cut, they are left under the mercy of their village elders and elderly women to decide their fate, which of course is having them undergo the cut.

The researcher sought to understand whether the policy by Kajiado County Government is functional, and the impact it has had locally in the fight against FGM. The outcome of the study is as follows;

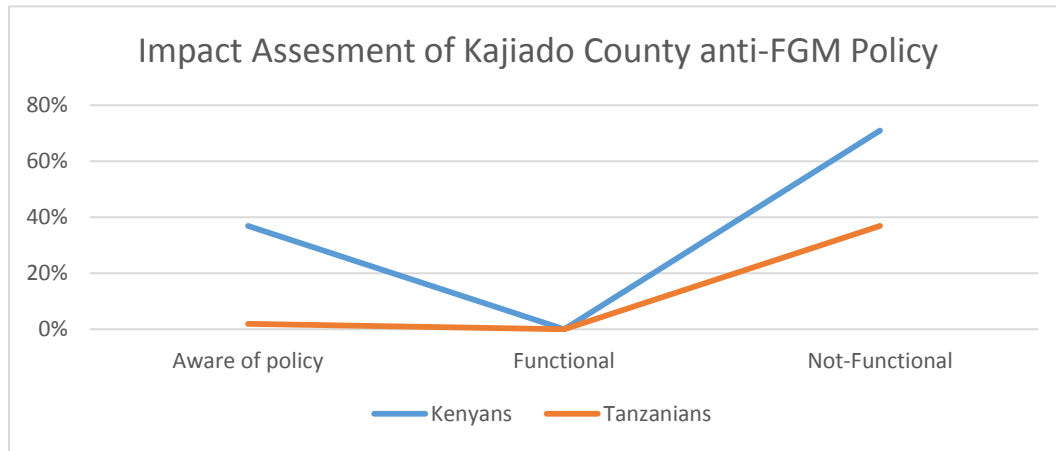


FIG 2.9 IMPACT OF ANTI-FGM POLICY ON CROSS-BORDER FGM.

The Anti-FGM policy’s popularity amongst Kenyan respondents was at 37% which many attribute to the much publicized launch of the document by the County Government. The popularity of the

<sup>74</sup> Ibid, Pp. 1.

policy amongst Tanzanians was at a low of 2%, where the respondents were advocacy group members. On functionality, none of the respondents had knowledge on the implementation status of the policy, and hence, they chose remained non-committal on the issue. However, 71% and 37% of Kenyans and Tanzanians held the view that if the outcome was not being felt at the grassroots level as was envisioned by drafters of the policy, then it is automatically not functional.

## **2.6 Conclusion**

*Protocol to the African Charter on Human and Peoples Rights on the Right of Women in Africa.* States are required to safeguard the rights of women by ensuring that proper legal and social infrastructure is put in place. In Article 5, on Elimination of Harmful Practices, it states; “*State parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:*

- 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, medicalization and para medicalization 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 forms of violence, abuse and intolerance.*<sup>75</sup>

Female Genital Mutilation has been in existence for many decades as a tradition in some communities not only in Africa, but also around the world. Therefore it is an issue of global concern with a specific focus on African countries where prevalence rates are high. The above protocol was therefore designed in cognizance of the fact that FGM is a transnational health and Human rights issue of concern to women and girls across the continent. Such consensus documents have increased awareness and commitment by African states on the need for intensifying their efforts to try and eradicate the practice through legislation of laws and use of other supporting strategies. “From the foregoing, it is clear that FGM/C is recognized as a practice that violates a number of human rights laws. As a result, states that are party to these international human rights instruments have a duty to fulfill, protect, and promote the fundamental rights of women and girls in their jurisdiction against the practice.”<sup>76</sup>

Criminalizing FGM has been core in achieving attitude change strategy and much of the progress currently being witnessed is attributed to the legal aspect of the fight against FGM. “Efforts to eradicate FGM/C have gained impetus through the growing use of legal sanctions, which are by far the most common response adopted by African governments to address FGM/C. Criminalization often involves the imposition of jail sentences or fines.”<sup>77</sup> It is worth noting that the past two decades has been characterized by many African countries making considerable efforts to ensure development of laws that completely outlaw FGM within their jurisdictions.

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<sup>75</sup> African Union: *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*

<sup>76</sup> Satang Nabaneh, Adamson S. Muula: *Female genital mutilation/cutting in Africa: A complex legal and ethical landscape*. International Journal of Gynecology and Obstetrics. Feb 19, 2019.

<sup>77</sup> Ibid

There are also those which have been reluctant on their part and have therefore been used a safe havens by perpetrators coming in from countries that have tightened their laws against the vice. This is mostly done by communities living along the borders of such counties, hence occasioning a failure of the laws in tackling Cross-Border FGM.

The above highlighted failure by the legal strategy in fighting FGM can be addressed by other measures working together in support of the law enforcement instruments. These measures include engaging communities in developing other acceptable Alternative rites of passage and running well-funded women empowerment programs to enable women support themselves and also grant them the power to make decisions of refusing to be cut without compromising the quality of their lives. “The empowerment approach takes a starting point the belief that empowered women and girls can claim their rights and end the practice of FGM/C in a generation. The UN General Assembly in its 2013 resolution on FGM/C required states to “promote gender sensitive” educational programs that will equip women with the necessary knowledge of different policies and programs on gender –based violence and discrimination.”<sup>78</sup>

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<sup>78</sup> Ibid.



## CHAPTER THREE

### IMPACT OF CROSS-BORDER FEMALE GENITAL MUTILATION ON WOMEN

#### EMPOWERMENT

#### 3.0 Introduction

This chapter will analyze the impact of Cross-Border FGM on women empowerment in the area of study. FGM as a transnational human rights abuse on girls and women especially on those living along our national borders is on the rise, and the level of exposure to the risk on the women and girls is far much greater due to the cross-border aspect than on those living in non-border areas. This transnational challenge has had negative impact on women empowerment across the borders, hence the need for diplomatic and regional interventions to eradicate the practice in order to win the fight against gender-based discrimination.

#### 3.1 Response rate

The researcher used structured random sampling to collect data from respondents and the response rate was at response rate was 68.2% which the researcher felt it was adequate for the study given the prevailing conditions explained in the previous chapters

Category	Targeted Sample (Total)	Respondents
Medical practitioners	19	15
Politicians/legal practitioners	27	22
Activists/advocacy group members	44	35

Religious/ Opinion/ Community Leaders	80	53
Scholars/Teachers/ Peer educators	109	66
Parents	154	93
Students (all cadres)	200	148
Total	633	432

TABLE 3.1. RESPONSE RATE FOR CHAPTER THREE

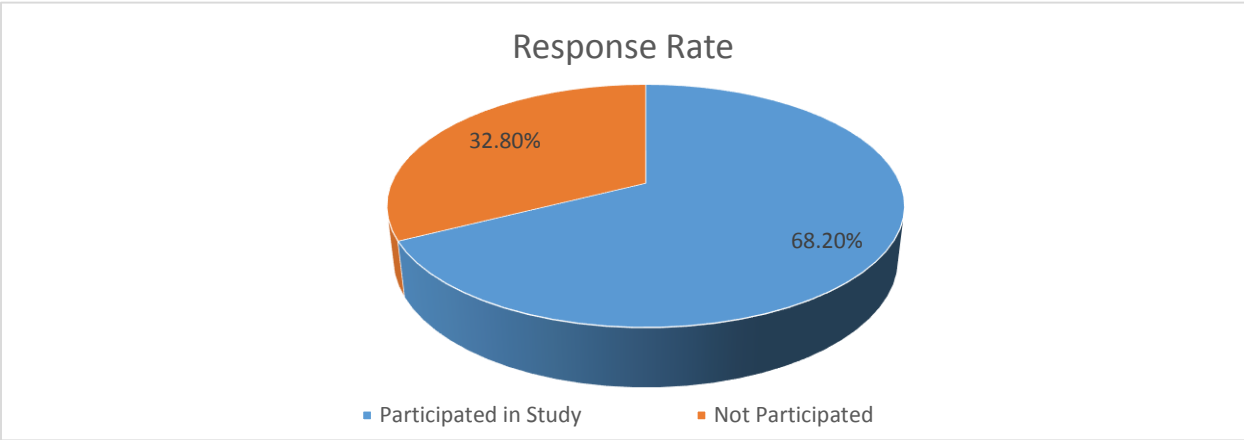


FIG 3.1 RESPONSE RATE FOR CHAPTER THREE.

**3.2 Effects of Cross-Border FGM in Education**

In cognisance of the difficulties faced by the girl child in accessing education, the United Nations established a multi-stakeholder partnership; United Nations Girl’s Education Initiative (UNGEI) whose objective is “ improving the quality and availability of girls’ education and contributing to the empowerment of girls and women through transformative education”<sup>79</sup> This is part of international efforts to enable access to education for the girl child in efforts to ensure gender

<sup>79</sup> UNGEI: *What Constitutes UNGEI?* <http://www.Ungei.org/whatisungei/index.html>

equality and women empowerment. The priority areas for the organization include; “enhanced focus on marginalized and excluded groups, reduction/ elimination of school-related gender-based violence, improved learning outcomes for girls and increased number of girls transitioning to secondary education and accessing post-primary opportunities.”<sup>80</sup>

Access to adult education by women and formal education by girls within the study area, like in any other part of the world, has been a challenge. The scarcity of educational institutions coupled with the challenge of Cross-Border FGM has significantly affected the achievement of sustainable development across the borders. Women have missed out on opportunities due to lack of proper and adequate information which help in making informed choices that determine their future. “Inadequate access to education has excluded them from jobs requiring different skills and qualifications. All of this leads women to remain passive observers in the economic sector of the country.”<sup>81</sup>

In this context, FGM is a precursor for marriage and once the girls get circumcised, they drop out of school in pursuit of marriage. A significant number of girls who undergo the cut do not make back to school. The sense of maturity and readiness for marriage created by the society diminishes the chances for the victims of FGM to pursue their education and are therefore married off. Having outgrown the formal school system, the women do not also get the chance to attend adult literacy programs to support their empowerment, but due to busy schedules at their homes of child upbringing making it a challenge for them, a situation that further exacerbates their inability to participate in social development.

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<sup>80</sup> Ibid.

<sup>81</sup> Endalcachew Bayeh; *The Role of Empowering Women and Achieving Gender Equality to the sustainable Development of Ethiopia*. 2016. Pp38.

FGM therefore places women and girls in a disadvantaged position than their male counterparts in accessing information and opportunities available. Empowerment is a process that improves women's fall-back position and bargaining power within a patriarchal structure, and identify different causal pathways of change; material, cognitive, perceptual and relational.<sup>82</sup> The first stage in women empowerment begins with access to basic information and thereafter advance their knowledge further to enable them make informed choices and decisions based on the acquired information. "In short, empowerment is a process of awareness and capacity building leading to greater participation, to greater decision making power and control, and to transformative action. In addition, empowerment is a process that is both individual and collective. Sometimes it involves people as groups that most often begin to develop their awareness and ability to organize to take action and bring about change."<sup>83</sup>

"In her gender lenses, Griffen explains empowerment as having control or gaining further control, having a say and being listened to, being able to define and create from a woman's perspective, being able to influence social choices, and decisions affecting the whole society (not just areas of society accepted as women's place), being recognized and respected as equal citizens and human being with a contribution to make."<sup>84</sup>

The ability of women to understand the adverse health effects of FGM and having the power to say no to FGM and the decision respected, accepted and listened to is empowerment. When women can influence men against the harmful practice of FGM on them and their daughters is a great milestone in women empowerment. Also, the ability of women to determine agenda, make

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<sup>82</sup> Aminur Rahman; *Women's Empowerment: Concept and Beyond*. Global Journal of Human Science. Sociology and Culture. Vol 13, Issue 6, Version 1.0, Year 2013. Pp3.

<sup>83</sup> Ibid, Pp3-4.

<sup>84</sup> Griffen Venessa: *Women, Development and Empowerment: A Pacific Feminist Perspectives*. Kuala Lumpur; Asia and Pacific Development Centre, ed 1989.

decisions and maintain the status quo on FGM is also empowerment. Women empowerment is more in theory than in reality and the factual situation at the grassroots level is that women have to fight against FGM, fight for their rights and fight for their place in the society. “Such power cannot be given, it has to be generated. Self-esteem and feeling of being as active agent are the fundamental principles of empowerment.”<sup>85</sup> “Empowerment should be considered aspect of perceiving oneself as an active agent capable of making decisions.”<sup>86</sup>

The societal transformation where women and girl are able to have a voice in matters that are of importance to them is seen as a step towards rejection of the retrogressive practice of FGM and early marriages. The sensitization of women on the scientific facts that FGM could lead to conditions like Obstetric fistula and still births is enough to make them make decisions that would bring to a stop these among other negative outcomes of the cut.

In the Maasai community which highly patriarchal, the power rests with men who exercise control over women in all aspects of their lives from FGM to matters of sexuality. The subordinate status women are accorded by the community is what has made Maasai to be among other few ethnic communities that have lagged behind while others have moved on from FGM and early marriages. Women are not aware that their rights are being violated and thus the need for intensive sensitization to enable them be socially independent so that they can make decisions on FGM as a social issue. Their ability to participate on decision making makes them to have a sense of control, power and worth.

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<sup>85</sup> Kabeer Naila: *Reversed Realities: Gender Hierarchies in Development Thought*. London, Verso, Pp. 69-79,130-136, 2003.

<sup>86</sup> Naz Farzana: *Pathways to Women Empowement in Bangladesh*. A H development Publishing House,Dhaka,Bangladesh

The continuous exacerbation of Cross-border FGM continuously threatens the future of our women and girls and its effect manifested through the reducing number of adolescent girls in schools within the area of study. With that in mind, the researcher sought to understand the impact of on the attendance and performance of girls in schools. The researcher also sought information on the existence of adult education popularly known as ‘Masomo ya Gumbaru’ which can also help victims of FGM and early marriages to read and write and hence participate in social empowerment.

On school attendance, there was a 2.96% decline in the number of girl-child student population in schools within the study area once they reached adolescent. The reduction was more during transition to secondary schools at an average of 17.12% over a period between class five and form three. The numbers steady as the girls proceed to form four and then again drops significantly at an average of 43.7%, with the remainder proceeding to tertiary institutions

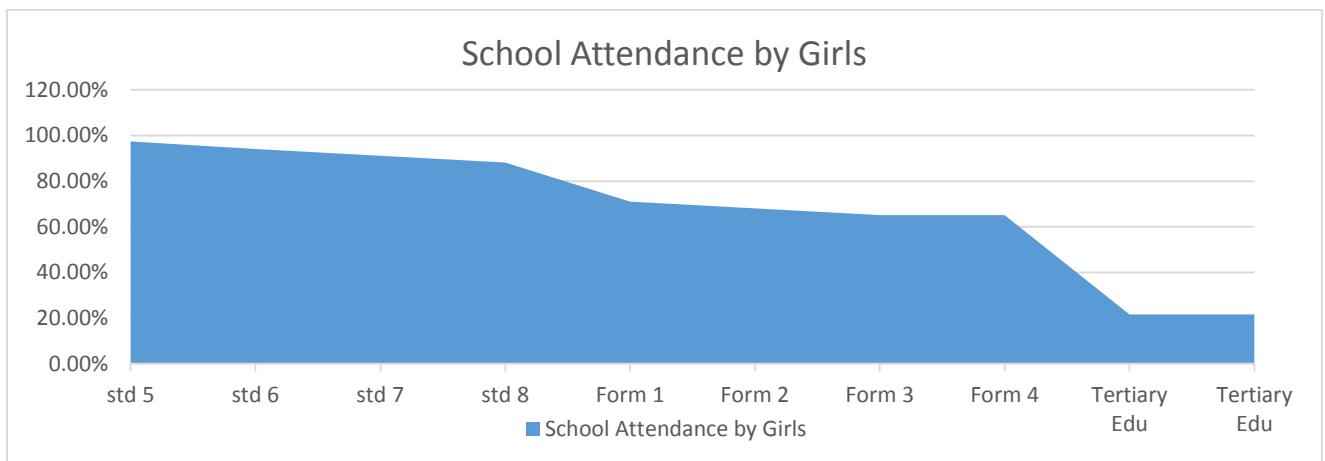


FIG 3.2 AVERAGE TREND OF SCHOOL ATTENDANCE BY GIRLS IN THE STUDY AREA.

