The Complexities of Ending FGM: Understanding the Challenges within the Somali Community of Wajir County, Kenya.

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List of Acronyms

ACRWC	African Union Charter on the Rights and Welfare of the Child
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRBA	Child Rights-Based Approach
CRBP	Child Rights-Based Programming
CSO(s)	Civil Society Organization(s)
FGC	Female Genital Cutting
FGM	Female Genital Mutilation
GDRC	Geneva Declaration of the Rights of the Child (1924)
INGO	International Non-Governmental Organization
KDHS	Kenya Demographic and Health Survey
NFD	Northern Frontier Districts
OAU	Organization of African Unity
UN	United Nations
UNCRC	United Nations Convention on the Rights of a Child (1989)
UNDRC	United Nations Declaration of the Rights of the Child (1959)
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
WHO	World Health Organization

Abstract

Female Genital Mutilation (FGM) is a harmful cultural practice that violates women's and children's rights. FGM has serious negative implications for the health and wellbeing of girls and women and hampers their potential development. FGM continues to affect millions of girls and women, despite the various forms of efforts from governments, NGOs, and the private sector to end it. Among the many communities that practice FGM in Africa, the Somali community remains one that widely practices FGM for cultural and religious reasons. This research focuses on exploring why the practice of FGM persists within the Somali community of Wajir County, Kenya. The study adopts a child rights-based approach to examine how FGM violates rights that are enshrined in various children's rights instruments. The study further examines the effectiveness of anti-FGM laws in tackling the continuation of FGM in Africa and the rest of the world. In this study, qualitative methods were employed to collect data through semi-structured interviews with representatives of government agencies and non-governmental organizations, and with religious leaders. The findings of this research suggest various reasons explaining the persistence of FGM among the Somali community in Wajir county, Kenya and ways of overcoming those challenges. More specifically, the research further examines the contributions of law in ending FGM within the Somali community.

Keywords

FGM, Kenya, Somali Community, children's rights, child rights-based approach, Wajir County, harmful practice.

CHAPTER ONE: CONTEXTUALIZING FGM

1.1 Introduction

Female Genital Mutilation (FGM) also known as Female Genital Cutting (FGC) or Female Circumcision (FC), has been a topic of discussion for governments, policy makers, non-governmental organizations (NGOs), and human rights activists for many years. FGM continues to be practiced, despite being a harmful cultural practice and a human rights violation, as will be substantiated later on in chapter two of this paper. Female Genital Mutilation (FGM) is defined as the "partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons" (WHO 2011:1). The World Health Organization (WHO) (2011) further classifies FGM into four main types. Type I is Clitoridectomy. This procedure involves the partial or total removal of the clitoris and/or the prepuce. Type II is Excision or the partial or total removal of the clitoris and the labia minora, with or without removal of the labia majora. Type III is Infibulation. This refers to the narrowing of the vaginal opening with the creation of a covering seal by cutting and positioning the labia minora and/or the labia majora, with or without excision of the clitoris. Type IV involves all other harmful procedures to the female genitalia for non-medical reasons, such as piercing, incising, pricking, cauterization, or scraping.

An estimated 230 million girls and women aged between 15-49 years alive today have undergone at least one form of FGM worldwide, and about 3 million girls and women are at risk of undergoing the practice every year (UNICEF, 2024). According to UNICEF (2024), Africa registers the highest percentage of girls and women who have undergone FGM with over 144 million followed by Asia with over 80 million cases of FGM worldwide. Currently, FGM is practiced in around 28 countries in Africa despite the adoption of policies and/or laws that made the act illegal in most African countries. Among the countries in which FGM is practiced, Djibouti, Egypt, Guinea, Mali, Sudan, Sierra Leone, and Somalia have registered the highest prevalence with nine in every ten girls in these countries having undergone FGM (Berg and Denison 2013:838). Although United Nations agencies have reported that the prevalence of FGM is showing a positive declining rate in many countries in Africa (United Nations, 2024b), the countries mentioned earlier have shown only a very slowly declining rate despite their ratification of the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) that prohibit and protect children from harmful socio-cultural practices in Articles 24(3) and 21 respectively.

In Kenya, 13 communities living in 11 Counties identified as FGM hotspot regions are still practicing FGM (UNFPA, 2022). The Northeastern part of Kenya (Garissa, Wajir and Mandera Counties) predominantly occupied by the Somali community have the highest prevalence of FGM among girls and women in the age range of 15 to 49, standing at 82%, 97.2% and 95.9% respectively while Bungoma and Kilifi counties have recorded less than 5% prevalence (KDHS 2022:93). Forms of FGM practiced and the age at which girls and women are subjected to FGM vary across different communities in Kenya. For instance, the Somali community of the Northeastern part of Kenya practices the severest forms of FGM which are types two (Excision) and three (Infibulation), while the Massai and the Kisii communities practice type one (Clitoridectomy) which is less complicated and relatively less harmful (Muhula *et al.,* 2021:3).

The high prevalence of FGM among the Somali community can be attributed to the unique cultural and religious practices of the community, high illiteracy levels in the region, and the strategic geographical location. The Somali community is predominantly pastoralist and keeps goats, sheep, camel, and cows as a source of livelihood. In Kenya, the practice of FGM is high among the pastoral communities like the Massai, Somali, and Borana. Their high mobility and cross-border movement makes anti-FGM campaigns harder. The Northeastern part, known as the Northern Frontier Districts (NFD) during the British colonial government, lies on the border of Kenya and Somalia. The region was initially part of Somalia during the colonial times until the time of Kenya's negotiation that Britain gave the administration of the regions to Kenyan nationalist.[1] The Somalis living in the Northeastern part of Kenya formerly known as the NFD share cultural values and beliefs with the Somalis in Somalia. Somalia being the country with the highest FGM prevalence in Africa of 98% (UNFPA, 2022), the practice has been passed over by many generations and maintained over the borders. This explains the high prevalence of FGM in the northeastern part of Kenya.

Although every community practicing FGM in Kenya has different reasons for perpetuating the act, the Somali community performs the practice mainly for cultural and religious beliefs. In this community with its rich cultural heritage, traditional norms are valued and are adhered to even though some practices like FGM and early marriage are (known to be) retrogressive and harmful. Like in many other communities, FGM is perceived to protect girls against promiscuity and immoral behavior before marriage by controlling their sexual desire as well as preserving their virginity (Berg and Denison, 2013). However, the belief that FGM prevents promiscuity has not been supported by any research even though some researchers have reported reduced sexual pleasures among women who have undergone FGM (Ibid.:845). Men's value for marrying virgin girls has been a major contributing factor for performing the harmful practice for generations as families see virginity as a source of pride for the girls' parents and of chastity for the bride. Among the Massai community of Kenya, FGM is practiced as an initiation period from childhood to adulthood for girls. Girls are considered to be mature and fit for marriage and childbearing once they undergo FGM (Mbogo *et al.,* 2019). The belief that FGM is a tool for attainment of maturity within FGM practicing communities puts girls at risk of early or child marriage and teen pregnancy which further jeopardizes their wellbeing.