On the availability of adult literacy programs within the study area, 87% of the respondents agreed that there is scarcity of such facilities and were only aware of a few being run by the governments of both Kenya and Tanzania and also by NGOs. 13% were no sure of the presence of such

institutions in the area as they had not come into contact with one. This explains the high levels of illiteracy in the study area as the program is grossly underfunded by the government. This argument is confirmed by the Kajiado county director for adult education. ‘We have limited capacity to reach to everybody, we only have 19 qualified teachers in the entire county that has five vast sub counties. The rest of the teachers are untrained volunteers. Lack of classrooms is also a big issue. At times we have to liaise with churches to allow us to use their facilities.’<sup>87</sup> The education official also added that FGM and other harmful cultural practices have impacted on education thereby pushing the illiteracy levels to a high of 30%. ‘The director also said cultural beliefs and practices like Female Genital Mutilation (FGM) and early marriages also contribute to the high levels of illiteracy among the pastoralist community and urged the residents to stop outdated cultural values and embrace change’.<sup>88</sup> It is therefore through knowledge impacted through education that will help women and girls to make informed choices. This can be achieved through educational programs for women focusing on the disadvantages and benefits of circumcision.

Educated women and girls gets married in their adulthood when they have become mature and aware of their rights. At this age, the women are able to plan their families by having fewer children. This is not to mean that women should compete with men on who should be superior between men and women. The decision should be consultative and inclusive of the input of women. ‘Empowerment is therefore more than participation in decision making, it must also include the process that lead people to perceive themselves as abled and entitled to make decisions.

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<sup>87</sup> Kenya News Agency; *30 Percent of Kajiado Residents Are Illiterate*. March 6, 2020.

<sup>88</sup> Ibid.

“Empowerment must involve undoing negative social construction so that people come to see themselves as having the capacity and the right to act and influence decisions.”<sup>89</sup>

### **3.3 The Role of Religious Institutions/ NGOs/CBOs in the Eradication of Cross-Border**

#### **FGM**

##### **3.3.1 Religious Institutions**

Religious institutions and leaders in the study area have been on the forefront in the fight against FGM within the study area. Their contribution has been felt greatly due to their presence in many parts of the study area in which they serve the community not only on religious matters but also on human rights and charity. These institutions have been instrumental in the establishment of safe houses and rescue centres for victims of FGM as well as offering other much needed material and psychological support.

The clergy has also been able to mobilize resources for the education of girls in order to keep them at schools as a way alleviating the needy families the economic burdens of keeping the girls at school as a way of minimizing their chances of being cut and married off, and as well maximizing their chances of becoming empowered through education. Through religious institutions, many individuals and organizations have been able to channel funds for empowerment initiatives for the community to enable funding of community projects that go a long way in influencing social change, which includes the abandonment of harmful cultural practices and embracing good cultural practices.

Churches and other religious facilities have also been offered to government for use in enabling carrying out of empowerment activities and thus help in addressing the shortage of resources.

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<sup>89</sup> Rowland Jo; *Questioning Empowerment*, Oxford: Oxfam, 1997.



Within the study area, many religious facilities have been used to support civic education activities and also, adult literacy centres have also been using the facilities for empowering adult learners including women who never went to school or had dropped out due to FGM and early marriages. With over 80% of the population attending a faith building at least weekly, religious narratives and references are essential for personal understanding, family and society. “Faith-based organizations are a major agent of change and their international, regional and local presence and structures offer platforms for teaching, education, support and health provisions regarding issues such as FGM.”<sup>90</sup>

Hospitals and dispensaries being run by religious organizations have also been at the forefront in educating women on the dangers of FGM to the health of women, and have also participated in responding to incidents of gender-based violence by offering treatment and psychological support to victims. In acknowledging the role of religious leaders in the fight against FGM, Hellen Kijo-Bisimba, the coordinator of the umbrella body of seven NGOs against FGM in Tanzania said “There is also increased awareness and goodwill among the clergy and politicians at the grassroots.”<sup>91</sup> She added that “Some religious leaders now openly condemn the practice in their sermons, while in some villages, by-laws against FGM and other repugnant cultures have been enacted.”<sup>92</sup>

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<sup>90</sup> 28 Too Many; *Country Profile: FGM in Kenya*, 2013. Pp. 45

<sup>91</sup> The New Humanitarian; Seven non-governmental organizations(NGOs) in Tanzania have formed a coalition to fight female genital mutilation (FGM), a practice that is Still Widespread in the East African Country. Dar es Salaam, 2005.

<sup>92</sup> Ibid.

### **3.3.2 Non-Governmental Organizations (NGOs) and Community Based Organizations (CBOs).**

Non-Governmental Organizations have been vibrant in the eradication of FGM within the study area. These organizations. Many of them run empowerment programs and awareness campaigns for women and girls.

Respondents were in agreement that programs being run by NGOs and CBOs have been vital in filling the gaps left by lack of government services as a result of poor leadership and corruption. Government allocated resources for vulnerable groups have over time been pilfered by rogue government officials, hence making the important women empowerment agenda a mirage as the agenda has been characterized by a mismatch of priorities and empty promises on the part of governments.

In view of the above, NGOs and CBOs within the study area seem to have gain trust amongst the donors and the locals as well. This can be ascertained by the number of Anti-FGM and women empowerment programs being run by these organizations and other stake holders which by far, outnumber those from the governments across the borders.

It was also observed that NGOs and CBOs easily operate across the borders once they are registered and allowed to operate, and hence, they do not face jurisdictional challenges as opposed to government run programs which can only be run within their borders. It has also been observed that, these organizations are more attractive to international donors as they provide the assurance of proper utilization of funds channelled through them. “FAWE has adopted this approach. FAWE is a pan-African NGO working in 32 countries to empower girls and women through gender responsive education, founded in 1992 by five African women ministers of education. FAWE has developed the Centre of Excellence (COE) model through which ordinary schools are transformed

into gender-responsive schools that offer quality education and pay attention to the physical academic and social dimensions of the girls' and boys' education and pay attention to the physical and social dimensions of girls and boys education. It aims to tackle those issues that prevent girls completing their schooling, including FGM”<sup>93</sup>

International Non-Governmental Organization (INGOs) among many others have been at the forefront in spearheading the fight against FGM in many African countries with their activities coordinated under one umbrella body. “Bilateral and Multilateral agencies working against FGM include USAID, UNFPA/UNICEF, and Programmes for Appropriate Technology in Health (PATH) and GTZ (from Germany). The inter-African Committee on Traditional Practice (IAC) is also present in Kenya.”<sup>94</sup> Therefore, these organizations are more responsive to Cross-border FGM and other transnational human rights issues. Their international recognition and status has provided them with the latitude to influence government policies in their host countries as well as roll out well funded programs which are responsive to the needs of their target communities. Through their enhanced status, they are able to bring on board many other actors to actualize their goals and their employees are also accorded adequate diplomatic cooperation and immunities.

Similarly, NGOs operating on a national scale and CBOs operating at the grassroots level have also had their share of success in impacting social change through eradication of harmful cultural behaviours including FGM. These organizations have a greater presence at the grassroots, with greater influence to change through their community oriented programs of creating awareness and in eradication of harmful cultural behaviours, especially FGM and early marriages.

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<sup>93</sup> 28 Too Many; *Country Profile: FGM in Kenya*, 2013. Pp. 36.

<sup>94</sup> *Ibid*, Pp38.

The impact of NGOs and CBOs on the local community was observed to be greater due to their presence and acceptance and also based on their soft approach in dealing with FGM. The researcher observed that community friendly approaches employed by the organizations at the grassroots produce better results albeit slow. Their method of approach is geared towards a permanent change of perspectives and behaviour contrary to law enforcers who were observed to be “impatient with the community’s slow pace of embracing change” and thus, do not produce permanent solution to the menace as many choose to defy the law.

The researcher also found out that NGOs and CBOs within the study area carry the biggest share of liability of dealing with the outcomes of FGM on the health of women. Some of the vulnerable groups given priority by these organizations are the victims of FGM, some suffering from Obstetric Fistula and HIV/AIDS, where they mobilize for funds to enable corrective surgeries for victims of fistula and also to help in the supply of Anti-retroviral drugs (ARV’s) for HIV/AIDS patients. De-stigmatization of victims of HIV/AIDS and fistula through creating awareness on the dangers of FGM is secondary to the health of the victims and therefore, there is still a shortage of both human and material capital and this might explain why, despite all the efforts being put in place, FGM prevalence rate is yet to come down.

The researcher therefore sought to understand the impact of NGOs and CBOs in the fight against FGM and their presence vis-à-vis that of Government funded programs within the study area.

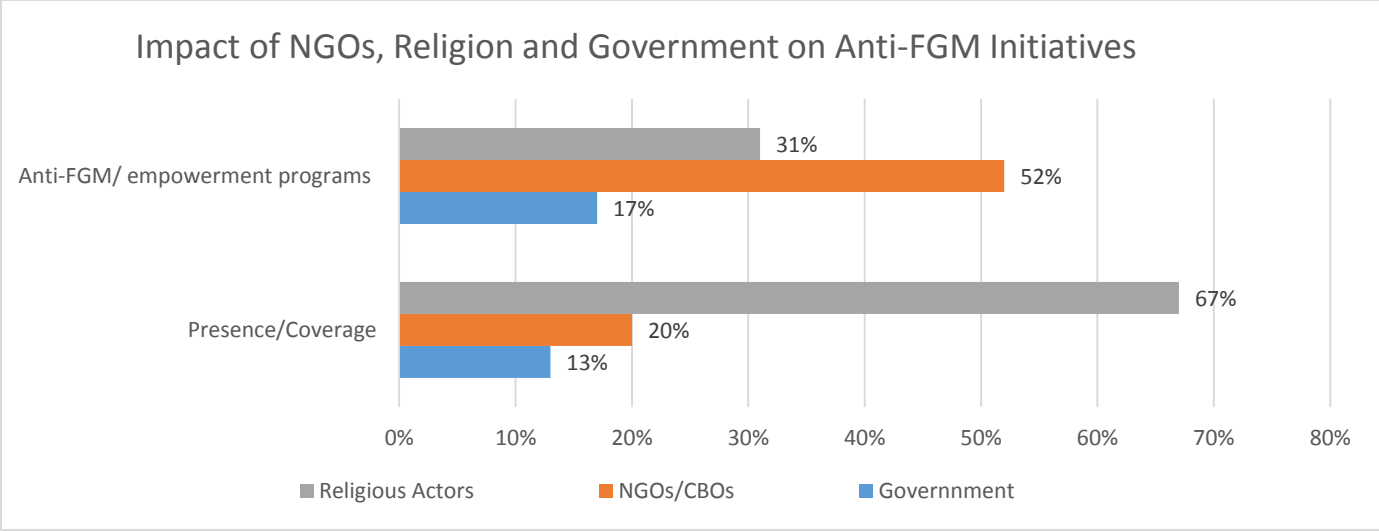


FIG 3.3 IMPACT OF INGOS/NGOS, CBOs, RELIGIOUS ACTORS AND GOVERNMENT

From the outcome above, the religious actors are dominant within the study area at 67%, however, their primary objective is spreading of gospel and therefore Anti FGM initiatives are among other priorities to be attended to, with their contribution to FGM eradication being at 31%. NGOs and CBOs presence within the study area is at 20% but their contribution is widely felt at 52% due to the effective mobilization of resources and full time devotion to the course of eradicating FGM within the study area. The government’s presence of 13% is felt mainly through enforcement of the anti-FGM laws with an impact of 17%.

**3.4 The Economics of Cross-Border FGM**

The impact of FGM, and in this case Cross-Border FGM has some economic repercussions in terms of overstretch of resources in the medical sector and economic productivity of the locals. These are two major areas of economic concern affected by FGM related activities which were also identified by the World Health Organization when it launched the FGM Cost Calculator. The Interactive data tool can be used to estimate the current and future costs of health care for women with FGM related complications with the current cumulative global estimations being at \$1.4

billion annually. “The FGM cost calculator combines data on health risk associated with FGM, health costs and national FGM prevalence to analyse the economic impact on national health services of treating the consequences of these harmful practices.”<sup>95</sup> The researcher was unable to calculate health costs estimates within the study area due to unavailability of properly compiled data on FGM from both Kenya and Tanzanian medical facilities within the study area. However, WHO observes that “the direct financial costs of treating the negative health complications caused by FGM can span generations, starting as early as child birth. This puts a significant economic burden on health systems and national budgets, especially in countries with rates of FGM greater than 10%.”<sup>96</sup> The above observation could perhaps be the reasons behind the deplorable conditions in medical facilities within the study area.

In terms of productivity, the researcher estimated the cost of paying the circumciser and nursing her until the inflicted wounds are healed to be at least Ksh 14,000 or Tsh 298,480 within the study area. Together with time spend by people around taking care of that girl instead of doing other economically constructive activities coupled with the costs of ceremonies and logistics involved would double the costs per head. The costs are mainly quantified in terms of livestock where families are unable to raise the money to incur the costs.

Adolescent girls are a great asset to families in the Maasai community in terms of bride price. The moment girls are subjected to FGM, being married off becomes a priority on the part of their parents in order to reap economically through bride price from the bridegroom’s family. “Girls who have not undergo FGM are often stigmatized. There is a strong link between FGM and marriageability, especially among the Maasai and Samburu, with ability to attract a higher bride

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<sup>95</sup> WHO; *The economic cost of female genital mutilation*. February 6, 2020.

<sup>96</sup> Ibid.

price for a girl who has been cut being significant to the latter.”<sup>97</sup> This explains why families, despite economic hardships, would sacrifice much of their resources to have the girls undergo the cut with the hope of compensating for the costs with much higher returns in form of bride price.

The respondents agreed to the fact that FGM has been commercialized, with a lot of premium being placed on circumcised girls who are believed to be more mature and responsible homemakers, thereby becoming valuable assets for the grooms’ families. The above reasons therefore, makes it mandatory for majority of parents to ensure that their girls adhere to the unwritten law, or else, they will be denied the opportunity to ‘enjoy the fruits of their labour’.

Traditional circumcisers are at the core in perpetrating FGM and they earn from it, thereby creating the link between the practice and the resultant economic gains associated with it. The reward to the circumcisers is either in monetary terms or through livestock, which serves to motivate them to continue the practice and thus, perceive Anti-FGM efforts as schemes meant to disrupt their income sources.

Anti FGM crusaders in study area are advocating for the inclusion of traditional circumcisers in Anti-FGM initiatives, which should also be designed to offer alternative sources of income for them. They observe that their inclusion will solve at least 40% of the challenges that arise from FGM. The women would reap big during the cutting season where many girls are cut. “He says he knew women who were cutting girls received about 30,000 Tanzanian shillings (roughly \$14) for one girl. So he figured out how to replace that income.”<sup>98</sup> The most efficient way to bring on board the traditional circumcisers is through economic incentives, a method that has worked well

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<sup>97</sup> 28 Too Many; *Country Profile: FGM in Kenya*, 2013. Pp26.

<sup>98</sup> Gayle Tzemach Lemmon: *How to fight female genital mutilation with economics*. CNN. Dec 04, 2017.

in Tanzania. “Tanzanian charities designed to stop female genital mutilation have offered women start-up capital to get them to end these practices and focus on small business.”<sup>99</sup>

In order to ensure continuity of FGM as a source of income, it was observed that the traditional female circumcisers are also facilitators for victims to cross the border to the Tanzanian side where they make arrangements for the girls to be accommodated until they get healed. Since their role is vital for the continuity of the vice, the researcher sought to understand the level of inclusion of the circumcisers in economic empowerment as incentives to abandon the business of cutting girls.

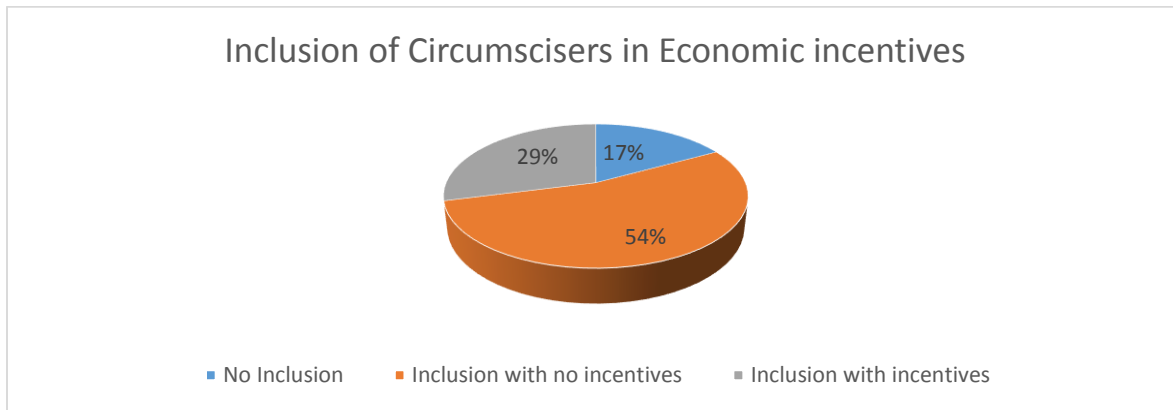


FIG 3.4 INCLUSION OF TRADITIONAL CIRCUMCISERS IN EMPOWERMENT PROGRAMS THROUGH INCENTIVES

Non-inclusion of Traditional practitioners in Anti-FGM initiatives was at 17% which comprised mainly of law enforcement strategies where they were being tracked down and arrested as principal offenders. Their inclusion with no incentives as motivation to abandon the practice was at 54%, most of which were churches, some few CBOs and government programs, probably due to lack of adequate funds. The programs bring run by INGOS, NGOs and some well-funded CBOs

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<sup>99</sup> Ibid.



included incentives for circumcisers as part of their strategy to motivate them into abandoning the practice.