Apart from being deeply rooted in cultural and traditional beliefs, the Somali community also practices FGM as an Islamic requirement that should be strictly adhered to. This is the case despite renowned Islamic religious scholars and leaders having rejected the practice of FGM type one, two, three, and four terming it as unlawful and without a basis in the Islamic teachings. However, there is a *sunnah* form of female circumcision described by the Islamic teachings that is less severe and less harmful. There are varying views among the Islamic scholars on whether the *sunnah*[2] is obligatory or not, with many Islamic scholars supporting this form of cutting as an optional practice that can be abandoned if it will harm the body and wellbeing of the girl (Abdi and Askew 2009:5; Kimani et al. 2020:7). However, the World Health Organization (WHO) classifies the *sunnah* female circumcision described as a form of FGM that falls under type one (clitoridectomy) of FGM that should be eliminated since it involves injuring the prepuce.

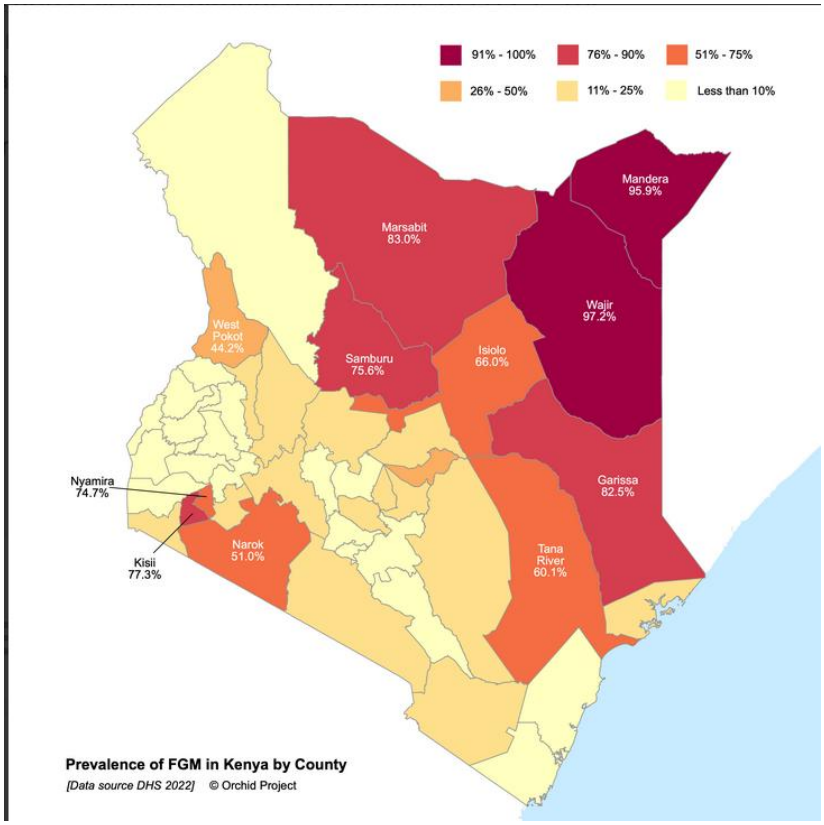
[1] The historical description of the Northeastern Kenya formally known as NFD can be accessed in https://en.wikipedia.org/wiki/Northern_Frontier_District.

[2] Sunnah is form of girls' circumcision involving injuring the topmost part of the clitoris. It is described by the Islamic teachings as an optional practice.

According to the World Health Organization (WHO), the practice of FGM is associated with both long and short-term negative effects on the health and wellbeing of women and girls. Short term effects include severe pain, infections, scars, and excessive bleeding that at times causes death. Long term implications may include infertility, menstrual problems, psychological trauma, fistula, and childbirth complications that can significantly impact women's personal growth and potential development (Reisel and Creighton 2015; WHO 2024).

To accelerate the eradication of FGM in Kenya, the government, international non-governmental organizations (INGOs), national and local organizations have taken several measures to ensure the achievement of the United Nation's sustainable development goal number 5 on promoting gender equality, and specifically target 5.3 to eliminate harmful cultural practices, such as forced, early, and child marriage, and FGM. In 2011, Kenya adopted an anti-FGM law that prohibits all forms of FGM (Van Bavel 2023:379). Kenya's anti-FGM policy that criminalizes FGM will be introduced and discussed further in Chapter two.

UN agencies, INGOs and local organizations led by a joint programme of UNICEF and UNFPA, have also been implementing anti-FGM programmes by working with communities, religious leaders, and government agencies both at the national and local levels. The global joint UNICEF and UNFPA programme is the largest of its kind. It was established in 2008 to accelerate the eradication of FGM by partnering with governments, national and local survivor-led organizations and other stakeholders in implementing anti-FGM interventions and policy advocacy in 17 countries across the world (UNFPA-UNICEF Joint Programme, 2022).



Map1. Prevalence of FGM in counties in Kenya. Source: https://www.fgmcri.org/country/kenya/.

1.2 Problem Statement and Objectives

Despite the existence of a law and various forms of interventions by the government (both national and local levels) and non-governmental organizations that address the continuation of FGM in Kenya, the Somali community continues to practice the harmful cultural practice. Hundreds of girls are at risk of being subjected to the practice every day, violating their rights to life, survival, health, and development as enshrined in various human and children's rights treaties.

The national prevalence of FGM in Kenya declined from 38% in 1998 to 15% in 2022. This is most likely due to the multifaceted measures put in place by the government and non-governmental organizations (KDHS 2022:92). Even though the national rate of FGM in the country significantly dropped, the prevalence among the Somali community living in the Northeastern part of Kenya and specifically Wajir, where this research was conducted, hardly declined. The only very slowly declining FGM prevalence among the Somali community brings up the need to explore and understand why the change is uneven, despite the more or less equal efforts to eradicate the harmful cultural practice everywhere.

This research aims to achieve the following objectives.

a. To explore why FGM persists in the Somali community in Wajir County, despite a legal ban being in place and while in other parts of Kenya FGM has dropped significantly

b. To explore how the challenges faced in relation to reducing FGM in the Somali community in Wajir County could be overcome

c. To reflect specifically on the potential contributions made to curbing FGM in the Somali community in Wajir County by criminalizing the practice and/or pursuing a child rights-based approach to the issue.