Similarly, with modernization, a new form of FGM has emerged within the study area where medical practitioners are ‘medicalizing’ the procedure, therefore making it an issue of economic significance for medics in the area of study. The cut is done discreetly under ‘safer and sterile’ conditions by families that do not want to be in bad books with the authorities for cutting their daughters. The researcher found out that majority of the clients come from civil servants, politicians and scholars who are domiciled in the study area. “Within the study area ‘medicalized’ FGM/C is carried out in hospitals, at home or at neutral places using surgical tools, antiseptics and anaesthetics. Some of the reasons for medicalization of FGM/C include the reduction of immediate complications while allowing women and girls to adhere to their cultural obligations and financial benefits for the practitioners.”<sup>100</sup>

### **3.5 The Role of Political Actors in the Eradication of Cross-Border FGM**

“The political reality of Africa is that the people of Africa live within the two political systems and authorities. The first and most important one is the indigenous one, as mentioned above. This is a system that commands loyalty from majority of Africans and the legitimacy of this system is because it does not employ force on the people to gain recognition. Africans identify themselves with the system that is not a foreign one and not imposed on them. The reverse is the case of the modern African state with contemporary political system.”<sup>101</sup> The traditional political systems recognized the importance of rites of passage as integral in enhancing social cohesion within the

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<sup>100</sup> Evidence to End FGM/C; *The Medicalization of Female Genital Mutilation/Cutting in Kenya: Perspectives of Families and Health Care Providers*. February 2019. Pp1.

<sup>101</sup> Dr. Rasheed Akinyemi; *Political Dimensions of Female Genital Mutilation (FGM) in Africa*. Institute of Political Science, University of Vienna. June 2000. Pp2.

communities. As such Female Genital mutilation was key in ensuring that women are accepted in the society with their distinct roles already set to only those who meet the threshold. Therefore, the contemporary African political actors have no choice but to submit to the indigenous political systems in order to survive politically. Issues contradicting the expectations of African societies are cannot be accommodated within those indigenous systems and therefore those political actors who have been active players eradication of FGM are seen as enemies of their communities. The politicians therefore have to balance the interests as a majority of those expected to be involved in leading the fight against FGM come from communities which practice FGM.

The successes of politicization of FGM has been through escalation of the agenda to the international organizations which has enabled the enactment of treaties that prohibit all forms of gender discrimination and elimination of harmful cultural practices including FGM. The political process has also enabled the legislation of regional treaties which also prohibit FGM. The *East African Prohibition of FGM Bill of 2016* was a good starting point for a robust regional legislation specifically Cross-Border FGM. At the national, the enactment of the *Prohibition of Female Genital Mutilation Act of 2011* was also as a result of a political process which also became a game changer in the fight against Cross-Border FGM by addressing jurisdictional challenges that had slowed down the fight. “The attempt to awaken public attention to FGM practice is also a step forward in looking into the political dimension of the practice and to force the placement of the FGM discussion on the political agenda of national governments and international political forum.”<sup>102</sup>

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<sup>102</sup> Ibid. Pp1.

It was observed that failures associated with politicization of FGM are also significant, where many of the political actors make use of war against FGM as a political tool to get elected into office. Political actors are known for making decisions based on what people expect them to do and in most cases across the continent, they become more popular among their people through supporting and sponsoring cultural activities. “Politically, it is difficult to ban FGM/C in a country in which over 60 percent of women of voting age have undergone the practice says renown local anti-FGM/C campaigner Olayinka Koso-Thomas.”<sup>103</sup>

The researcher observed that Political actors within the area of study are usually cautious when it comes to the issue of FGM. They say that, the issue is sensitive and if not handled carefully, it would kill ones political ambitions. “The social relevance of FGM practice both to the individual families, to the practitioners of FGM and to the maintenance of social and political cohesion of the society is very important in traditional systems and any attempt to put a stop to such practice will be seen as a threat to the system. There is a reciprocal interest of maintaining power between the protectors of traditions and cultures and the protectors of political institutions and power.”<sup>104</sup> The researcher sought to find out if politicians within the study area have openly endorsed the eradication of FGM and if they have or are planning use FGM as a campaign tool. Also, the study sought to know whether they have been involved in funding of FGM related activities either directly or indirectly and also, whether they have participated in the process of enacting Anti-FGM laws through legislation in both national and county/local assemblies and also through community participation forums. The respondents were individuals involved in mainstream politics and also those in activism.

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<sup>103</sup> The New Humanitarian; *The Political battle on FGM*. December 17, 2012.

<sup>104</sup> Dr. Rasheed Akinyemi; *Political Dimensions of Female Genital Mutilation (FGM) in Africa*. Pp2.

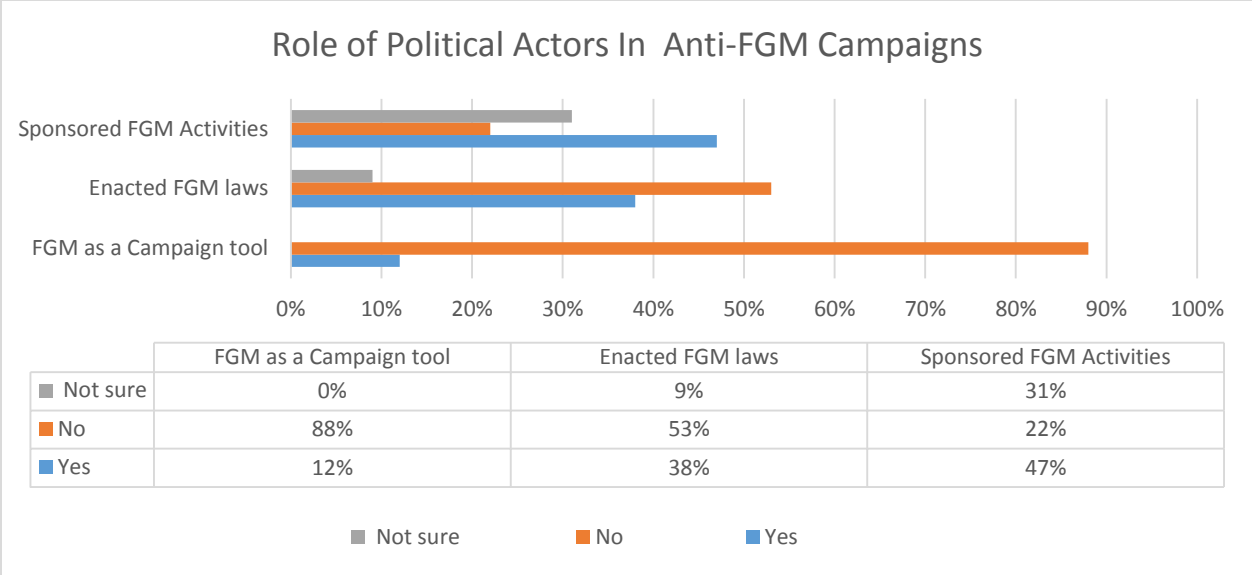


FIG 3.5 ROLE OF POLITICAL ACTORS IN ANTI-FGM CAMPAIGNS

In using FGM as a campaign manifesto, 12% incorporated the agenda into their election pledges while 88% kept of the FGM topic as a pre-election pledge for fear in order to appease both pro and anti-FGM voters by exercising neutrality on the matter. 38% of them openly pushed for the enactment and implementation of Anti-FGM laws and policies, 53% did not while 9% could not remember having participated in such forums before. On offering financial support for FGM-related cultural activities, 47% agreed to have been approached to help and to which they agreed, 22% declined, while 31% could not ascertain whether their financial support for cultural activities involved FGM related activities.

**3.6 Conclusion**

Cross-Border FGM has had an impact on women empowerment within the area of study in ways extensively highlighted in this chapter. Women have been subjected to the harmful cultural practice for a long time and efforts to eradicate it have bore minimal results due to challenges in addressing the transnational legal challenges in relation to the crime.

The continuity of FGM as a result of the cross-border challenges has led to effects on women empowerment, which is about “equipping and allowing women to make life determining decisions through the different problems in the society.”<sup>105</sup>

“Women empowerment is seen as women’s ability to make strategic life choices where that ability had been previously denied to them.”<sup>106</sup>Therefore, denial of their ability to make decisions and choices of interests to them is a violation of their rights and which is contrary to international human rights provisions on gender discrimination.

Human rights issues are universal to all irrespective of gender, and whereas the scales are perceived to be tilting in favour of men, they are integral in ensuring they support their counterparts in achieving gender equity. The empowerment process should bring on board every member of the community in order to reduce the chances of resistance by men, hence bringing about conflicts in families .Understanding and respect for human rights by all will create the space for women and girls to lead a life with dignity and respect.

Access to information and opportunities are integral parts of decision making processes in women, which gives them the latitude to reject what they think is not useful and accept that which they think is helpful to them. This is the missing link for women in the Maasai community domiciled in the study area. “Gender equality and inequity plays out when girls are forced to drop out of school after undergoing FGM while boys are allowed to continue and further their education. Women and girls will inadvertently be deficient of literacy, skills and qualifications for meaningful employment opportunities. Gender equality is further described as a situation where all human

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<sup>105</sup> Bayeh,Endalcachew; *The Role of empowering women and achieving gender equality to the sustainable development of Ethiopia*,Pacific Science Review B:Humanities and Social Sciences,2(1):38 ,January 2016

<sup>106</sup> Maholtra Anju et al; *Innovation for Women’s Empowerment and Gender Equality* .International Centre for Research on Women (ICRW), North Washington DC, 2002.

beings are free to develop their personal abilities and make choices without the limitations set by strict gender roles that the different aspirations and needs of women and men are considered, valued and favoured equally.”<sup>107</sup> “In addition, gender equality refers to the rights, responsibilities, and opportunities of individuals will not depend on whether they are born male or female.”<sup>108</sup>

Through creation of functional social support systems the vulnerable women and girls in the study area will enable the reversal of the harmful cultural practices where “the ultimate goal of gender equality is the non-existence of discrimination on the basis of one’s gender.”<sup>109</sup>

There should be government to government efforts to enhance diplomatic cooperation in enhancing the fight on Cross-Border FGM. The cooperation should also extend INGOs, NGOs and CBOs across the border. The cooperation should include joint rolling out of anti-FGM and Empowerment programs for the community and also in sharing of important information among all stakeholders in efforts to enhance enforcement of laws.

The anti-FGM and empowerment programs should not be a women’s-only affair, but should include all members of the community. With access to appropriate information, there will be proper community participation in enhancing the much required change in attitudes and behaviours. “One study among the Maasai found that a significant proportion of unmarried boys (46%) had a preference for uncut girls or stated that a girl’s circumcision status did not matter, compared to 68% of all respondents stating that they wanted FGM to continue.”<sup>110</sup>

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<sup>107</sup> Holzner, Brigitte et al ;*Gender Equality and Empowerment of Women* :Policy Document .Federal Ministry For European and International Affairs Vienna,2010

<sup>108</sup> Warth Lisa and Koparanova Malinka ; *Empowering Women for Sustainable Development, Discussion Paper Series ,No 2012.1* United Nations Economic Commission for Eurpoe,Geneva,Switzerland,2012.

<sup>109</sup> Alvarez Sonia and Lopez Michelle; *From unheard screams to powerful voices: A case study of women’s political empowerment in the Philippines*. In 12<sup>th</sup> National Convention on Statistics (NCS), 2013.

<sup>110</sup> 28 Too Many Lets End It; *Country Profile; FGM in Kenya*. May 2013. Pp. 29.

The involvement of both young and the old in awareness initiatives will enable the community to move together without leaving others behind in effecting change. This approach is based on the principle of listening and questioning between different generations aided by a facilitator. It enables participants to reflect on their values, customs, traditions and expectations and to consider whether, when, how and under what conditions change should take place.<sup>111</sup> The approach should be inform the designing of all community-based approaches including the most appropriate and acceptable Alternative Rites of Passage (ARP).

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<sup>111</sup> Ibid. Pp36.

## CHAPTER FOUR

### TRENDS IN CROSS-BORDER FGM AND FACTORS UNDERMINING THE FIGHT AGAINST THE PRACTICE IN NAMANGA BORDER

#### 4.0 Introduction

This chapter will examine the trends in Cross-border FGM by tracing back to its history, the difference in the ways the practice is being conducted now and how it was in the past before Anti FGM laws came to be. This chapter will also look into historical and current data on factors exacerbating cross-border FGM.

#### 4.1 Response rate

For this chapter, the researcher used structured random sampling to collect data from respondents and the response rate was at response rate was 68.2% which the researcher felt it was adequate given the fact that the remaining 31.8% could not be achieved due to the prevailing conditions relating to travel restrictions, ban on social gatherings and curfew imposed by the both Kenyan and Tanzanian governments as containment measures for the spread of Covid-19 pandemic.

Category	Targeted Sample (Total)	Respondents
Medical practitioners	19	15
Politicians/legal practitioners	27	22
Activists/advocacy group members	44	35
Religious/ Opinion/ Community Leaders	80	53



Scholars/Teachers/ Peer educators	109	66
Parents	154	93
Students (all cadres)	200	148
Total	633	432

TABLE 4.1. RESPONSE RATE FOR CHAPTER FOUR

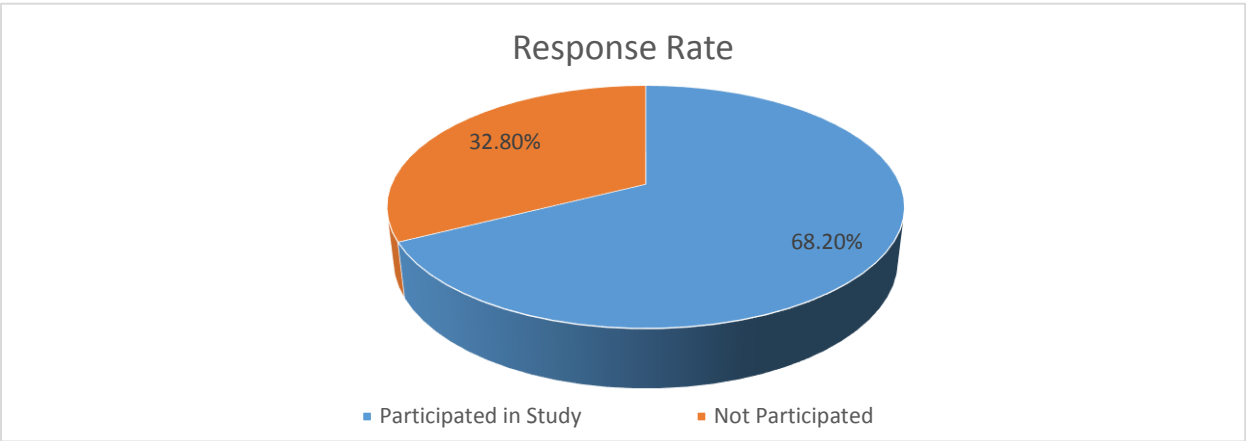


FIG 4.1 RESPONSE RATE FOR CHAPTER FOUR.

**4.2 FGM as a harmful cultural practice**

Effects of Female Genital Mutilation are adverse to the wellbeing of women and girls. Apart from negative health implications, the procedure also results in psychological effect as it causes trauma due to the violence meted upon them, mostly without their consent, which might leave the girl or woman suffering from Post-Traumatic Stress Disorder (PTSD) while at the same time taking up more responsibilities as a wife and a mother.

FGM has got no known health or medical benefits, On the contrary, it causes irreparable harm to women and girls. The sexual and reproductive health of girls and women is adversely affected by FGM.

The World Health Organization (WHO) classifies FGM into four categories namely:

Type 1: Often referred to as clitoridectomy; this is the partial or total removal of the clitoris

Type 11: Often referred to as excision; this is the partial or total removal of the clitoris and the labia minora with or without the excision of the labia majora.

Type 111: Often referred to as infibulation, which is the narrowing of the vaginal opening through the creation of a covering seal by partial or total excision of the external genitalia and stitching the vagina opening consequently narrowing it.

Type 1V: this includes all other harmful procedures to the female genitalia for non-medical purposes such as pricking, piercing, incising, scraping, cauterizing the genital area, stretching of the clitoris or labia, and introduction of corrosive substances or herbs to the vagina. <sup>112</sup>

FGM is usually performed by elderly women or traditional health practitioners, herbalists and at times experienced female relatives. FGM has also been ‘medicalized’, which means it is being performed by medical personnel and under hygienic conditions. Razor blades, scalpels, special knives, scissors, pieces of glasses are usually used in the procedure. The use of anesthetics and antiseptics is becoming common among the practitioners in efforts to make the procedure friendly to the girls and also to minimize the chances of complications arising from the procedure. The

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<sup>112</sup> WHO; *Female Genital Mutilation: Key Facts*, 2018.

medicalization FGM has also made it possible to silently cut the girls without the usual traditional ceremonies that could attract law enforcers to their homesteads.

The researcher sought to understand the role of traditional birth attendants in cutting of uncircumcised pregnant women. 93% of respondents were in agreement that expectant women and girls who seek services of traditional birth attendants are likely to be cut during childbirth without their knowledge or consent. The remaining 7% are likely to survive the circumciser's knife, a rare circumstance that could be occasioned by complications that require them to be referred to hospitals and medical centers. In such cases, the birth attendants cum circumcisers are unlikely to risk conducting the FGM for fear of being reported to authorities.

On preference of traditional birth attendants by parents of expectant school-going girls, 54% of respondents consisting mainly of parents would prefer to take their girls to the attendants instead of hospital, citing affordability of their services. However, the researcher was made aware that parents of expectant school going girls prefer to procure the services of traditional birth attendants to have their girls cut while giving birth at the same time. This would enable the girl to become a 'complete woman' after birth and will also avert a social crisis, where the community considers it a taboo to have uncircumcised women giving birth as such children would be deemed as outcasts of the community.

The reproductive health complications occasioned by FGM vary according to the extent of the operation, the instruments and equipment used, the expertise and skills of the practitioner, the hygiene conditions under which it is performed, the amount of resistance from the girl. The health condition of the girl or woman undergoing the procedure is also a determinant in their survival during the procedure. Women and girls who resist are forcefully cut by being forcefully restrained by a number of strong women and in such case, it can result in a serious injury and damage to the

genitals if the circumcisers knife misses the targeted parts resulting in a botched procedure. More often cases of botched procedures are referred to hospitals and health centers as emergency cases to offer saving support for the patients. The same case applies to women and girls with underlying health conditions such as anaemia or haemophilia are also likely to die if not given proper and timely medical assistance.

The researcher sought to find out if the hospitals and health centers within the study area have emergency support systems in place for victims of botched FGM procedures. None of the hospitals had standby emergency centers fully equipped with blood bank and corrective surgeons and the reason given for that is that it would create a perception of the government offering a formal support system for FGM which by law is illegal. However, 77% of medical practitioners interviewed asserted that if such cases arise, their primary objective is usually to save the lives of the women and girls and then report the cases to authorities for further legal action.

Girls and women who have undergone FGM experience complications during childbirth as compared to women who have not undergone the procedure. Prolonged and obstructed labour is common resulting in still births, fistula, and increased risk of infant death after birth and in worst cases, death of the mother or both.

Health care centers visited by the researcher, health records indicate that 63% of the maternity care patients attended to in prenatal clinics are below 18 years, an indication that the girls were forced into early marriages by their parents or guardians before completion of their basic education. Due to immaturity, victims are unable to have normal deliveries and hence majority undergo cesarean section as their birth canal had either been tampered with during FGM or due to tender age or both.

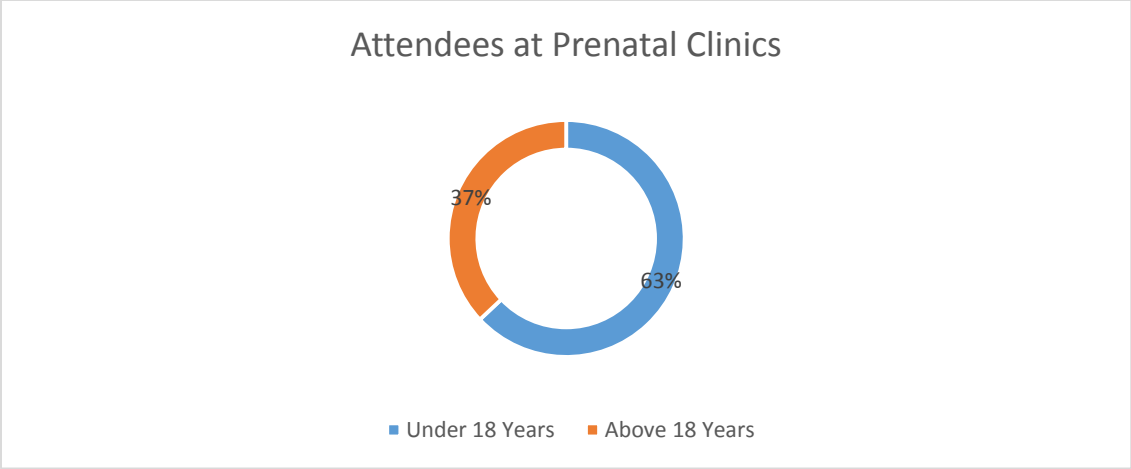


FIG 4.2 ATTENDEES OF PRE-NATAL CLINICS IN HOSPITALS AND DISPENSARIES.

FGM is mostly performed in unhygienic environment by traditional birth attendants, which by all standards is not fit for surgical procedures. In cases of medicalized FGM, the procedure is performed in homesteads or private clinics which serve as hideouts where law enforcers cannot easily trace them. Use of unsterilized and sharing of instruments is common in the case of traditional circumcisers, which often result in the transmission of deadly infections such as HIV/AIDS and tetanus. Also, the traditional practitioners don't use anesthesia and antibiotics which often result in severe pains and prolonged healing of wounds

The researcher found out that 58% of maternal health complications is as a result of FGM in the Kenyan hospitals and dispensaries visited by the researcher. On the Tanzanian side, only 33% of maternal health complications were reported in their clinics and dispensaries. This could be attributed by the influx of Tanzanian women into Kenyan hospitals due to the sophisticated maternal care offered

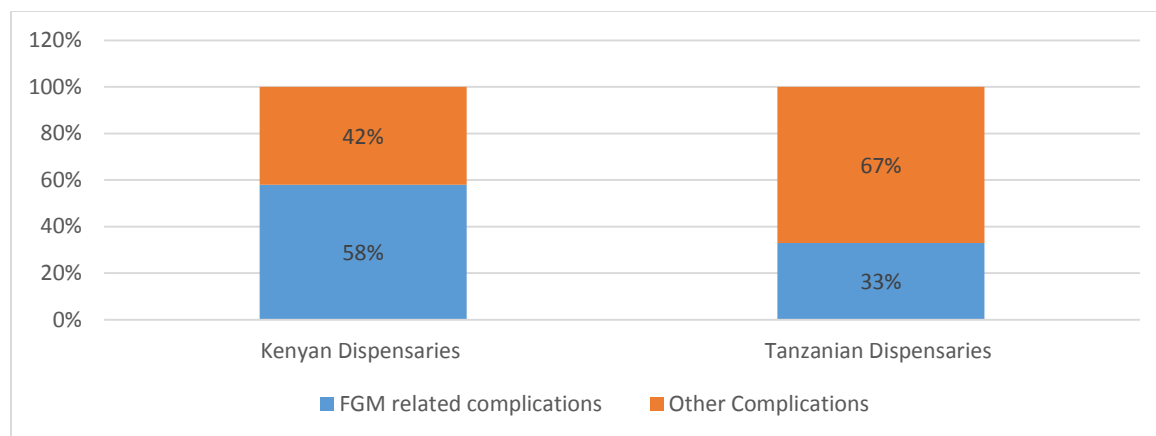


FIG 4.3 FGM RELATED MATERNAL COMPLICATIONS

In order to minimize cases of FGM as a form of gender based violence, NGOs that deal in Gender and Women issues in the study area have established rescue centers and safe houses where rescued girls are also accorded opportunities to continue with their studies. The initiative works mostly for girls who are willing to be rescued from FGM and hence, the important role of sensitization on the dangers of FGM complements the efforts to rescue the girls at risk by having them make the right decision.

Keeping girls at school as much as possible has been the best approach by Anti-FGM crusaders as stakes are high for a girl at home to be married off within the slightest opportunity as they are perceived as assets on standby ready to be exchanged for money and livestock. Uncircumcised girls are considered unmarriageable, and hence cannot be accommodated in such a setup and thus, keeping them in school as much as possible to continue with their education has been observed by teachers and Anti-FGM crusaders as the only way to ensure their safety until that time when the society will be ready to be transformed.

However, the researcher found out that there are those girls who are also not willing to abandon their culture and resolve to be subjected to the cut for fear of being cursed by their parents or for

other social reasons. In such cases, anti-FGM crusaders are left with very limited options of trying to convince them to abandon their intentions and get rescued. The researcher therefore took cognizance of the importance of enhancing cooperation between the anti-FGM crusaders and the future potential victims of FGM. This, the researcher has observed, could be done through proactive targeting of the victims to be and equip them with the necessary knowledge on the dangers and negative effects of FGM. Above 80% of anti-FGM crusaders agree that girls willing to undergo the procedure can only be rescued through interventions by government authorities, but unfortunately, such initiatives offer temporary reprieve and therefore policing such cases becomes difficult without the cooperation by the girls and their parents or guardians.

#### **4.3 Origin of Cross-Border Female Genital Mutilation**

Female Genital amongst the Maasai community originated from a myth that has been passed from generation to generation of the existence of a girl called Naipei who had sexual encounters with the enemy of her family hence bringing shame and dishonor to their family. As a punishment and to suppress her erratic sexual behavior, a decision was arrived at that she had to be cut to avoid future recurrence of such a behavior. Since that time, FGM has been performed on girls once they reach adolescence to contain erratic behaviors and to bring honor and dignity to their family.

Cross-border aspect of FGM is however a creation of international boundaries created by colonial masters during the scramble for Africa, and more so after it became a subject of global health concern. Declarations and treaties were made to criminalize FGM, thus setting the stage for the adoption of those treaties by African states. Many African countries enacted laws to criminalize the practice and soon, there was no room left for communities to continue with the practice as per the dictates of their traditions. The spill-over effect of the practice started taking shape, whereby countries that had more punitive Anti-FGM laws and stricter enforcement measures started to

experience an outflux of women and girls being taken across the borders into more ‘friendlier’ jurisdictions for the ritual and then brought back when they are already healed.

Kenya has got one of the most progressive and robust anti-FGM laws in East Africa as compared to Tanzania, Uganda, South Sudan, Rwanda and Burundi. The Kenya anti-FGM law 2011 totally outlaws FGM on women and girls and consent is not acceptable. Tanzania’s law on FGM has loopholes that perpetrators exploit to perform FGM. According to Tanzania’s *Sexual Offences Special Provisions Act of 1998*, only girls below 18 years are granted protection by law against FGM, however the law is blind on cases of women above 18 years.

The researcher sought to further understand the history of Cross-border FGM amongst the respondents and the findings were as follows. 83% of the adult respondents had knowledge of the cross-border aspect of FGM in the study area. However, they could not point out the exact year when the practice of cross-border FGM started to take shape along the border. 59% of respondents noted that major changes have taken place over the last 20 years, while 13% of respondent could not understand the concept of Cross-Border FGM.

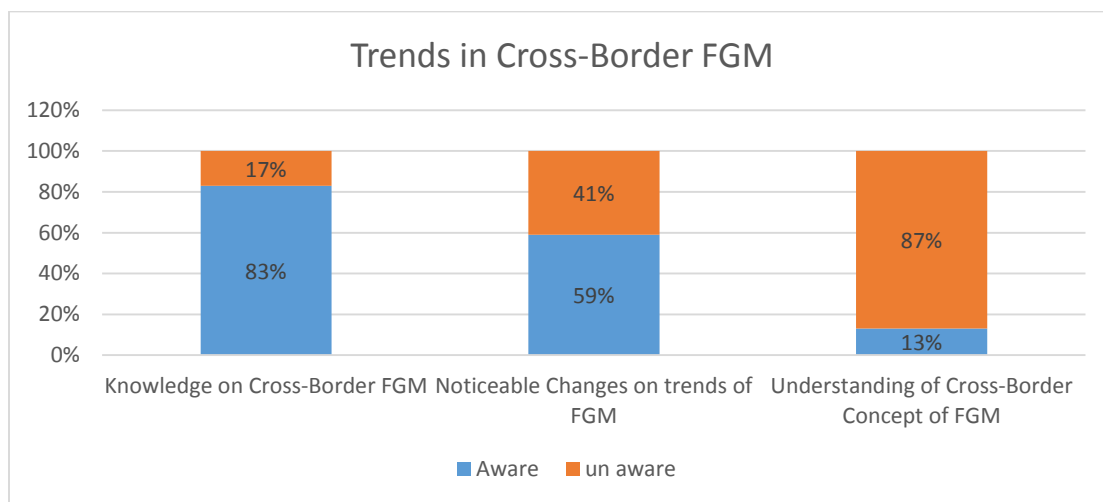


FIG 4.4 TRENDS IN CROSS-BORDER FGM



On the issue of Tanzania being a safe haven for perpetrators of FGM, 89% of Kenyan respondents were in support of the argument, 7% disagreed while 4% could not articulate the question. 52% of Tanzanian’s respondents concurred that Tanzanian anti-FGM laws were not as stringent as those of Kenya, which according to them, were the main contributing factor for Cross-Border FGM. However, 43% of Tanzanians were of the contrary opinion that Kenya authorities were to blame for failing to act on the rising cases of FGM involving Kenyans. The remaining 5% could not be answer the question.

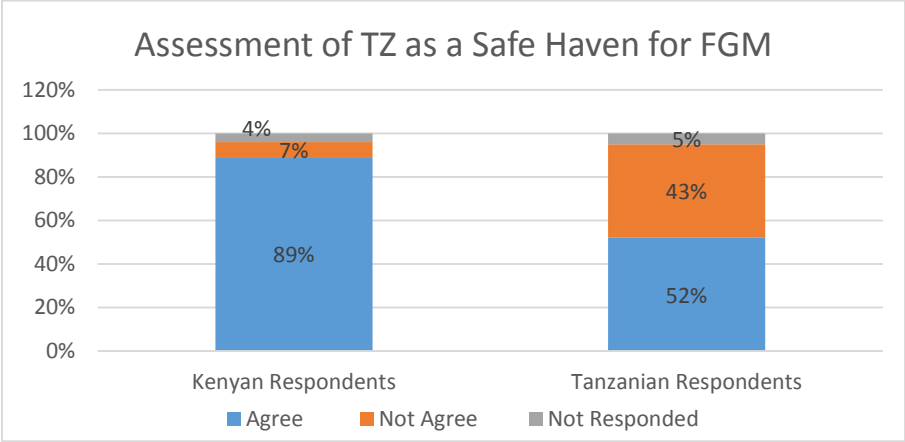


FIG 4.5 ASSESSMENT OF TANZANIA AS A FACILITATOR FOR CROSS-BORDER FGM

**4.4 Factors exacerbating Cross-Border FGM along the Kenya-Tanzania Border**

Lack of harmonious legislative approaches on FGM laws between Kenya and Tanzania has been identified as a major hindrance in the fight against FGM among communities living along the border. The researcher sought to find out why the existing laws are not effective in combating Cross-Border FGM and 82% of the respondents were in concurrence that the laws are sufficient but proper implementation mechanism is lacking. The remaining 18% of the respondents thought that the laws were sufficient and fully effective but lack of cooperation amongst the community is what is derailing the fight.