1.3 Research Question(s)

The main research question addressed in this research paper will be: How could FGM in the Somali community of Wajir County be significantly reduced or even eliminated? To complement this main question, the following sub-questions seek to delve deep into the topic and obtain sufficient data for answering the main question:

1. Why does FGM persist in the Somali community in Wajir County, despite a legal ban being in place and while in other parts of Kenya FGM has dropped significantly?
2. How could the challenges faced in relation to reducing FGM in the Somali community in Wajir County be overcome?
3. Does criminalization of FGM potentially contribute to curbing the practice in the Somali community in Wajir County?
4. Does pursuing a child rights-based approach to FGM in the Somali community in Wajir County potentially contribute to curbing the practice?

1.4 Relevance and Justification

FGM has been a topic of discussion within the development sector due to its continuous practice and its negative implications that hamper the potential development of women and girls and thereby affect their communities and the country at large. Researching the challenges of ending FGM in Wajir County contributes to the existing literature by focusing on marginalized communities like the Somali community of Kenya. Researching FGM enhances our understanding of how FGM as a harmful socio-cultural practice violates children's and women's rights that are protected by the national constitution and international human rights treaties. The Somali community continues to practice FGM despite the interventions from state and non-state actors. Within the Somali community, girls are subjected to FGM at a young age, making it a child rights issue. This research aims to assess why FGM persists within the Somali community of Kenya while other communities in Kenya have registered a clear decline. The findings of this research will also be a useful input for enhancing the effectiveness of the design and implementation of existing and new anti-FGM interventions to promote effective programming. Finally, this research will contribute to the development of discourse as it aims to highlight the potential contribution of adopting a Child Rights-Based Approach in curbing the continuation of FGM.

1.5 Organization of the paper

Chapter one of this paper lays the foundation by introducing what FGM is and in which forms are practiced. It describes the prevalence of FGM in Africa and Kenya. It further delves into describing the prevalence of FGM among the Somali community and reasons why the community practices FGM. The chapter also contains the problem statement, research objectives, and the research questions to be addressed in this research paper. Relevance and justifications are presented as well. Chapter two will share a theoretical framework integrating a Child Rights-Based Approach (CRBA) and deterrence theory. Under the CRBA framework, I will take on how children's rights gained global attention and are protected in various human rights instruments. The United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) will be analyzed. The chapter also presents the notion of criminalization of FGM, by delving deeper into the clauses of Kenya's anti FGM law. The methodology employed in this research is also covered in chapter two. Chapter three presents the findings and analysis of the primary data obtained. Chapter four will present discussions of the findings. And finally, chapter five will formulate the conclusions of the study.

CHAPTER TWO. THEORETICAL FRAMEWORK

This Chapter will present a Child Rights-Based Approach (CRBA) as both a theoretical framework and a methodology to analyze how FGM is addressed and prohibited in international and regional human rights instruments that bind governments and other duty bearers to protect children's rights. First, I will briefly describe what a CRBA entails, how children's rights gained global attention from the early years of World War I that led to the adoption of various international child rights documents since the 1920s. Secondly, the United Nations Convention on the Rights of the Child (hereafter UNCRC), its four main principles, and the relevant provisions of the African Charter on the Rights and Welfare of the Child (ACRWC) will be covered. Finally, I will present the criminalization of FGM as a framework helping to understand Kenya's anti-FGM Act that prohibits all forms of FGM in the country.

2.1. A Child Rights-Based Approach

Since the adoption of the UNCRC, the approach of humanitarian and development agencies has gradually shifted from the traditional way of providing aid to a rights-based approach that is based on fundamental human rights standards (Save the Children, 2005:21). A new model of people-centered, empowering and participatory development and humanitarian work came about (Ibid.). Save the Children articulated that, adopting a rights-based approach to development and relief work was a morally right approach to bring more practical benefits than other approaches (Ibid.:22). Child rights-based approaches integrate children's rights (often as stipulated in the UNCRC) in all the cycles of programs and policies or other interventions undertaken by state and non-state actors (OHCHR, 2024; Save the Children, 2007:4). Child rights-based programming (CRBP) became an essential mechanism for governments and non-governmental organizations to redirect their programmes and policies to place children at the center stage (Save the Children, 2005:23).

Save the Children described CRBP as the use of children's rights principles in the planning, implementation and monitoring of programs to improve the position of children to fully enjoy their rights as enshrined in the UNCRC (Save the Children, 2007:5 and 2005:24). CRBP recognizes children as social actors (rights holders) that can co-determine what serves their best interests. In CRBP practices, children are involved in program life cycles and their views are given full consideration (Save the Children, 2007).

FGM is not only a harmful practice that affects the wellbeing of girls negatively, but it is also a violation of their rights to health, life, survival, and development, and the right to be free from discrimination as enshrined in international and regional human rights instruments including the UNCRC. Adopting a Child Rights-Based Approach in this study shifts the perception of FGM as a cultural practice to recognizing it as a violation of fundamental human and children's rights. By employing a CRBA, I aim to explore the legal and moral obligation of duty bearers to protect the girl child from a harmful retrogressive cultural practice that severely affects their rights, health and wellbeing and the potential contributions made by adopting a CRBA to curb FGM.

2.1.1 The Historical Evolution of Children's Rights

World war I impacted children severely, forcing millions of children to be orphaned, displaced, hungry, and deprived of the support they had before the war. During the war,

millions of children were left in a dire situation and had no one to protect and defend their rights. Eglantine Jebb, the founder of Save the Children, claimed that children needed to be saved from the unfolding calamities since they were innocent and unaware of the ongoing divisions between parties and nations (Save the Children, 2005). Jebb continued with her advocacy to fight for the protection of children during situations of armed conflict and pushed for the drafting of the Geneva Declaration.

In 1924, the Geneva Declaration of the Rights of the Child (hereafter GDRC) was adopted by the League of Nations, the first instrument that recognized and affirmed specific rights for children (League of Nations, 1924). The Declaration articulates in its preamble that men and women of all nations owed the children the support they can offer, asserting the responsibilities of the older people indiscriminately. Jeb emphasized the important role of the community and going beyond the state parties in protecting the rights of the child, instead of solely obliging the state to protect children's rights (Arts, 2023). Despite being the first to reaffirm the rights of the child, the Geneva Declaration contained only five articles that incorporated mainly the child right to development (both materially and spiritually), protection from exploitation, freedom from hunger, protection of orphans, and shelter (League of Nations, 1924). Although these aspects were significant for the child's development, many other essential elements like child participation were not covered in the Declaration which treated children as objects of protection rather than capable subjects.