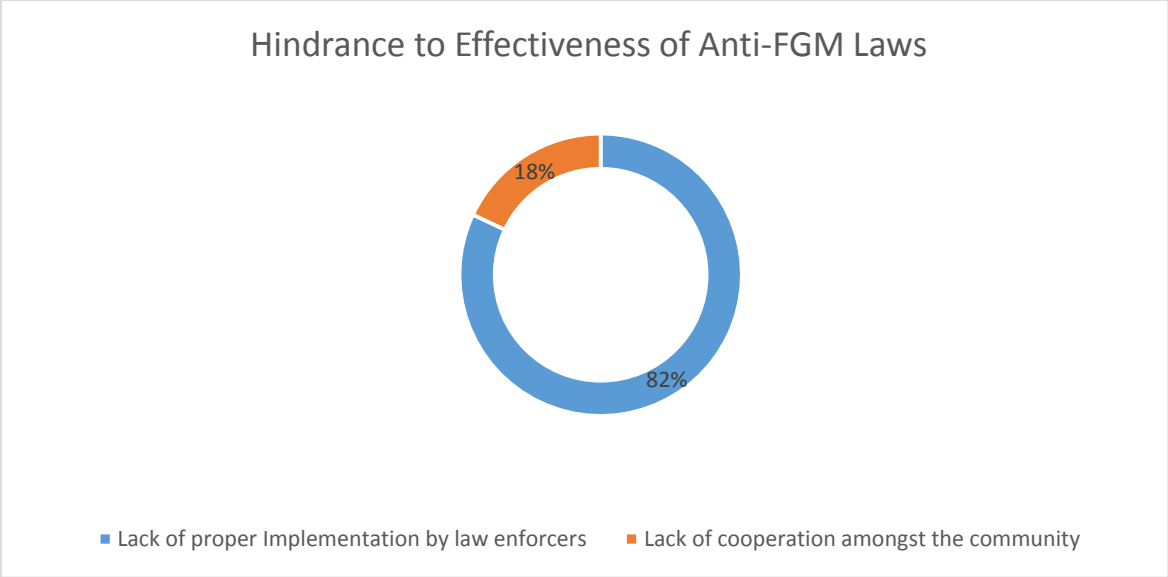


FIG 4.6 HINDRANCE TO EFFECTIVENESS OF ANTI-FGM LAWS

According to local administrators both at the county and national levels, the community in the study area discovered Tanzania’s laws are more lenient to perpetrators of the vice and hence secretly arrange for their girls to be taken for the cut across the border. Tanzania’s anti-FGM laws only protect girls under the age of 18 years but does not protect women over the age of 18 years against the practice. Once the legal age of 18 is attained in Tanzania, women are at a liberty to make a choice on whether to be cut or not. The irony of it is that, the bulk of complications related to FGM during child birth is borne by the medical facilities in Kenya, which are considered more equipped and sophisticated as compared to those in Tanzania where maternal care is far much below in standards. Therefore, there was a 100% concurrence by the local administrators from the Kenyan side, that if urgent interventions are not put in place, Kenya will continue suffering both economically and socially due to the laxity in enforcement of the laws across the borders.

78% of the administrators complained of lack of adequate facilitation by the government by equipping local law enforcers with enough resources to enable them to reach out and attend to all

cases in the grassroots. 13% observed that there should be community driven initiatives in solving the problem rather than using the law which does not offer protection to witnesses to enable prosecution of the cases in courts of law. 9% of the government administrators were however honest that they do not see the need to stop their communities from performing a cultural rite that has been there for decades. They observed that it is unfair for the community to succumb to external ideologies and abandon their deeply rooted culture and that their own relatives and family members have undergone the rite albeit secretly so as not to be perceived as going against government policies which they are entrusted to ensure compliance.

Apart from government officials, the researcher also sought the opinion of other locals on their levels of satisfaction in how Anti- FGM strategies are being implemented in the grassroots. 71% supported the anti FGM initiative, but were dissatisfied with the way authorities are handling the situation with allegations of corruption being at the core of their complaints. They also called for a more reasonable and humane approach that is community friendly and further to that, they also proposed for incentives from government for traditional circumcisers who change their ways and become anti-FGM ambassadors. 18% maintained that FGM should be a personal choice while 11% thought that the culture must be preserved including FGM or else it becomes extinct with the penetration adoption of western cultures by community members. They also claimed that the fight against FGM is bringing disunity among the community members with the formation of factions that support the government and the other faction that support FGM.

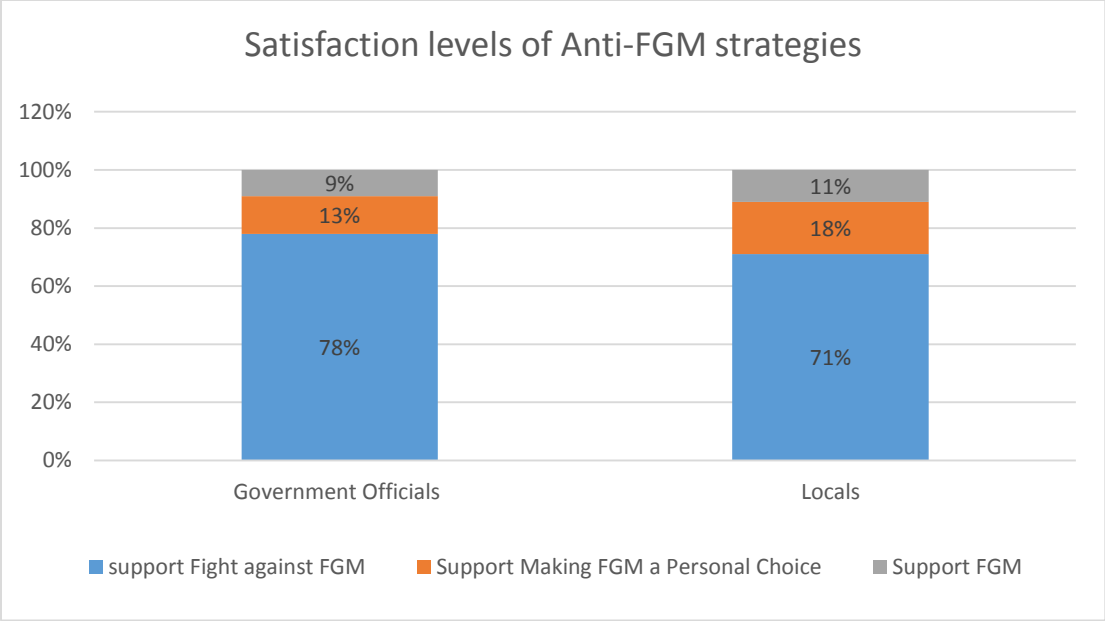


FIG 4.7 SATISFACTION LEVELS OF ANTI-FGM STRATEGIES.

The role of NGOs and religious organizations in anti FGM campaigns in the area was also noted to be vibrant by 73% of the respondents through facilitating evacuation of girls at risk to rescue centers, in the establishment of safe houses and also in litigation support for victims. The government visibility in campaigns against FGM within the study area was at 24% which was through enforcement through local administrators, teachers and police. The organizations were more visible and hence more vibrant in the design and facilitation of alternative rites of passage through involvement of the community in the process. In comparison to the government’s initiative in the ant-FGM campaigns, their presence in the grassroots was at 64% against the government’s presence at 31%, the remaining 5% could not distinguish the roles of government and of the NGOs in the initiatives.

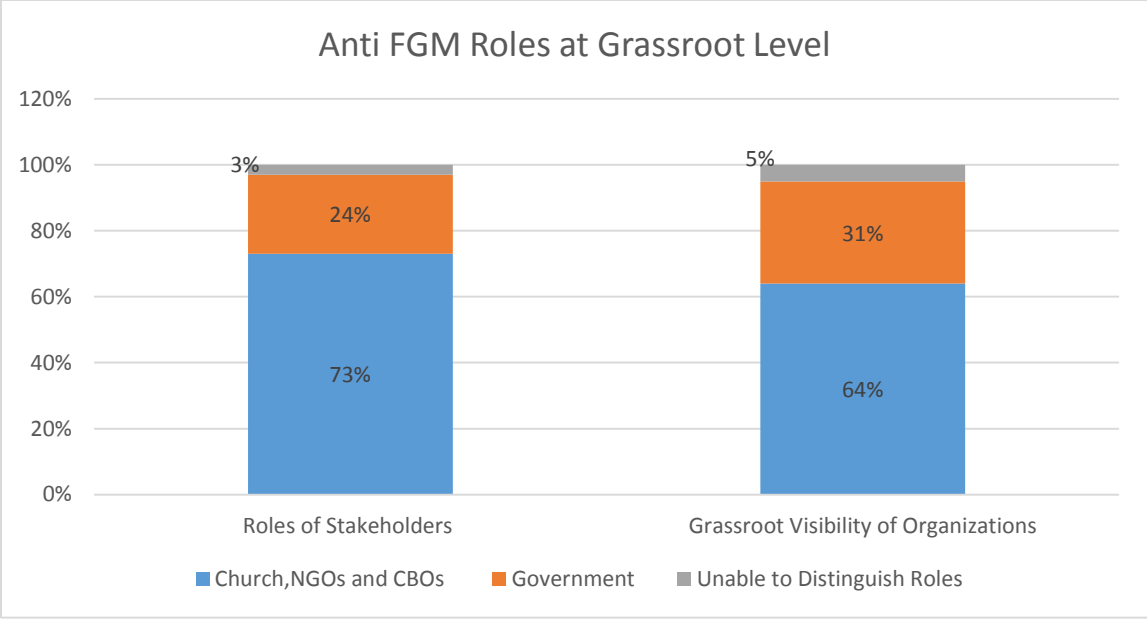


FIG 4.8 ROLES AND VISIBILITY AT GRASSROOTS LEVEL BY ANTI-FGM STAKEHOLDERS

On diplomatic and political goodwill, the researcher observed that only teachers, administrators and professionals could articulate impact of the frosty relations between Tanzania and Kenya as a hindrance to the fight against Cross-Border FGM.

The women and girls in within the study area who practice FGM hail from the Maasai community, a community with strong historical and cultural ties to FGM. Almost all women from older generations having undergone FGM, and having been bestowed the responsibility by the community, they have the obligation to pass the baton of their cherished cultural practices including FGM to younger generations. Subsequently, the practice is bound to reach all generations, a factor that makes it nearly impossible to eradicate FGM amongst women in the community as the practice is not seen in the lenses of being retrogressive, barbaric, violation of dignity and human rights of women or torture, but is seen in the lenses of progressiveness and femininity.

FGM is mostly an inter-family affair and is performed by elderly women who also happen to be relatives of the girls. If the law enforcement agency catches up with perpetrators, parents or caregivers are arrested leaving the girls facing hostility from the community if they opt to become prosecution witnesses against their parents and or relatives. There are no proper guidelines for witness protection for the girls as they are expected to help the state in prosecuting the people that feed and take care of them.

#### **4.5 FGM as a deeply rooted culture**

“FGM is a practice that is deeply rooted in historical belief systems based on culture, religion or both.”<sup>113</sup> Among the Maasai community living Namanga along the Kenya- Tanzania border, Female genital mutilation is a deeply entrenched and treasured practice in the community. Respondents underscored the important roles played by women in the community where their respective roles cannot be substituted for anything. “Such gender socialization processes affect individual identities, social values and social standing.”<sup>114</sup> Uncircumcised women are considered as little girls and hence do not command respect not only among their peers, but also to all other members of the community including children. Respondents who are victims of FGM agreed to be cut in order to pave way for their acceptance and to participate in the community’s activities where women play a significant role during ceremonies such as Initiation of warriors (Moran) into young elders called (*Eunoto*). FGM is seen as rite of passage. It is an initiation of a girl into womanhood. A circumcised girl is respected and has a higher value as compared to a girl who is

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Rahman Anika and Toubia Nahid; *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*. London: Zed, 2010

Monogan S.Lynnette; *Patriarchy: Perpetuating the practice of Female Genital Mutilation*, *Journal of Alternative Perspectives in the Social Sciences*, 2(1), 160-181, 2010

uncut. “FGM is a norm that regulates the female body, shape’s women’s behavior and increases their chances of marriage.”<sup>115</sup>

“A rite of passage is characterized as a life cycle ritual that marks an individual or group’s transition from one state to another.”<sup>116</sup> Therefore, the specific roles played by women here is setting up of homesteads (*Manyattas*) in readiness for the ceremony and also the shaving of the warriors’ hair by their mother using razor blade and milk. In such an instance, no other person is allowed to touch the warriors’ hair apart from their mothers. The worst situation in this case would be if the warrior’s mother is uncircumcised, hence it will have an impact on the development and transition of their boys and girls into adulthood.

There was a general consensus by majority of respondents that uncircumcised girls and women in the community do not meet the threshold for marriage. Such women also face stigma in their daily decisions and when they err, the mistake is attributed to her being unable to make good decisions until she gets cut. The man who marries uncircumcised women does not command respect amongst his peers and cannot also be given leadership positions in the community due to their considered ‘inadequacies’.

93% of the respondents were also in agreement that the elimination of FGM is a threat to a string of other cultural activities which follows after the woman is initiated into adulthood. Therefore, they hold the view that there should be a consultative process on how the elimination of FGM should be done without compromising the quality of the community’s culture or in worst case the

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Shell-Duncan B; *From Health to Human Rights: Female Genital Cutting and the Politics of Intervention*, Wiley Press ,2008

Genev Arnold; *The Rites of Passage*: University of Chicago Press ,1960

culture getting extinct. 7% held the view that with the introduction of Alternative rites of passage, no disruption on the cultural lifestyle of the community will occur.

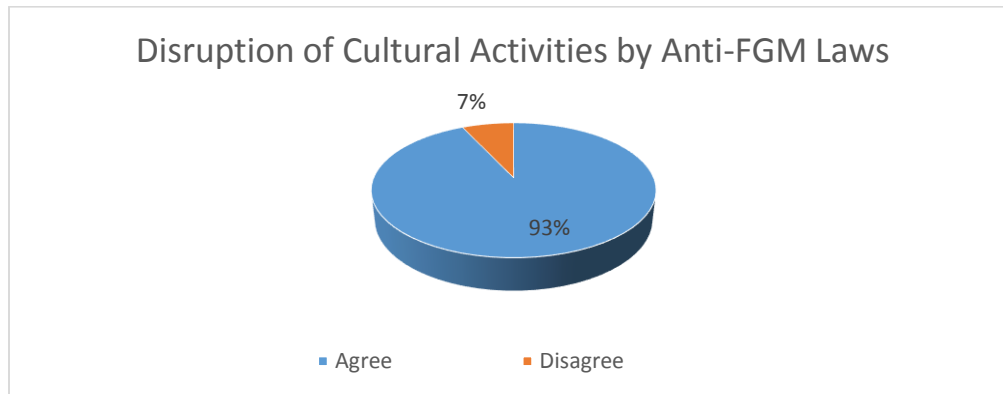


FIG 4.9 DISRUPTION OF CULTURAL ACTIVITIES BY ELIMINATION OF FGM

#### 4.6 Economic Reasons for FGM

“In societies that are afflicted by poverty, a daughter’s marriage becomes a survival issue of great concern for parents.”<sup>117</sup> Bride price in the African society is used as a token of appreciation to the girl’s family for offering their daughter to the bride groom’s for marriage. In the Maasai community, marriage is an arrangement between the bride and the groom’s parents where girls at very tender age are booked by their potential suitor’s family. The bride price is negotiated once girls approach adolescent age, and the obstacle left between her and marriage is being cut. Therefore, such girls are left with no choice but to accept their fate by dropping out of school to pursue her parent’s wishes. In such instances, the bride price is quantified by the number of livestock to be given in exchange for the girl. In modern times, money has also been incorporated into the token, but livestock is predominant, as it is the main symbol of wealth amongst members of the community.

<sup>117</sup> Herlund K.Yiva and Shell-Duncan Bettina; *Transcultural Bodies: Female Genital Cutting in Global Context*, New Brunswick, Rutgers University Press, 2007



The traditional circumcisers also charge for their services where they are often rewarded with livestock from girls' family. Commercialization of FGM has encouraged the vice to continue by design, where the circumcisers offer counsel to the girl's parents on ways to circumvent the existing laws by facilitating Cross-Border FGM. Therefore, such practitioners get an assured source of income from the practice and their unwillingness to abandon their job remains an uphill task for the fight against FGM as they are on the frontline fighting for their careers which is under threat.

FGM being an economic issue to the community, is a topic that generates a lot of interest to the community and hence complete elimination of it without offering an alternative source of income to fill in the gap would pose a threat to their economic sustainability. The researcher interviewed respondents on the economic significance of FGM and they were in 100% concurrence that FGM has an economic value in the community. 58% of school going male students admitted to have at some point been educated from proceeds of FGM in terms of pride price and others whose parents are traditional circumcisers. Newly wedded, those intending to get married and having their brides booked in the arranged system of marriage agreed to have had their bride price paid from proceeds linked to FGM. 34% of the young men agreed that their bride price was paid either directly or indirectly by proceeds of FGM.

The above assessment is in concurrence to the argument that Tanzania has in recent years been used as a safe haven for perpetrators of FGM who also take advantage of long school holidays in December to conduct the ceremony popularly known in local dialect as '*Ntaleng'o*' whereby the ceremony is performed immediately after schools are closed in late November and the girls heal by January before the reopening of schools. During such a time, the researcher found out that teachers and human rights groups/ NGOs experience challenges monitoring the activities of their

pupils in their localities due to the nomadic nature of the community, where more often, there is movement cross the borders in search of water and pasture for livestock. For the past 5 years, there has been a consistence reduction of girls in upper primary and lower secondary classes, from class five to form two by at least 2%, mostly on reopening of schools in January every year.

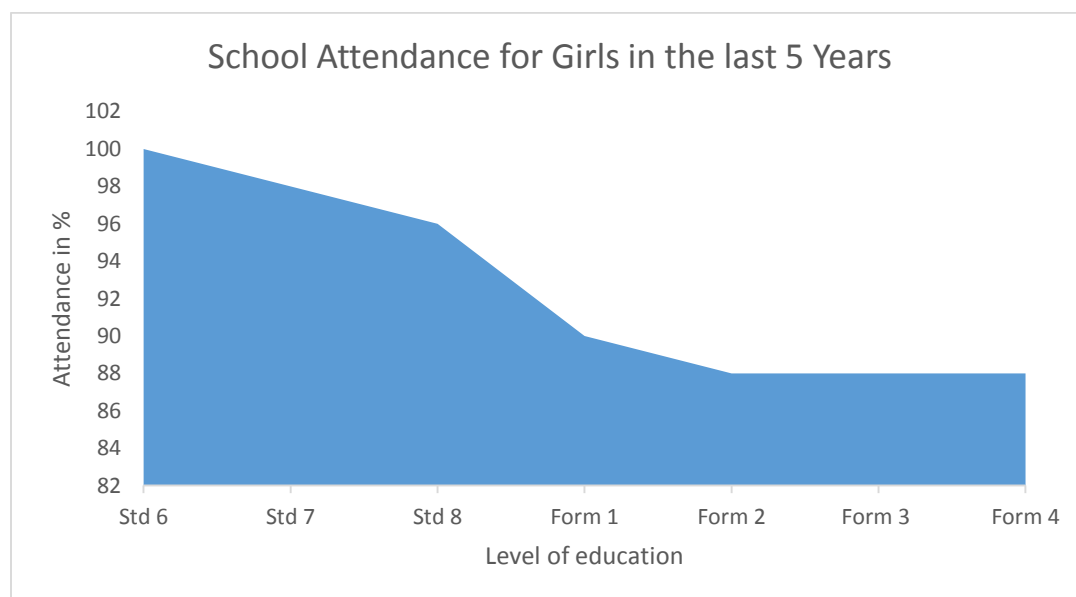


FIG 4.10 IMPACT OF FGM ON SCHOOL ATTENDANCE OF ADOLESCENT GIRLS

The above drop in number of girls during their adolescent years within the study area is an indication that once FGM has been conducted, it creates opportunities for parents to reap from dowry paid as a result of early marriages.

#### **4.7 Social Reasons for FGM**

Social acceptance is important for any person living in a community as it creates a sense of belonging. It is the main reason why girls have to undergo FGM to make their lives easy and to be comfortable in the society. ‘Uncut women are labelled as easy women, promiscuous, loose and

uncontrollable.<sup>118</sup> No man will be willing to undergo the humiliation of marrying a woman with such a description and yet there are other women who are deemed socially compliant.

The society seems not yet ready to accommodate uncircumcised women as such women will have to endure unending series of mockery, body shaming and ridicule by their peers and also other members of the society. Their parents will have to go through similar experience, which very few are willing to let themselves and their girls go through such stigma and social pressure. Therefore, many parents will do everything in their power including using force to ensure their children comply with the demands of the society.

The Maasai community decision making is done by elders, and hence the community is patriarchal. 'Patriarchy is defined as the structure that oppresses women for the benefit of men and curtail the growth and development of women.'<sup>119</sup> Therefore, if the girl's father decides that the girl will have to be cut, no other member of the family will overrule the decision. Any female who dares challenge or oppose the position or decision made by the community through the elders risks excommunication, curses and very hefty fines. Very few women will have the courage to resist the decision, as it is a very involving process where law enforcers are also to be notified and the girls evacuated to safer places where they will be free from the risk and also, they will have the opportunity to continue with their education. The price that come with decision on whether to be cut or not is hefty and not many women are willing to go that route. "Women who do not comply

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Onyishi et al; *Female Genital Cutting Restricts Socio-Sexuality Among the Igbo People of Southeast Nigeria*, *Evolutionary Psychology*,14(2),1474704916648784,2016.

Van R. Rossem and Gage J.Anastacia ;*The Effect of FGM on the onset of Sexual Activity and Marriage in Guinea*, *Archives of Sexual Behaviour*, Pp. 38(2),2009.

by refusing to adopt the procedure are considered social, cultural or religious detractors worthy of harsh punishment.”<sup>120</sup>

“Patriarchy is further seen as a society in which men dominate women and justify their domination through devaluation.”<sup>121</sup> Girls who have undergone FGM have high marriageability as compared to girls who are uncircumcised. Girls who are uncut are shunned by young men intending to marry (*Morans*) because they prefer girls who have complied with the social demands of the community, one of them being having to undergo FGM. If by any chance the uncut girls get married, the marriage will not last, or perhaps, she will have to be cut during child birth with or without her consent if she is to be attended to by traditional midwives.

“FGM is seen as two-fold responsibility by parents towards their daughters; firstly to increase daughters their marriageability chances and secondly, to be seen as conscientious parents acting in the best interests of their daughters.”<sup>122</sup> FGM is therefore rewarded in the community through higher prospects of marriage, social acceptance, ability to participate in the community’s cultural activities among many other privileges. On the other hand, uncircumcised women are considered outcasts, impure, unclean, and immature and may risk being cursed by elders for going against their wishes. “Clitoridectomy, excision or infibulation lead to better marriage outcomes is a sufficient reason for families to continue the practice.”<sup>123</sup>

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Karmaker et al, *Factors Associated With Female Genital Mutilation in Burkina Faso and It’s Policy Implications*, *International Journal for Health and Equity*,10,20-20, 2011.

Denscombe Martyn, *The Good Research Guide for Small Scale Social Research Projects*: Open University Press,Buckingham,1998.

Coyne Christopher and Coyne L. Rachel ,*The Identity Economics of FGM*,*The Journal of Developing Areas*,48(2),137-152,2014.

Cheskonova Tatyana and Vaithianathan Rhema,*The Economics of FGC* ,*The B.E Journal of Economic Analysis and Policy*,10,64,2010.

The researcher sought the answers from respondents on whether they can withstand social pressures associated with FGM. 56% of male adult respondents claimed that marrying uncircumcised women would spell doom on their future prospects in the community. The remaining 44% said they would wish to marry uncircumcised women as long as the society accommodates them. On the willingness of women to withstand pressure by defying the norm. 88% were supportive of the eradication of the practice but urged tolerance and support from the society. 12% could not abandon the norm even if they were accorded friendly environment. On parents, 42% were supportive of the initiative but on condition that they are not discriminated upon by other members of the society

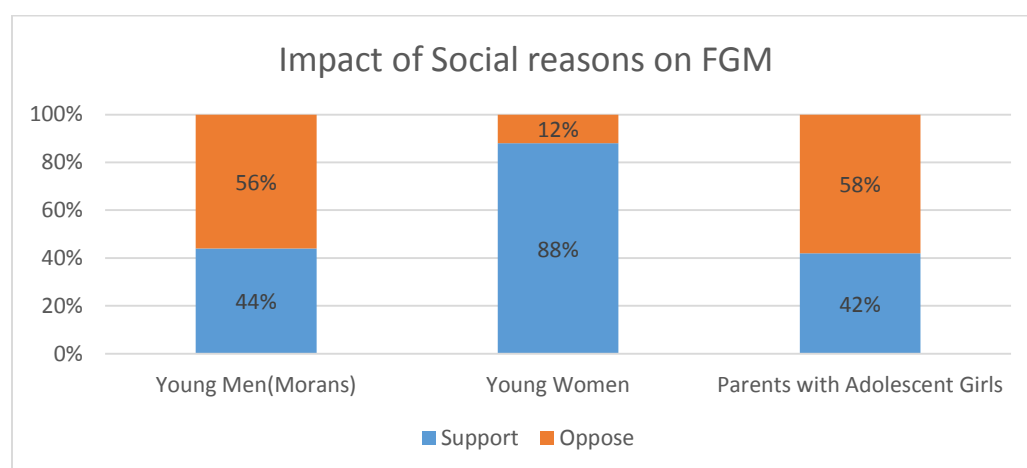


FIG 4.11 IMPACT OF SOCIAL REASONS IN SUPPORTING/OPPOSING FGM

#### 4.8 Psychosexual, Hygiene and Aesthetic Reasons for FGM

“Virginity is a prerequisite for marriage and is associated with female honour.”<sup>124</sup> In order to assert control of sexuality on women, FGM is used as the tool. Being cut is believed to promote sexual purity, morality and virginity. It is also believed that it increases male sexual pleasure because of

Kaplan A et al, *Health Consequences of FGM/C in the Gambia, Evidence Into Action*. Reproductive Health 8(1), 2011. Pp.26.

the tightened female sexual organ. “FGM is practiced to control female sexuality as clitoral mutilation weakens women sexual desires.”<sup>125</sup> In addition, FGM is attributed to all the beautiful characteristics any woman would wish to be associated with, which is beauty, fertility and controlled sexuality. Such women are also seen as strong and capable of withstanding difficulties in life and bearing the pain of childbirth.

External female genitalia according to myths associated with the community, is considered dirty and ugly and therefore its removal is meant to enhance cleanliness and aesthetic appeal. Uncircumcised women are perceived as unclean and thus unattractive, which dims their chances of being married to respectable men within the community. The practice is considered a major boost in enhancing femininity and womanhood which are high value traits in women and girls.

The researcher sought answers from women respondents on the importance of FGM as a hygiene measure. 65% believed it is a myth that is not factual. 23% believe that there is truth in what they were told by elderly women while 12% were not sure and could not comment on what they were not sure about.

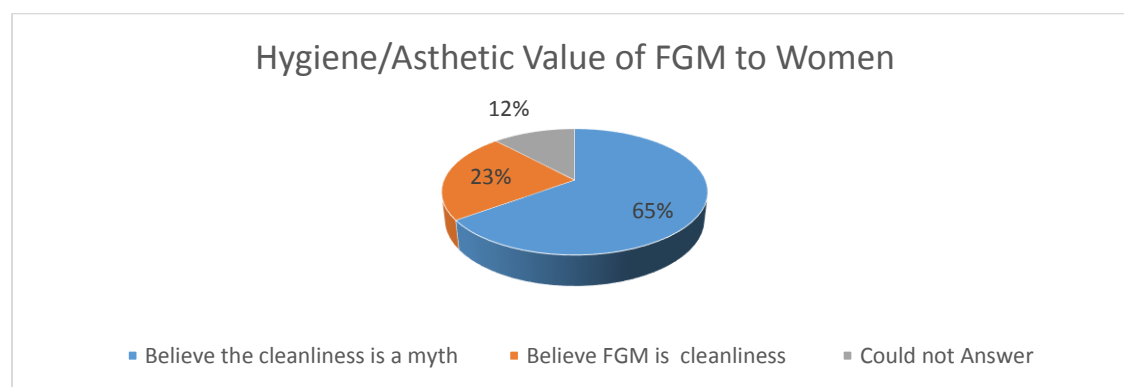


FIG 4.12 HYGIENIC/AESTHETIC VALUE OF FGM ON WOMEN.

Berg C.Rigmor and Denison Eva; *Does Female Genital Mutilation/Cutting Affect Women's Sexual Functioning? A Systematic Review of FGM/C*. *Sex Social Policy* 9, 41-46, 2012.

#### **4.9 Nomadic pastoralist lifestyle**

The community's main source of livelihood is rearing of livestock and some practice subsistence agriculture to complement their staple food which is meat, milk and blood. The study area being semi-arid, dry seasons are occasioned by lack of water and pasture for their livestock due to overstocking. Therefore, the community is forced by circumstances to move from one place to another in search of water and pasture for their livestock. The movements are evident during national events such as census and general election where low turnout is witnessed. School going children are also forced to miss their classes for weeks and worst still even for months.

During such times, women and girls are not left behind as they are expected to perform their roles in their temporary settlements as life activities continue normally and that includes observing their cultural activities including FGM. Therefore, the nomadic pastoralist lifestyle contributes in exacerbating FGM. Local administrators, Anti FGM crusaders and organizations and teachers are unable to attend to cases related to FGM in far flung areas where they also experience jurisdiction challenges when the victims and their families cross the borders to neighbouring countries.

The researcher sought from the respondents if nomadic lifestyle has an impact in the fight against FGM and 53% of the respondents agreed that parents and relatives wishing to have their girls undergo the cut take advantage of the dry seasons to relocate and perform FGM outside the jurisdiction of their local administrative units. This is one of the tactics the community employs to ensure they frustrate efforts law enforcers and anti FGM crusaders to bring to justice perpetrators of FGM. This, they claim has enabled them to successfully observe their traditions without risking being arrested and prosecuted as they return back after the girls have been cut and with little evidence to show.

#### **4.10 Lack of adequate and affordable secondary school education**

In 2008, the government introduced secondary school education in all public day secondary schools in the country. The efforts by government were to ensure a 100% transition from primary to secondary school, in an arrangement where the government was to foot the cost of tuition while parents pay for boarding, school uniforms and utility fee which was capped at Ksh 9,374 for day secondary schools and Ksh 53,553 for boarding secondary schools per academic year. However, the amount is varied upwards depending on schools' needs. The government had realized the challenge and decided to have the day secondary school completely waived as quoted by the Ministry of principal secretary as follows; "In order to ensure a 100% transition for all learners and remove the burden from parents, the parent component of Sh 9,374 has been taken up by the government and as such learners in day schools will not pay any school fees"<sup>126</sup>

According to facts on the ground, the directives by the principal secretary has not been fully implemented resulting in challenges in transition from primary to secondary schools within the study area. Further to that, sponsors have been keen to ensure their girls under sponsorship programs are taken to boarding schools to enable them concentrate more in education and avoid social pressures and negative influence associated with daily interactions with their parents and relatives. Therefore, doubts have been cast on the ability of day secondary schools to achieve the desired results due to absenteeism occasioned by social and economic challenges at home. Charging of higher fee than the required by local School Boards of Management has also been cited as a challenge for parents, most of whom rely on informal jobs is unaffordable to many parents within the study area. However, interventions by local leaders through issuance of bursaries by county government of Kajiado and the National Government Constituency

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<sup>126</sup> Daily Nation. *Gov't to effect full free day secondary learning in January*, Nov 6, 2017.



Development Fund (NG-CDF) has proven inadequate to keep all students in school regardless of their gender.

Education for both boys and girls according to majority members of anti-FGM advocacy groups and teachers, creates an opportunity for both to gain exposure and have the possibility of changing their view on the role of women and their rights. They hold the view that the war on FGM cannot be fought by women and girls alone and thus requires joint efforts by both gender to actualize the goal of complete eradication of FGM.

A director of Community Based Organization which runs a girls' rescue center during a one on one interview with the researcher cited smooth transition of girl child from primary to secondary school as a big headache for education stakeholders in the study area, which she said in her own words 'is critical because it happens when the girls are at their adolescent age and any disruption is likely to cause them to drop out of school'. She emphasized that at this stage, girls among the Maasai community face high risk of being circumcised and be married off and therefore, she called for joint intervention by all stakeholders to enable successful transition of the girl child, after which, the risk will be greatly minimized and by the time she completes secondary school, she will be approaching the legal age.

#### **4.11 Medicalization of FGM**

“Medicalization of FGM refers to a situation in which FGM/C is practiced by any healthcare provider whether in public or private, clinic, home or elsewhere.”<sup>127</sup> Trained and licensed medical practitioners have ventured into the business of performing FGM on women for economic gain.

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<sup>127</sup> WHO; *Global Strategy to Stop Health Care Providers From Performing Female Genital Mutilation*, Geneva: World Health Organization, 2010.

Despite the practice being outlawed, many of these healthcare providers carry out the outlawed practice discreetly in their private clinics at night or they are invited to homesteads mostly at night.

Medicalized FGM involve the use of sterilized equipment to carry out the procedure which reduces the chances of the transmission of deadly diseases such as HIV/AIDS. There is also the use of anesthesia and antiseptics so as reduce pain and disinfect wounds and lacerations consecutively before, during and after the FGM procedure. This minimizes the chances of having a botched procedure as well the occurrence of other infections. The safety of the process and the career risk taken by the practitioner also comes with a cost on the parents who have to dig deeper into their pockets for the services.

Targeted clients in this type of FGM are mostly those who have embraced modern lifestyles, mostly professionals both in government and private sector as well as businessmen. These parents and guardians had undergone the cut themselves and wish to have their girls cut in order to maintain good family reputation within the community. Hence, their preference for medicalized FGM because of the assured safety of the process for their girls and also as a tact to avoid being in a collision path with law enforcers and other anti FGM stakeholders. They can also afford the high cost charged by the practitioners which is beyond reach for ordinary families. The preference for medicalized FGM is also due to the clientele being able to control the process on how they wish their girls to be cut, some preferring the less severe options including cutting a small portion of the clitoris and all the other parts of the female genitalia remaining intact which is commonly referred to as ‘symbolic FGM’.