In 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child (UNDRC) (United Nations, 1959). This was the second major global declaration adopted to foster and promote children's rights. The UNDRC broadened the provisions of the previous Geneva Declaration and, among other things, recognized the need to incorporate the right to be free from discrimination, education, name, and nationality (Ibid.: Art 1, 3, and 7). The Declaration also established the principle of the best interests of the child in Articles 2 and 7, asserting that the principle should be a paramount consideration and a guiding force to those responsible for the education and guidance of the child.

Following the GDRC and the UNDRC, the government of Poland submitted a draft treaty containing provisions on children's rights in 1978 to the United Nations Commission on Human Rights (UNCHR) to be adopted in the following year (Arts, 1993). After a long process of drafting, the United Nations Convention on the Rights of the Child (henceforth UNCRC) was adopted on 20 November 1989 (Ibid.140). The Convention builds on the provisions contained in the two predecessor Declarations of children's rights and, by and large, extended them encompassing many more aspects of children's lives. The UNCRC will be discussed further in the next section.

2.1.2 United Nations Convention of the Rights of the Child (UNCRC)

The UNCRC became a landmark treaty that seeks to promote and protect children's rights across the world (Save the Children, 2005: Arts, 1993:140). The Convention became the most significant and fastest ratified binding children's rights standard (Arts, 2014:273). It is a cornerstone for policy making, encompassing 54 articles that cover nearly all aspects of children's lives, including social, political, economic and cultural elements. Despite the comprehensiveness of the treaty, it entered into force in less than a year and achieved almost universal ratification by 1997 (Ibid:273).

The UNCRC defines a child in its Article 1 as "any human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (United Nations, 1989). The first section of the CRC definition is clear. The later part seems fluid, allowing flexibility in some contexts, leaving the relevant state parties to determine age limits in relation to their local and national laws. In as much as the UNCRC provides state parties to be flexible and adjust the age limits, this flexibility could be exploited in states and societies where social age is used to define childhood instead of the chronological definition used by the UNCRC, which has been a subject of critiques within the academia (Clark-Kazak, 2009).

By 2015, the UNCRC achieved almost universality, with 196 states parties. Since then, the United State of America and Taiwan are the only countries that are yet to ratify (UNICEF, 2015). The Convention's principles guide all the state parties in formulating and implementing policies and practices related to children. The UNCRC obliges state parties to periodically report to the UN Committee on the Rights of the Child on the progress in implementing the Convention within two years of ratification and then every five years (OHCHR, 2014; Save the Children, 2005:18). The Committee on the Rights of the Child comprises of 18 independent experts (OHCHR, 2014; Arts, 2014). By April 2014, besides the UNCRC, the Committee was monitoring three Optional Protocols to the Convention, on involvement of children in armed conflict, the sale of children, child prostitution and pornography, and the (third) Protocol on the Communications Procedure which was approved in December 2011 (Arts, 2014:292). The third Protocol allows children to report complaints regarding violations of their rights individually which signifies the agency bestowed upon them by the Convention.

The UNCRC emphasizes the role and contribution of the state in relation to the development and protection of children Various articles imply that states parties should undertake all appropriate legislative, administrative, and other measures to ensure the protection of the rights of the child. This positions states as the primary duty bearers for children's rights. The Convention also recognizes the importance of international co-operation for improving the living conditions of children in every country, particularly in developing countries like Kenya (United Nations, 1989, preamble). International cooperation entails co-operation of governments, and non-state parties like non-governmental organizations and development partners that support governments in achieving their objectives of protecting children's rights. The Convention further recognizes that apart from the state, the family is an important stakeholder that can create a child-friendly space where children can grow and develop. Article 5 directs states to respect the responsibilities, rights and duties of parents, extended families or communities, legal guardians or others legally responsible for a child to guide the child in exercising their rights (United Nations, 1989).

Although many countries and especially in Africa ratified the UNCRC in its early years, they struggled to implement and comply with it fully (Osaiyuwu, 2023). Osaiyuwu (2023:6) further claims that the struggle of African countries to implement policies and practices in accordance with the UNCRC guiding principles is due to a lack of commitment by the governments and varying cultural practices within the continent. Although the UNCRC seeks to build the promotion and protection of children's rights, some local languages within the African states do not even have a word that means 'rights'. This makes it hard to integrate rights within the national context which might also attract fierce resistance from the local communities (Cheney, 2007:60).

The Four General Principles of UNCRC

The 1989 UNCRC presents four main interdependent principles that should guide states and non-state actors in the implementation of policies and practices safeguarding children's rights. These principles are non-discrimination, the best interest of the child, the right to life, survival and development, and respect for the views of the child. I will now introduce and discuss these four principles further to lay out their significance in upholding the rights of the child.

a) Non-discrimination

Among the many strengths of the UNCRC is its position to protect and uphold the rights of every child without discrimination. Article 2 states that, "state parties shall respect and ensure the rights of the child without discrimination of any kind irrespective of the child's or his or her parent's or legal guardians' race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" (United Nations, 1989). In as much as the principle of discrimination accords all children equal opportunities regardless of their situations, Suman Khadka has drawn attention to the fact that, the Convention only formulates the principle of discrimination but does not provide any framework on ways of achieving it (as referred to in Arts, 2014:269).

Article 2(2) of the Convention calls for states to take all possible measures to protect the child from all forms of discrimination. The principle of non-discriminatory is vital in recognizing that children are not homogenous and that they face varying inequalities among themselves, and in thereby demanding special consideration for marginalized groups like children with disabilities, refugee children, and girls.

b) Best Interests of the Child

Article 3(1) of the UNCRC articulates that in all actions concerning children, whether undertaken by the state or "private social welfare institutions, courts of law, administrative authorities or legislative bodies" the best interests of the child "shall be a primary consideration" (United Nations, 1989). The principle directs all actions, including laws, policies, and programs to put the best interests of the child as a primary consideration which might override the interests of other actors (Save the Children, 2007:14). The concept of best interests is also contained in other human rights instruments such as the 1959 Declaration of the Rights of the Child (UNDRC, Principle 2) and the 1979 Convention on the Elimination of All Forms of Discrimination against Women (Article 5b) (UNICEF, 2007:36)

However, the UNCRC did not give a specific meaning to the term "best interest of the child" to accommodate diverse aspects and actions of actors to determine what is best for the child's development (Arts, 2014). Various questions were raised on the specific definition of the term. In its Implementation Handbook for the CRC, UNICEF stated that states cannot interpret "best interests" in an overly culturally relativist way to deny rights guaranteed to children by the UNCRC Convention (UNICEF, 2007:38).

c) The Right to Survival and Development

The Convention recognizes the right to life, survival, and development of every child. The meaning and implications of this right are determined by several aspects of life, including the political, social, economic, and cultural aspects of life that impact children varyingly across

different regions (Save the Children, 2007). Recognizing the right to life calls for prevention and addressing possible factors such as poverty, which is a major root cause of children's rights violations (Arts, 2014:295).

Article 6(2) of the UNCRC further directs state parties to ensure to the maximum extent possible survival and development of the child (United Nations, 1989). The state as the primary duty bearer is obliged to protect the children's right to life, survival, and development from all actions, including harmful practices, that violate these rights. In circumstances where the state is unable to offer maximum protection, international donors, NGOs, the private sector, and civil society organizations (CSOs) may come through to complement and support the state, if the state is open to this (Save the Children, 2007:11).

d) *The Views of the Child*

The fourth general principle of the UNCRC is that of respect for the views of the child. Article 12(1) states that "States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child" (United Nations, 1989). Article 12(2) further mentions that children should be allowed to be heard in judicial and administrative proceedings affecting them. In this way, the UNCRC recognizes the child as a social actor who can exercise his/her agency and contribute to decisions that affect their lives. Children's participation has been pursued ever since the UNCRC was adopted and became a critical element within international and inter-governmental programs by way of promoting participatory programming (Hart, 2008).

The principle accords children the opportunity to participate, contribute, and influence decisions that affect their lives. It also empowers children and enhances their capacities to act on their own behalf and protect their rights (Save the Children, 2007). Children's participation varies depending on their age, capacities to meaningfully contribute to the matter, and understanding, hence the need to adopt different approaches. This research employs the principle of participation to examine how government agencies and non-governmental organizations involve children, and specifically girls, in designing and implementing anti-FGM interventions.

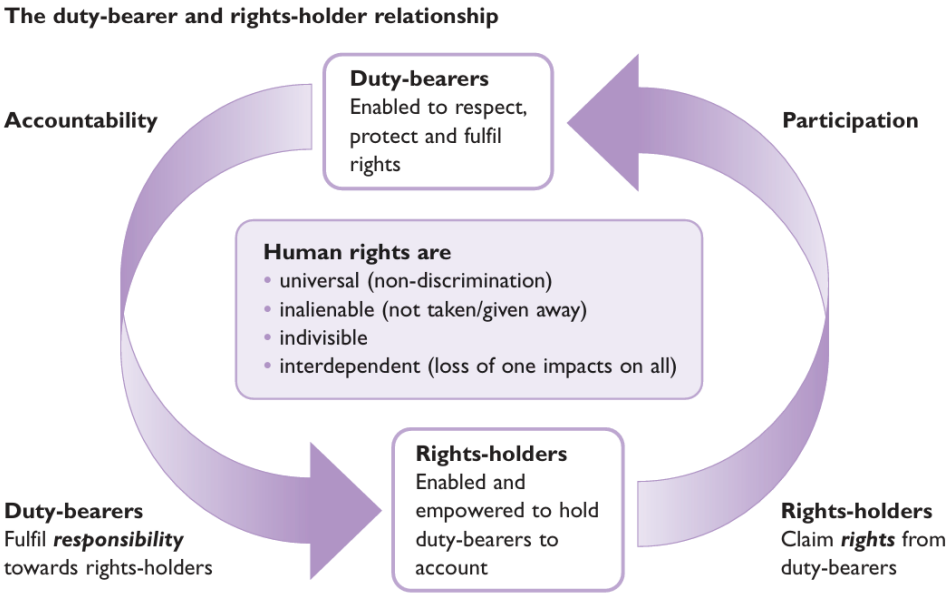
2.1.3 Rights-holder and Duty-bearer Relationship

A Child Rights-Based Approach has been a critical element adopted by states and non-state actors in fulfilling the rights of the child as enshrined in the UNCRC. State parties are obliged and have vowed to put in place safeguarding measures such as policies, laws, and resources that guarantee maximum enjoyment of children's rights once they became state parties to the UNCRC (Save the Children, 2005:34). The UNCRC specifies state parties as the 'primary' duty bearers, obliging them to take a leading role in protecting and promoting children's rights. The Convention also refers to 'secondary' duty bearers or other stakeholders such as the family, guardians, and other actors responsible for the care and protection of a child.

Empowerment and accountability are two major important elements of a duty bearer and a rights holder relationship. These elements entail the process through which the state as the primary duty bearer accomplishes the rights of the child and is held accountable for its actions while empowering the rights holders to claim their rights. This is also described in figure two below (Save the Children, 2007:9). Therefore, in this research, I will evaluate how

the government of Kenya (duty bearer) protects the right of the girl child (rights holder) not to be exposed to harmful practices including FGM that violate their rights.

Figure 2. Duty bearer and right holder relationship.



Source: Save the Children (2007:9).

2.1.4 The African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child (hereafter ACRWC) was adopted in July 1990 by the Organization of African Unity (OAU), now Africa Union (AU), less than a year after the adoption and ratification of UNCRC by African states (Arts, 1993:144). The Charter entered into force in 1999 and is the first major regional treaty that addresses and recognizes the rights of the (African) child (UNICEF, 2020).

Article 2 of ACRWC defines a child as "every human being below the age of 18 years" (African Union, 2023). Unlike the UNCRC, the ACRWC does not give room to any consideration to individual states to reconsider the age limits of childhood in their national laws by giving a rigid definition of childhood (Arts, 1993). Under Article 3, the Charter upholds the non-discrimination principle by providing that every child should be entitled to his/her rights without any form of discrimination regardless of their language, religion, political or other opinion, national and social origin, fortune, birth or other status (African Union, 2023; Arts, 1993).

The ACRWC also obliges member states to report their implementation progress to the African Committee on the Rights of the Child, which comprises of 11 members of high moral standing, integrity, competence, and independence who are specialized in child rights and welfare (African Union, 2023:24). The Committee members are elected by the Heads of States from persons nominated by the States for a five-year term through secret ballots

(Ibid:25). Among the many roles of the Committee is that of monitoring the implementation of child rights by member states in compliance with the provision of the Charter.[3]

2.1.5 Specific Provisions of UNCRC and ACRWC Relevant to FGM

It is quite striking that both the UNCRC and ACRWC do not explicitly mention FGM in any of their articles while this practice affects millions of girls and women across the globe. However, both treaties have noted the need to develop policies to prevent harmful social and cultural practices that violate children's rights. This includes FGM which is a harmful socio-cultural practice that negatively impacts the health, physical and mental state of girls.

Articles 24(3) of UNCRC and 21 of ACRWC stipulate that states should take appropriate measures to abolish all harmful socio-cultural practices that are detrimental to the health and wellbeing of the child. The UNCRC does not specify any harmful practice unlike the African Charter which mentions early marriage. According to Arts (1993:151), Senegal, along a few other African countries that actively participated in the drafting of the UNCRC, advocated for the Convention to be cautious when addressing issues related to cultural and traditional values such as FGM. Ultimately, the UNCRC indeed pays little attention to harmful practices. Its failure to explicitly mention the need to abolish the practice of FGM might be a factor contributing to the continuation of the practice until this date.