Medical practitioners have also had their share of troubles, while maintaining their motivation comes from their desire to ensure safety in sustainability of the culture. They have found themselves on a collision path with anti-FGM crusaders and law enforcers. They have also been

in conflict with traditional practitioners who think they are encroaching into their space and taking away their clients. Also, cultural conservative members of the community have on several occasions been on record rejecting this form of FGM arguing that proper procedure has to be followed keenly so as not to lose the value attached to this particular rite of passage.

Women and girls who undergo medicalized FGM face double stigma both from the community who perceive them as cowards and not 'women enough' because of a belief that FGM performed by medical professionals is not as painful as it should be, as pain is highly regarded as a sign of bravery and ability to withstand the pain of child bearing and such girls and women are considered not 'completely' and 'totally' cut by their traditionally circumcised peers. The same girls are also subjected to stigma by their uncircumcised peers who also think they are not part of them. Hence, medicalization of FGM has also brought psychological effects on the women and is therefore not good as people might be convinced it is.

According to data from advocacy groups in the study area, and also from government offices dealing in FGM, more efforts have been directed towards dealing with the traditional methods of procuring FGM and very little effort spared to deal with medicalized FGM. In the last one year, there has been no reported arrest and prosecution of medical practitioners performing FGM within the study area, consequently, no available data has been gathered on the number of reported cases of medicalized FGM for the same period. This can be attributed to the tact employed by the practitioners in circumventing the law, a worrying trend that rolls back the gains made in the fight against the FGM. This is perceived within the community of an endorsement of medicalized FGM by the law enforcers and hence more people are beginning to embrace it, which according to Anti-FGM advocacy groups' claim as biasness and a trend likely to generate confusion and misunderstanding amongst community members.

The researcher sought to understand the argument behind medicalization of FGM from medical practitioners within the study area. No medic admitted of having ever performed FGM, probably out of fear of victimization but 81% of them agreed that it happens, however, the remaining 19% denied of having any knowledge on the subject. While acknowledging the rising cases of medicalization of FGM, the practitioners equated it to the debate on abortions where they said that such societal challenges cannot be policed by the state but can be solved proactively through creation of strategies that are meant to help the community through influencing social change to solve the problem. Such strategies, they claim, should have the input of the community through public participation during its formation to minimize complexities during its implementation.

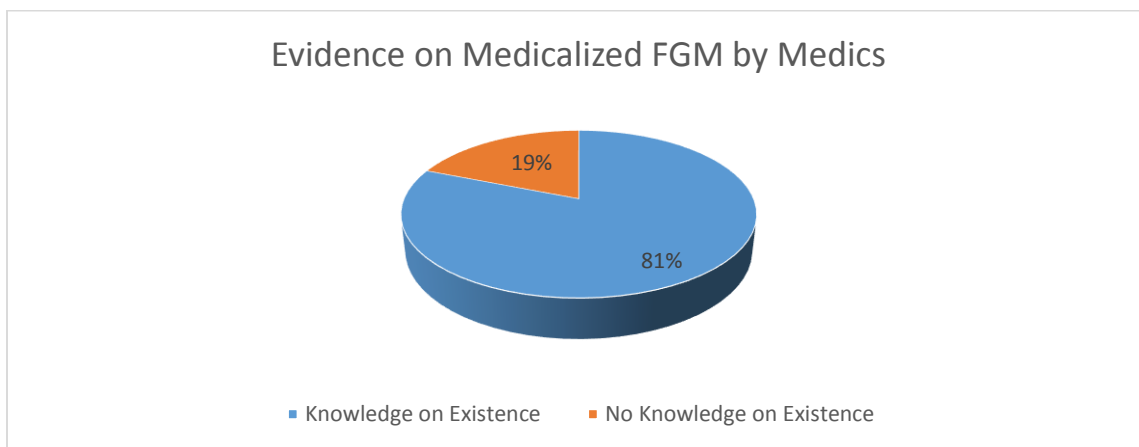


FIG 4.13 RESPONSE BY MEDICS ON EXISTENCE OF MEDICALIZED FGM

Advocacy groups also complain of lack of enough support from the government in terms of funds to enable them fill the gaps left by the state in ensuring the fight against FGM is effective. They mainly focus on community outreach programs which are supported through donor funding that help in offering civic education on the dangers of FGM to the girl child and also on coming up with practicable alternative rites of passage that suits the needs of their particular target groups. They have also expressed frustrations on the part of the local administration and law enforcers for

not responding in time to reported and suspected cases of medicalized FGM and the lengthy and inconclusive investigations being carried out, which sometimes ends up letting the suspects off the hook amidst claims of bribery.

#### **4.12 Prolonged school closures due Covid-19.**

The Corona virus pandemic has led to a steep rise in cases of cross-border FGM, attributed mostly to the closure of schools since the first case was reported in the country in March this year. The presidential directive on the closure of schools and subsequent scaling down of activities in government agencies brought to a lull on anti-FGM activities and all efforts were directed towards prevention of the spread of the pandemic. Operations at the judiciary arm of government were also grounded and law enforcers concentrated more on implementing nationwide curfew and movement restrictions have given room for FGM to be performed with impunity within the study area.

The continuous stay of school-going girls at home and the perceived breakdown of law enforcement according to 83% of the respondents, has created a lengthy and uninterrupted opportunity for the girls to be cut and eventually being married off. Out of that concern, majority of the respondents approximate the number of drop outs to be the higher than what has ever been witnessed in the area in recent times.

“Virginia Lekumisa, a Children Rights Officer at the Kajiado County Government says that this is not the only area where girls’ rights are violated. Girls from less privileged backgrounds who previously accessed menstrual hygiene products in school are now unable to do so. Thus, there has been an increase in child sexual exploitation due to period poverty. Alice Masinte, Founder of Naret Intoyie Organization declares girls are being encouraged to get married because there is

currently no schooling, and with the current economic strain, girls are being viewed as assets for dowry more than ever.”<sup>128</sup>

The economic mainstay for women in the study area is selling of livestock products such as milk, hides and skin products and also many have ventured into curios and crafts and jewellery businesses, with their main customers being both local and international tourists. With the collapse of the tourism sector occasioned by restriction of movements to contain the spread of COVID-19, has made many women to retreat back to their villages amidst economic difficulties. The loss of income has brought economic difficulty in the homesteads and hence the need to generate income in form of bride price, and hence, there is mounting pressure to have girls ‘who have come of age’ to be cut and married off. Most of the cases are cross-border due to the imbalance caused by the relaxation of COVID-19 protocols in Tanzania.

#### **4.13 Conclusion**

Cross-border FGM is challenge that is eroding the gains made in the fight against FGM. The researcher has highlighted social, economic and cultural factors as reasons for continuity of Cross-Border FGM. There are obvious gaps in the community living within the study area that are being exploited by perpetrators of the vice in ensuring continuity of the practice. These social problems ought to be incorporated in the legal frameworks through intensive community-based approaches such as civic education and social participation in the initial stages of formulating anti-FGM laws to ensure its practicability to ensure community driven solutions.

Transition from primary to secondary school is a contentious issue that need to be addressed keenly as it is a defining moment for the future of the girls who are perceived by the community as ‘mature

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Oliver Kabisa; *Her-Word –Women Living in Kajiado County Respond to the Covid-19 Pandemic*, 2020.

for FGM and marriage'. The girls need to be protected through proper planning by the government and other stakeholders to ensure smooth and seamless transition 100% transition for girls from primary to secondary school.

Medicalization of FGM is another emerging challenge in the fight against FGM which is perceived as a safer and less targeted by law enforcers. The challenge remains to be the effectiveness of the agencies charged with the responsibility of ensuring the eradication of the practice. The reported impunity and bribery claims by perpetrators of medicalized FGM to law enforcers in an effort to subvert justice should be given priority by policy makers. Part of the solution to this problem is prioritizing active involvement of all stake holders in the identification and prosecution of suspects a process which will enable proper evidence and witness management, which will result in success prosecution of suspects.

The Corona virus pandemic has exacerbated FGM due to prolonged school holidays. Temporary interventions by ministry of Education and that of health should be considered to minimize the projected rate of girls dropping out of school due to the pandemic. The researcher suggests that teachers who are currently at home to be facilitated to ensure that all girls report to school for roll call once every week and absentees noted and reported to the law enforcers for follow ups to be made and subsequent legal actions be taken on parents of girls found to undergone the cut

NGOs and CBOs provide support to girls are at the brink of collapse due to lack of donor funding for their Ant-FGM projects, a situation occasioned by the effects of COVID-19. The gaps created by the situation has also created an opportunity for an increase in FGM cases. Therefore the organizations need to be supported by governments as stakeholders also try to come up with community-driven strategies to permanently influence attitude change amongst community members as it has become difficult to police perpetrators and victims who agree to be cut.

## CHAPTER FIVE

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

#### 5.0 Introduction

This chapter will examine the overall summary of the study and findings, their conclusions and recommendations. It will also point out areas of interest that require further research both for academic and policy purposes.

#### 5.1 Summary of the Study

##### 5.1.1 Anti-FGM legal Frameworks

Containing Cross-Border FGM has encountered various legal challenges for both policy makers, and law enforcers. Enforcement of anti-FGM laws across the borders has been impossible due to jurisdictional and diplomatic challenges.

As highlighted in Chapter Three, there are several international, regional treaties as well as national laws that seek to address the transnational challenge of FGM. The African solution to Cross-Border FGM was provided by *Protocol to the African Charter on Human and Peoples Rights on the Right of Women in Africa*. The protocol requires all Member States to safeguard the rights of women by ensuring that proper legal and social infrastructures are in place. Tanzania was the first to enact *The Sexual Offences Special Provisions Act of 1998* which offers protection to girls under the age of 18 years from being subjected to FGM. The law, which is still in force, does not offer protection to women above the age of 18 years from FGM. Kenya on its part enacted the Children Act of 2001 which safeguarded children from harmful cultural practices including FGM. However, the *Prohibition of Female Genital Mutilation Act of 2011* became the game-changer in the fight against FGM as it offers protection against all forms of FGM on all women within Kenyan



boundaries. The Act also has penal provisions for any person engaging in any activity that will facilitate the commission of the offence as long as that person is subject to the Act.

In cognizance of the rising cases of Cross-Border FGM, the East African Legislative Assembly enacted the *East African Prohibition of Female Genital Mutilation Bill 2016* with the objective of unifying the legal regime in regards to FGM across all member states in order to address jurisdictional legal challenges that lead to the exacerbation of Cross-Border FGM across the region. However, the lack of goodwill by member states on adoption and implementation of the same has rolled back the gains made in efforts to harmonize the legal environment. In this case, failure by Kenyan and Tanzanian Governments to assent into law the *East African Prohibition of Female Genital Mutilation Bill 2016*, which would have unified the legal regime on FGM within the two jurisdictions has led to the continuation of the Cross-Border FGM within the study area with impunity.

The researcher was able to identify legal gaps that creates makes Cross-Border FGM to thrive in the area of study. The observations are highlighted below;

There is a delay in assentation of the *East African Prohibition of Female Genital Mutilation Bill 2016* the respective Heads of State of EAC member states in order to criminalize all forms of FGM within their jurisdiction.

There is laxity or lack of political goodwill by signatories to *The Protocol to the African Charter on Human and Peoples Rights on the Right of Women in Africa*, in which Kenya and Tanzania are parties to the treaty. The treaty requires all state parties to enhance existing laws or enact new sets of legislations to protect women from all forms of FGM.

### **5.1.2 Cross-Border FGM and Women Empowerment**

Creation of a robust legal regime and strict enforcement of the same by all EAC Member States does not offer a comprehensive cure to Cross-Border FGM. Therefore, the need to have a community-friendly approach to the problem. That approach would therefore influence social and attitude change amongst communities that practice FGM, leading to their abandonment of harmful cultural practices including FGM.

FGM has negative impacts on the livelihoods of women in the study area, with the resultant problems cutting across social, economic and health. The effects of this harmful practice is not a women-only affair. The study has observed that the problems faced by women after undergoing the cut affects the entire society. A strain in medical facilities as a result of FGM related complications, infant mortalities, and social and family problems caused by conditions such as Obstetric fistula are among many other problems caused by FGM.

During the study, it was observed that women and by extension girls in the Maasai community do not participate in decision making and therefore, cannot decide on whether to be cut or not. This has led to many women and girls being denied the opportunity to access basic education and subsequently being subjected to FGM and finally being married off while still underage. Community based approach that includes women empowerment, to compliment the legal approach with the aim of eradicating FGM, was found to be more permanent, effective and cost efficient. The approach involves enabling women to make informed choices and decisions on their own in regards to what affects them personally.

The study has observed several challenges that women empowerment initiatives programs within the study area face in their quest to ensure that women are empowered to reject retrogressive and harmful cultural practices while taking up active roles in socio-economic empowerment.

Majority of school-going girls in the study area are increasingly at risk of dropping out of school due to lack of basic needs that includes school fees, sanitary and educational materials. Their continued stay at home during school days increase their chances of being cut and married off as a way of parents evading the responsibilities of educating them.

There is shortage of active adult learning programs within the study area. It has been observed that women are the biggest beneficiaries of the literacy programs which accords those who did not attend formal education or dropped out of school a chance to enhance their literacy levels. “The survey revealed that women performed worse in reading and numeracy than men, at 64.2% and 67.9 and 58.9% and 61.4% respectively. Perhaps because of this, more females participate in adult literacy programs than men.”<sup>129</sup>

There are few untrained volunteers with little or no facilitation to undertake awareness on the dangers of FGM. The few existing are funded by CBOs and the governments are providing very little support for the programs. Community outreach therefore is very low in comparison to the demand for such services by a community that has very high illiteracy levels. There is also need for financial literacy for women that can also be offered through such an arrangement.

Provision of incentives to circumcisers to address their economic needs as a motivation for abandoning FGM has not been effective as majority of them reap from the incentives and also continue with the cutting of girls. The double earnings make the work of circumcising girls a lucrative venture and attracts more perpetrators into the business hence exacerbating Cross-Border FGM. “One program run by Sentinelles in West Pokot, seeking to provide income generating

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Joyce N. Kebathi; *Measuring Literacy: Kenya National Adult Literacy Survey*. Journal AED-Adult Education and Development, 2008.

activities for circumcisers was unsuccessful as it encouraged more women to become circumcisers in order to achieve financial assistance.”<sup>130</sup>

### **5.1.3 Trends in Cross-Border FGM**

Cross-Border FGM an international challenge that involves Women and girls being coerced or voluntarily crossing international border have the cut done in a foreign country and then returning back to their country soon after the cut, or after they are healed. This form of FGM has become common in African countries due to lack of uniformity in application of efforts and enforcement in the eradication of the vice.

The practice is common in the study area due to the presence of the same community on either side of the border and who happen to share ancestral ties. Therefore, crossing the border informally to visit their relatives, trading and looking for pasture for their livestock is a daily routine. Such trends make it easy for parents to have their daughters cut across the border. “Campaigners said cross-border FGM being seen among communities such as Maasai, Pokot and Kuria who live along Kenya’s west and southern borders with Uganda and Tanzania.”<sup>131</sup>

Chapter Two of the study focused on factors that exacerbate Cross Border FGM in the study area. The identified gaps in the research includes the porous borders with no movement restrictions for people, the high illiteracy levels occasioned by high numbers of school drop-outs affecting more girls than boys and the emergence of modern ways of performing the cut by medical practitioners. Therefore, in regards to the above, the study was able to make the following observations;

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28 Too Many: *Country Profile: FGM in Kenya*. May 2013. Pp34.  
Nita Bhalla; *Girls taken to Uganda, Tanzania for ‘vacation cutting’ as Kenya Cracks down on FGM*. Reuters. Dec 17, 2018.

The free movement of people across the border in relation to FGM is a challenge with unforeseen solutions. Being partner states of the East African Community, all members states are supposed lift restrictions on free movement of persons, goods and services to enhance regional trade and integration. With that in mind, to restrict of movements of persons across the borders as a measure to stop Cross-Border FGM would be impossible.

The illiteracy level among the Maasai community was observed by the researcher to be at 30% on the Kenyan side, while no data was available on the same from the Tanzanian side. “The ability to read and write gives individuals opportunities in life. The KDHS defined literacy as being able to read all or part of a sentence.”<sup>132</sup> Girls are mostly affected by lack of formal education, which makes them more susceptible to FGM. Marginalization of the community members is cited among many reasons for FGM and early marriages for the girls. “Adolescent childbearing has many negative health, social and demographic consequences. Children born to women aged 15-19 are more likely to die in infancy and early childhood than children born to older mothers. Women who start having children young often do not complete secondary school, limiting their future employment possibilities and other life choices.”<sup>133</sup> The Covid-19 pandemic led to schools being closed and the resultant economic hardships associated with the restrictions imposed by the governments to contain the spread of the virus was also observed to have increased the number of girls subjected to FGM subsequently being married off to generate income for the families in form of bride price.