Both the UNCRC and ACRWC specify for the child to enjoy the highest attainable health and easy accessibility to health care facilities in Articles 24 and 14, respectively. FGM infringes the right to health as it inflicts severe health risks upon the girl child. Section 3 of Article 24 of the UNCRC directs state parties to take all effective and appropriate measures with a view to eradicating harmful traditional practices that are detrimental to the health of the child (United Nations, 1989). Article 14(h) of the ACRWC also mentions that state parties shall ensure that all actors, including parents, children themselves, community leaders, and community workers are "informed and supported in the use of basic knowledge of child health and nutrition" (African Union, 2023). The involvement of all actors has been a critical instrument in fighting FGM. Many (I)NGOs utilized these actors as gateways to the local communities and trained them as change agents to disperse awareness information on negative implications of FGM.

Furthermore, Article 2(2) of the UNCRC mandates state parties to ensure children are protected against all forms of discrimination and punishment on the basis of status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members (United Nations, 1989). However, the UNCRC does not explicitly define the term discrimination. In this study, I will adopt the definition of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (United Nations, 2024a, Arc 1). FGM aligns with article 2(2) of the UNCRC as the practice

[3] A Full description of the ACRWC and the role of the Committee can be accessed at https://au.int/en/treaties/african-charter-rights-and-welfare-child

imposes a severe discrimination on women and perpetuates gender inequalities that surface from discriminatory social and cultural believes.

The adverse effects of FGM as specified in chapter 1, depending on their exact form and severity, may also amount to violations of the right to health, freedom from discrimination, and the right to life, survival and development accorded to children under various Articles of the UNCRC and the ACRWC.

2.2. Criminalizing FGM

Since the adoption of the UNCRC that binds states parties to protect the rights of children, attention for the need to eliminate FGM increased across the world. Various forms of interventions were practiced by governments, individuals, and non-governmental organizations to curb the continuation of FGM in Africa and other parts of the world. Many countries enforced laws and policies as a measure to curb FGM which amounts to a violation of human and children's rights.

The adoption of laws that criminalize and ban the practice of FGM has been widely practiced in many countries in Africa, Europe, the UK and the USA. Various human rights instruments have recommended legislations and sanctions as a preferred measure to achieve the immediate abandonment of the practice, even though questions were raised on whether this would indeed be the most effective tool to end FGM (Durojaye and Nabaneh,2021). Enacting laws that ban FGM was seen to be a crucial part of the global anti-FGM strategy by many state parties. In 1979, France became the first European country to adopt a law that criminalized the practice of FGM, at a time when many African migrants from FGM practicing communities were reaching Europe (O'Neill *et al.,* 2020). Three years later, the Swedish government followed France and adopted an anti-FGM law. Thereafter various other European countries would follow.

Switzerland listed FGM as one of the crimes that is tantamount to compulsory deportation for immigrants in Switzerland, including those with permanent residence permits. In August 2018, a Somali immigrant mother was convicted for subjecting her two daughters to FGM in Somalia prior to her arrival in Switzerland (ibid:269). The woman was convicted for breaking the Swiss criminal law and charged in relation to paragraph two of the Swiss Anti-FGM Act that establishes universal jurisdiction for the crime. This allows for the arrest of any individual who, at the time of the arrest, is in the country, regardless of where and when the FGM took place (Ibid.).

By 2020, 24 of 28 countries in Africa where FGM is highly practiced had a legislative act that prohibited and criminalized the practice of FGM (Shell-Duncan *et al.,* 2013). Among the countries that adopted anti-FGM laws were Somalia, Egypt, and Guinea, all countries with a high prevalence of FGM (over 90%) (Ibid.). The fact that the prevalence of FGM in these countries remained high despite the enactment of laws against it justifies the question whether legislation is the most effective tool to end FGM. Criminalization of FGM has since faced solid resistance from local communities in African countries, including Kenya, where such laws have been seen as the imposition of western ideologies on African communities and as a way of obtaining donations from developed countries (Van Bavel, 2023).

Why did governments opt to criminalize FGM, while there could be alternative interventions to end the practice? Wouango, Ostermann, and Mwanga (2020:4) state that the criminalization of FGM has been preferred mainly because of the assumption of the doctrine

of legal centralism by the governments. This implies that, in most cases, people obey laws to avoid penalties and laws are thus an efficient way to bring social change. However, criminalizing an action means suggesting a deterrence effect which has been largely critiqued for not achieving the desired outcomes in most cases (Durojaye and Nabaneh, 2021). The origin of deterrence theory is traced back to the work of Thomas Hobbes, Cesare Beccaria, and Jeremy Betham, three classical philosophers who believed that sanctions and laws would discourage individuals from committing a crime (Ibid.). Hobbes, in his publication *Levithans*, mentioned the need for the state to impose sanctions and punishment for crime higher than the benefits an individual may derive from it, and stated that sanctions will deter people from committing crimes repeatedly (Ibid:120).

Anti-FGM laws adopted in various countries varied in terms of their exact provisions and the restrictions contained in them. Countries like Tanzania and Mauritania criminalized FGM in relation to children only, while many other African as well as western countries prohibited FGM practiced on women and girls of all ages (Shell-Duncan *et al.,* 2013). Covering women and children of all ages in the Act reflects that, like children, adult women too are unable to provide consent to undergo FGM because of cultural pressures and lack of legal independence. Exempting adult women from the Act and legalizing FGM on them, hampers the elimination efforts and contradicts various universal human rights treaties that classify FGM as a violation of children's and women's rights regardless of their age.

Sanctions and punishments as an alternative measure to end FGM have been critiqued and seen ineffective in many affected countries (Durojaye and Nabaneh, 2021). The ineffectiveness of the intervention in many developing countries manifests in the widespread acceptance of the practice in some communities, limited state intervention, lack of awareness of the law, and secrecy of the practice (Wouango, Ostermann and Mwanga, 2020). Secrecy was expected to be a concerning issue as early as the 1980s, when the drafting of the UNCRC was ongoing. Senegal advocated for the state parties to consider to be cautious when dealing with cultural practices like FGM, emphasizing that prohibiting cultural practices will only lead to clandestinity rather than abolishing them (Arts, 1993).