FGM being conducted by medical personnel in clinics and private homes is a serious contravention of medical ethics. This was observed as an emerging challenge in the fight against FGM. It is the

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KNBS: *2014 Kenya Demographic and Health Survey (KDHS)*. Pp2  
Ibid 5.

easiest to contain as practitioners are licensed and hence are bound by professional ethics. Effecting crackdowns on such rogue practitioners was observed as the most appropriate method of containing medicalized FGM.

## **5.2 Conclusions**

For successful eradication of Cross-Border FGM, the study has observed the need to incorporate both soft and hard approaches. Creating a balance between these two approaches is important with the application of each or simultaneous application of both depends on the prevailing circumstances as at each particular time.

The hard approach is through the use of enforcement mechanisms whereby existing laws are enforced and defiance is as stipulated in the law for deterrence against offences. The areas of weaknesses in the anti-FGM law is usually exploited by perpetrators of Cross-Border FGM and there is nothing that can be done to stem the impunity. It only requires policy makers to collaborate and tighten the noose on perpetrators by enhancing law enforcement through addressing the legal gaps.

The soft approach on the other hand requires engaging with the communities through introduction of new ideas with the aim of effecting a change in behavior and attitude. The approaches include conducting civic education on the communities and empowering them with knowledge to adapt to new ideas and as well improve on their livelihoods. The fight against FGM, there should be gender inclusivity whereby women and girls are educated on the dangers to FGM and are able to reject it while at the same time men are made to change their attitude to embrace and take in uncircumcised women as their wives.

There is a critical juncture where the two approaches have to work hand in hand to achieve the much required results. In situations where the perpetrators benefit from empowerment and at the same time continue practicing, law enforcement would help in having them punished for the offences. “Educating traditional practitioners about the health risks and providing them with alternative means of income as an incentive to stop practicing FGM has not been beneficial as expected. Although such a strategy may encourage some practitioners to stop, they have virtually have no effect on demand for FGM and circumcisers often return to cutting”<sup>134</sup> Therefore, stronger laws would complement lack of goodwill and vice versa.

### **5.3 Recommendations**

The study came up with recommendations on what should be done to improve on the identified gaps in the fight against Cross-Border FGM. The recommendations have been split according to the research objectives to include Social remedies to address identified gaps in objective one, legal remedies to address gaps in objective two and empowerment remedies to address gaps in objective three.

#### **5.3.1 Social Remedies**

Minimizing favorable conditions for girls to be cut by ensuring they remain in school through a joint approach in mobilization of resources to ensure their essential needs are taken care off. Parents in the study area have decried the expenses incurred in keeping girls in school as opposed to boys. This situation may tempt parents into ‘getting rid of the liability’ by having the girls cut and married off. This, has been observed will also bring economic relief to them.

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Too Many: *Country Profile: FGM in Kenya*. Pp. 34.

Identification and permanent revocation of operating licenses of medical practitioners and medical facilities that are involved in the practice of FGM. Traditional practitioners who have refused the persuasion to abandon the practice should be identified and be subjected to community sanctions and excluded from benefiting in any government and NGO/CBOs anti-FGM oriented programs as a social remedy.

### **5.3.2 Legal Remedies**

Assentation and strict implementation of the *East African Prohibition of Female Genital Mutilation Bill 2016* by all member states to criminalize all forms of FGM within their jurisdiction. This has been observed as the quickest way effecting change on the community, especially for those who are defiant or reluctant to the change. This recommendation if implemented will give no room for FGM to thrive in the entire East African region. Members of the East African Legislative Assembly should form a committee to conduct a shuttle diplomacy to all Member States. This will increase pressure on Heads of States to assent to the bill, and it will also help the EALA to understand the reasons why there is reluctance to assent to the Bill. This will help in addressing the particular concerns and eventually clear the way for actualization of the good intentions of the bill in eradicating FGM in the region.

Adherence to the requirements of *The Protocol to the African Charter on Human and Peoples Rights on the Right of Women in Africa* by all African Countries through enactment of stringent local anti-FGM laws will create local remedies to the problem of Cross-Border FGM. With proper domestic mechanisms that is implemented and enforced strictly in a uniform manner will definitely not require international legal reinforcements.



### **5.3.3 Empowerment Remedies**

Increasing the provision of educational need for adolescent girls such as learning materials, school fees and sanitary needs in order to keep them at school as much as possible. This will minimize the liability of educating girls on parents and hence, enhance their cooperation in the fight against FGM. In addition, Opening up both formal and informal community learning centres with both paid and volunteer teachers to will enhance adult learning services to complement those already in existence. This will accord older women, young mothers and men who would wish to access basic education to enable them participate in businesses and activities such as operating mobile phones and banking, which are essential activities in the contemporary society.

Training community volunteers and facilitating them to reach out to all remote areas in efforts to increase awareness to both genders on dangers of FGM and also hold intergenerational discussions of both genders to chart the way forward in regards to the eradication of the practice. The information generated in form of feedback from such forums will aid in coming up with more suitable strategies such as designing appropriate Alternative Rites of Passage (ARP).

Enhancing the already existing training of women on financial inclusivity, with the aim of reaching out to as many women in the grassroots as possible. Economic empowerment decreases their vulnerability through reducing their over-dependency on men and increasing their ability to make decisions.

### **5.4 Areas of Further Research**

Enforcement of the anti-FGM laws in the region has been a challenge. The anticipated assent of the *East African Prohibition of Female Genital Mutilation Bill 2016* by EAC Heads of States to operationalize the legislation would require Implementation of Section 15 (3) which states as

follows; “*The Partner states shall develop appropriate mechanisms, policies, measures, strategies and programs to combat female genital mutilation including;-*

- a) Establishment of regional data bases on cross border female genital mutilation;*
- b) Enhancement of technical capacity for criminal intelligence*
- c) Enhancement of the exchange of criminal intelligence and other security information between Partner States criminal intelligence information centers;*
- d) Strengthening cross border security*
- e) Training of personnel and sharing of information on the modus operandi being used by criminals*
- f) Enactment of laws on mutual legal assistance in criminal matters; and*
- g) Establishment of cross border and interstate communication.”<sup>135</sup>*

#### **5.4.1 Academic**

Section 15(3) (a) on the establishment of regional data bases for information sharing on Cross-Border FGM and (g) will assist researchers with factual information on Cross-Border FGM. Studies on the effective implementation of the legislation is required in order to shed more light on viability, funding, operations as well as modes of making the information easily accessible to all.

#### **5.4.2 Policy**

Section 15 (3) (b to g) requires the establishment of coordinating mechanisms for their implementation. This would include establishment of institutions and human capital with

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<sup>135</sup> EALA: *The East African Community Prohibition of Female Genital Mutilation Bill, 2016*. Pp10.

unlimited jurisdiction to police the enforcement of the legislation within the region. Policy makers would require more research on how the legislations would be effectively implemented.

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## APPENDICES

### Appendix I: Letter of Introduction

#### RE: Request to Collect Data

I am Stella Nasimiyu Walela, a Masters Degree student at the Institute of Diplomacy and International Studies (IDIS), at the University of Nairobi. I am conducting a research titled: **ASSESSMENT OF INTERNATIONAL LAWS ON FEMALE GENITAL MUTILATION AND ITS IMPLICATIONS ON THE EAST AFRICAN REGION: A CASE STUDY OF NAMANGA, KENYA-TANZANIA BORDER.**

I am kindly requesting for you to set a side time for an interview/ filling of the questionnaire in regards to the above title. All the information provided will be kept confidential and will only be used for purposes of this study.

Attached herein is a letter of authorization to carry out the study from the University of Nairobi and the research questionnaire.

Thanking you in advance for your time and support.

Yours Sincerely,

Stella Walela.

## Appendix II: Data Collection Authority



**UNIVERSITY OF NAIROBI**  
College of Humanities and Social Sciences  
**Institute of Diplomacy and International Studies**

Tel : (02) 318262  
Telefax : 254-2-245566  
Fax : 254-2-245566  
Website : www.uonbi.ac.ke  
Telex : 22095 Varsity Ke Nairobi, Kenya  
E-mail : director-idis@uonbi.ac.ke

P.O. Box 30197  
Nairobi  
Kenya

July 13, 2020

TO WHOM IT MAY CONCERN

RE: STELLA NASIMIYU WALELA – R50/12543/2018

This is to confirm that the above-mentioned person is a bona fide student at the Institute of Diplomacy and International Studies (IDIS), University of Nairobi pursuing a **Master of Arts Degree in International Studies**. She is working on a research project titled, “**ASSESSMENT OF INTERNATIONAL LAWS OF FEMALE GENITAL MUTILATION AND ITS IMPLICATIONS ON THE EAST AFRICAN REGION: A CASE STUDY OF NAMANGA, KENYA-TANZANIA BORDER**”.

The research project is a requirement for students undertaking Masters programmes at the University of Nairobi, whose results will inform policy and learning.


Any assistance given to her to facilitate data collection for her research project will be highly appreciated.


Thank you in advance for your consideration.



Professor **Wairia Nzomo**,  
Director, IDIS  
&  
Professor of International Relations and Governance


### Appendix III: Research Permit

  
REPUBLIC OF KENYA

  
NATIONAL COMMISSION FOR  
SCIENCE, TECHNOLOGY & INNOVATION.

Ref No: **121700** Date of Issue: **31/July/2020**

**RESEARCH LICENSE**



**This is to Certify that Ms. Stella Nasimiyu Walela of University of Nairobi, has been licensed to conduct research in Kajiado on the topic: ASSESSMENT OF INTERNATIONAL LAWS ON FEMALE GENITAL MUTILATION AND ITS IMPLICATIONS ON THE EAST AFRICAN REGION: A CASE STUDY OF NAMANGA, KENYA-TANZANIA BORDER, for the period ending : 31/July/2021.**

License No: **NACOSTI/P/20/6003**

**121700**  
Applicant Identification Number

  
Director General  
NATIONAL COMMISSION FOR  
SCIENCE, TECHNOLOGY &  
INNOVATION

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## Appendix IV: Research Questionnaire

### Section 1: Respondent Profile

1. Gender

Male  Female

2. Age

Below 18 years  18 -23 Years  24-30 years  31-39 years  40-49 Years

50-59 Years  Above 60 Years

3. Nationality

Kenyan  Tanzanian  Other (specify).....

4. Education Level

Primary School  Secondary school  Tertiary College  Undergraduate   
Postgraduate

5. Profession .....

6. Professional experience.....

### Section 2: Assessment of International Laws on Female Genital Mutilation and its Implications on the East African Region.

7. What do you understand by the term Female Genital Mutilation and is it being currently being practiced in your community?

8. Have you ever been affected directly as a victim or indirectly as a relative or friend to a victim of FGM? Yes  No

If yes,

a) Where was the procedure done?

Within Kenya [ ] Tanzania [ ] Other place (specify)

b) If not within country, why do you think it happened in the neighboring country?

.....  
.....

9. Do you think FGM has an impact on the economy of families in the area?

Yes [ ] No [ ]

If yes, in what ways and what do you think are the alternative ways of addressing the economic impacts in the absence of FGM? .....

.....  
.....

10. i. In your understanding, what is Cross-Border FGM ?.....

.....

ii. Why do you think it happens .....

.....

iii. For how long do has it been happening in your locality?.....

.....

11. Do you know of any existing laws Anti-FGM laws?

Yes [ ] No [ ]

i. Name international Anti-FGM laws that are currently operational in East Africa and their penal provisions for perpetrators.

.....  
.....



.....  
.....

ii. Name Existing East African Anti FGM Laws and their penal provisions for perpetrators.

.....  
.....  
.....

Name and Explain the penal provisions for existing Anti FGM National Laws

.....  
.....  
.....

Name and explain the penal provisions for existing County/Local authority Anti-FGM laws.....

.....  
.....

12. Apart from Anti-FGM Laws, are there other Government/ NGO Anti FGM initiatives in both countries across the borders that help in eradicating the vice?

Yes [ ]                      No [ ]

If yes, what are these initiatives and do you think they are effective?.....

.....  
.....

13. Do you think there is need for provision of Alternative Rites of Passage (ARP) as a replacement for FGM within the communities across the border?

Yes [ ]                      No [ ]

If yes, what do you think should be the best ARP for the communities and why?.....

.....  
.....

14. Do you think that FGM is being used as a tool of discrimination/ stigma on women amongst themselves and the society at large in Namanga Border?

Yes [ ]                      No [ ]

If yes, how is it used and what do you think should be done to influence attitude change on FGM by women? .....

.....

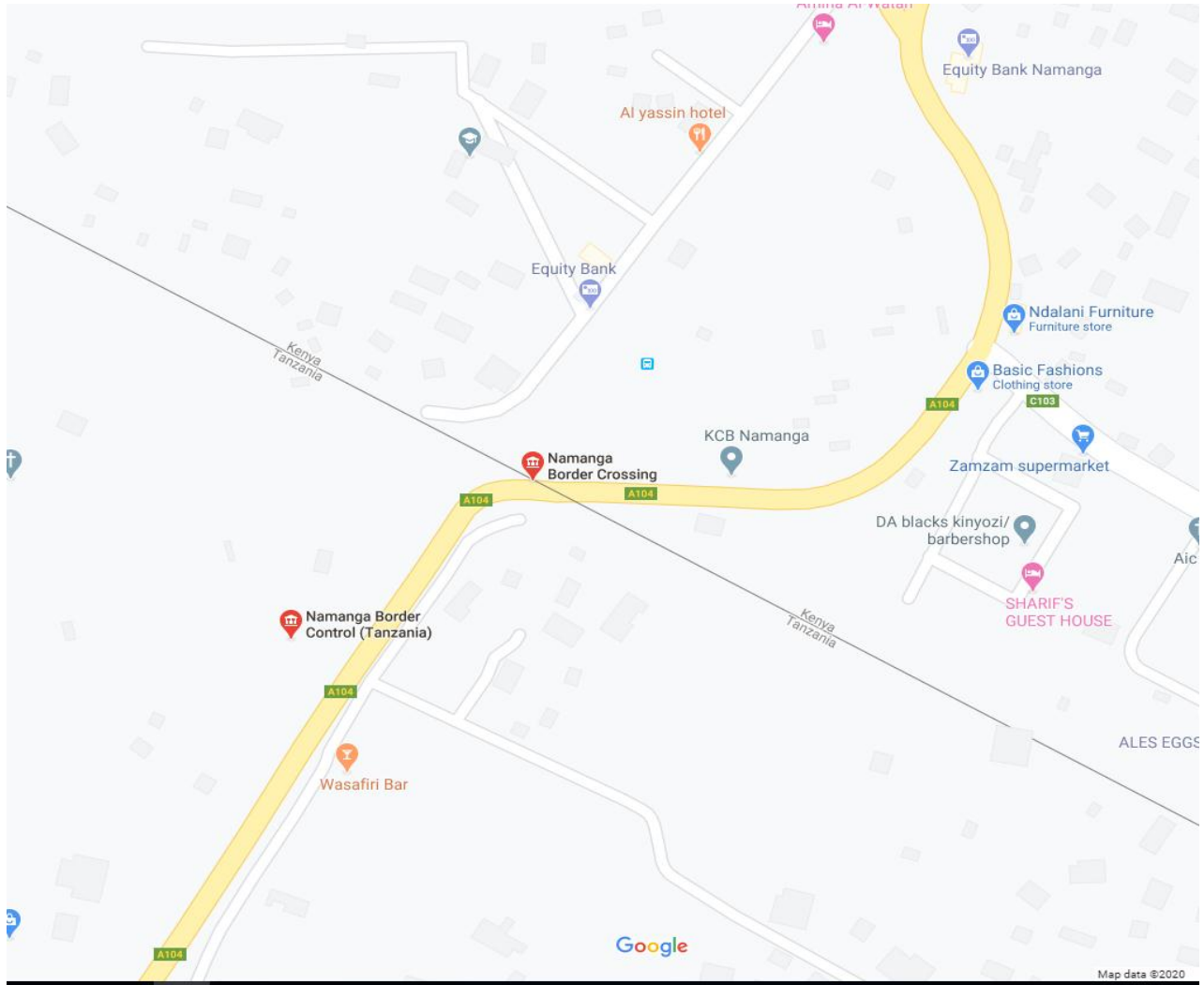
15. Do you think FGM has a negative impact on the success of women in ascending to leadership roles?

Yes [ ]                      No [ ]

If yes, what legislative and diplomatic measures do you think should be put in place in to safeguard the interests of the victims of FGM in?.....

.....  
.....

## Appendix IV: Map of the Research Site



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