2.2.1 Kenya's Prohibition of FGM Act 2011

Criminalization and banning of FGM in Kenya has been lobbied for by several actors, including political leaders, since independence (Van Bavel, 2023). The move to ban the practice of FGM was initiated by the colonial government in the early 1960s when Kenya gained independence. President Jomo Kenyatta, the first president of Kenya, supporting the move initially before declining it again after fierce resistance from the local communities, including his own Kikuyu community[4] (Van Bavel, 2023). The second move to curb the practice of FGM came in the year 1989 when President Moi, Kenya's second president, gave an official statement against FGM and declared a ban on the medicalization of FGM, directing government hospital and clinics to refrain from performing the practice. The

[4] President Jomo Kenyatta hails from the Kikuyu community that inhabit regions around Mount Kenya. The Kikuyu is largest community in Kenya by population and dominate the politics of the country. President Moi, the second president of Kenya hails from the Kalenjin community, the third largest community in Kenya by populations that inhabit around the rift valley regions. The Kikuyu and Kalenjin communities mainly practice Christianity. They are the only tribes out of 44 existing tribes in Kenya that produced all the five presidents Kenya has had since independence (Kikuyu 3 presidents and Kalenjin 2 including the current president).

banning of FGM and its medicalization by President Moi came after fourteen girls were reported to have died allegedly due to FGM complications (Ibid.:382).

Medicalization of FGM was first heard of in Kenya in 1989 when a Presidential Directive came that immediately illegalized medicalized FGM before it entered the public discourse. In this case, medicalization means the performance of FGM by a healthcare professional, either at home or in a clinic (UNFPA, 2022). However, the Presidential ban did not prevent families and medical professionals from practicing it in the following years. In 2001, the parliament of Kenya adopted the Children's Act which criminalized FGM on girls under the age of 18 years, two years after the 1999 National Plan of Action for the Elimination of FGM that emphasized the significance of education in ending FGM (Meroka-Mutua *et al.,* 2021;Van Bavel, 2023:382).

Kenya's 2001 Children's Act draws inspiration from the UNCRC and ACRWC and upholds the ACRWC's definition of a child, referring to any human being below the age of 18 years. Article 23 of the Children's Act states that no person shall subject a child to female circumcision, early marriage and other cultural rites, customs and traditional practices that affect children negatively (Kenya Law, 2022). However, the deliberate use of 'female circumcision' instead of FGM downplays the brutality and serious implications of the practice on the health and wellbeing of the girl child. The term female circumcision instead of FGM might be detrimental to the elimination efforts among the practicing communities, like the Somali community, that practices FGM as way of performing *sunnah* circumcision (Hidayana, 2024). According to Oloo and others, the Children's Act was immediately criticized to be ineffective for only resulting in a few court cases despite sanctioning the practice of FGM (Van Bavel, 2023:383).

According to anti-FGM activists and women leaders, there was a need to have a new broad and comprehensive legislation that addresses the continued practice of FGM in the country. Kilimo and Sophia Noor, two female anti-FGM advocates who hail from Marakwet and the Somali communities respectively, initiated advocacy to have a new law that prohibited and criminalized FGM (Van Bavel, 2023). Sophia and Kilimo later became members of parliament where they advanced their advocacy and convinced their male counterparts in the parliament. Sophia cited her own experience with the practice as a survivor and narrated how she lost two of her friends through the procedure, to persuade fellow pastoralist male legislatures to support the motion to enact a new anti-FGM Act (Ibid.). With support from activist, national and international organizations, Killimo and Sophia succeeded in having a clause stating that Kenya should incorporate and adopt the clauses of all the international laws and treaties ratified by Kenya in the new 2010 reformed constitution (Ibid.).

A year later in 2011, the parliament of Kenya passed the Prohibition of FGM Act No. 32, which is commonly known as 'the Anti-FGM Act 2011'. This Act criminalized the performance of FGM on girls and women of all ages whether performed by a traditional cutter or a trained medical professional (Van Bavel, 2023:385; Meroka-Mutua et al., 2021). Articles 20, 21, and 22 of the 2011 Act also prohibit persons from aiding and abetting, procuring, and allowing FGM to be undertaken in premises under their control (Kenya law, 2022). The imposition of penalties on third parties who contribute to the practice of FGM seeks to disrupt the broader network of participation of community members in perpetuating FGM.

The Act also addressed the medicalization of FGM by restraining medical professionals from engaging and contributing to FGM. Article 19(2) of the Act imposes life imprisonment on persons who cause the death of another while performing FGM, either under the supervision of a healthcare professional or a traditional birth attendant (Kenya law, 2022). Incidences of cross-border FGM where families perform FGM across borders to evade punishment were mentioned as a hindering factor that undermines the elimination efforts in Africa (UNFPA ESARO, 2022). To tackle the increasing cases of cross-border FGM among Kenyan communities residing along the border towns of Moyale, Mandera, Garissa, and Wajir, the Anti-FGM Act 2011 specified clauses that criminalize cross-border FGM. Article 28(1) of the Act further prohibits a Kenyan or individual permanently residing in Kenya from performing FGM outside the country, asserting that such a person would be guilty of committing an offence under section 19 of the 2011 Act (Anti-FGM Board, 2019:13).

Article 3 of the 2011 Act mandates the establishment of a semi-autonomous government agency known as the Anti-FGM Board (Kenya law, 2022). In 2013, the Board was established to carry out several duties, including designing and formulating policies regarding FGM and advising the government on issues related to FGM. The Board comprises of a chairperson appointed by the president, principal secretaries of relevant departments, and the chief executive officer (CEO). All serve a single term of six years, except the CEO who is an *ex officio* member. The Act confers on the CEO the powers to manage the day-to-day operations of the Board, and to be the secretary of the Board. The CEO serves for a term not exceeding five years and he/she is eligible for a re-appointment (Kenya law, 2022 Article 5).

Like many laws that criminalize FGM in Africa, Kenya's Anti-FGM Act faced mixed local reactions, with some supporting and others opposing. Among those who opposed it was a female doctor named Kamau. Kamau petitioned the Act in courts, advocating for the legalization of FGM for adult women of 18 years and older, arguing that adult women should be allowed to undergo the practice with their own consent (Van Bavel, 2023:386; O'Neill et al., 2020:271). O'Neill et al., further mentioned that Kamau claimed in her petition that criminalizing FGM among adult women violates their right to culture and freedom of religion, and that adult women should be allowed to do what they want with their bodies. According to Kamu, criminalizing the medicalization of FGM would force women to seek alternative practitioners such as traditional circumcisers to perform the practice posing them at risk of severe consequences (Van Bavel, 2023:387).

Local resistance manifested further in the secrecy of the practice, increased medicalization of FGM among the practicing communities, and non-compliance with the law (Van Bavel, 2023). Secrecy of the practice has been a major by-product of the Anti-FGM Act as most of the communities practice the harmful practice behind the curtains and in hard-to-reach areas with little referrals to the law- enforcing agencies. As Shell-Duncan et al. (2013:812) mentioned, there were only a few cases of people arrested for breaking the FGM prohibition laws in several countries, for instance due to the unwillingness of community and family members to report and testify against each other. This has been the case to this date as there are no available data showing the number of FGM prosecutions in Kenya to justify the strength of the Act.

Various publications that critiqued the law have suggested the need to adopt alternative measures, including raising awareness about the effects of the practice, educating women on the dangers of FGM, adopting locally led initiatives, sensitization of affected communities, multi-sectoral coordination, and partnership (Durojaye and Nabaneh,2021; Aberese Ako and

Akweongo, 2009). Ideally, there is widespread acceptance that education and awareness raising will have a positive effect on social change rather than using punishment and sanctions. However, my argument in this study is not criticize the criminalization of FGM, but to explore its effectiveness in curbing the continuation of FGM among the Somali community of Kenya, where the prevalence of FGM remains high.

2.3 Methodology

The methodology section for this research serves two main functions. The first focuses on integrating a Child Rights-Based Approach (CRBA), adopted as the theoretical framework in this chapter into the data collection. CRBA was employed to guide the design of the questionnaire guide and process of the data collection focussing on FGM as a child rights violation. CRBA was also used to incorporate participation of children in anti-FGM programmes to assess the potential contributions of adopting a CRBA in curbing the continuation of FGM within the Somali community. The second function served by the methodology is to lay out the data collection tools, sampling method, the data analysis techniques, positionality and the ethical considerations of this research.

Initially, I intended to involve children, specifically girls, in this research to obtain their views on why FGM persists within the community, and on their participation in FGM programs. However, in the end I decided not to engage children due to ethical considerations and fear of traumatizing young girls who were subjected to the brutality of FGM. Even though participation of children would have enriched this research, their involvement would have posed a risk to their wellbeing due to the sensitivity and cruelty of the practice. Therefore, I decided to engage instead government, non-governmental organizations and community members (religious leaders) since they have an obligation as either the primary or secondary duty bearers to safeguard and protect the rights of the child.

The study being explorative in nature, it employs a qualitative method to utilize secondary and primary data to address the research questions at hand. FGM being a deeply rooted cultural practice, a qualitative method was deemed to be best suited to find out people's perceptions and experiences as to why the practice persists within the community and which are the main challenges in achieving total abandonment of the practice. According to O'Leary (2014), qualitative methods aim to gain a deep understanding of people's perceptions, experiences, cultures, places and situations through rich engagements. The secondary data utilized in this research is obtained from the literature, Demographic Health Survey (DHS) reports, and NGO publications, to increase the depth of discussions in this research. Primary data was obtained from key informants working in NGOs and government departments, and from religious leaders.

2.3.1 Sampling Method

Purposive sampling was used to identify research participants based on a set criterion. Participants were selected based on their involvement in FGM programs, their knowledge of the practice of FGM, and their working experience within the Somali community in Kenya. I used my previous personal professional networks and those developed while undertaking my master's degree to contact and access the research participants. A total of ten respondents, drawn from NGOs, governments (local and national), and religious leaders were engaged in in-depth interviews. The participants were four females and six males. Gender differentiation of the selected participants was considered to enhance the richness

of the data by obtaining differing views from different groups. The Non-Governmental Organizations were selected by their role in complementing the efforts of the government (primary duty bearer) in ending FGM within the community and the country at large. The religious leaders were also chosen due to their position and influence within the community. Among the Somali community, religious leaders are accorded a very high position and are highly respected. Hence the need to incorporate their perspectives on FGM in this research. To access the local religious leaders, I contacted an area chief whom I have known for a long time to connect me with the religious leaders.

2.3.2 Data Generation Technique

To generate data for this research, in-depth interviews were used. The interviews were conducted face-to-face and by phone due to the absence of some participants who were out for field work by the time I was conducting the interviews. The interviews were carried out in two phases. Phase one was conducted in Nairobi, with a government agency and national non-governmental organizations that are based in Nairobi but have been implementing anti-FGM programs in Wajir and within the Somali community. In Nairobi, three interviews were conducted. The other five interviews were conducted in Wajir. The latter were with the local government department of gender and social services, the department of children and youth services, a local organization, and religious leaders.

Semi-structured interviews guided by eleven open-ended questionnaire guides (see in Annex) were conducted. During the interviews, the conversations were recorded where possible using a voice recorder, so that I could refer when transcribing to ensure accuracy and reliability of the data without distorting key information. However, I could not record all the interviews as some participants were not comfortable with doing so. In those cases, I opted to take notes. The interviews were conducted between mid-August and mid-September. They were meant to last for about forty minutes each, but some took more than the stipulated time depending on the depth of the conversation. The interviews were conducted in English, Somali, and Swahili languages, depending on which the participant felt comfortable with. Often, the conversations would switch between two languages to seek clarifications and give the conversation a better flow. For privacy purposes, the identities of the research participants and the names of their organizations are anonymized throughout the study.

After every interview, I would sit down later in the afternoon, listen to the audio recorded and transcribe to ensure every detail was captured. Once all the interviews were transcribed, the scripts were reviewed and re-read multiple times to attain maximum familiarity and understanding with the context and the content. Inductive coding was manually done pointing out repeated codes that emerged from the data. The codes were then re-grouped to generate specific themes that properly addressed the research questions.

2.3.3 Positionality and Ethical Considerations

As a professional who worked with an organization that implemented Anti-FGM programmes, before I joined my master's program, I found it difficult to detach myself from the topic of FGM, especially when I was conducting the data collection. However, given the fact that I was involved in FGM programmes for a short time, doing this research was an opportunity for me to explore and acquire new knowledge. I was always aware that my background experience might have an influence on my research and the data collection

process. Constantly maintaining my position as a student researcher rather than an Anti-FGM practitioner minimized unintended impacts on the study.

Before I started this research, I always had a thought of failure to get in touch with the right participants or obtaining sufficient quality data due to the sensitive nature of the topic and my status as a man. Among the Somali community, its unusual for a man to discuss and research FGM, given the sensitivity of the topic and its interrelations with women's sexuality. However, approaching FGM through the lense of children's rights violations eased the accessibility of research participants and possible cultural resistance. Approaching FGM as a children's rights violation changed the conversation from women's sexuality, which is very sensitive, to a protection of children's welfare that resonated with the research participants and the community at large.

Throughout the data collection process, I occupied a dual positionality of both an insider and outsider. Insider here means that, I share common characteristics such as language, nationality, culture, and origin with the research participants and the community under study. I also viewed myself as an outsider since I was a student and thus outside the organizations and the institutions where the participants were drawn from. According to Kusow, there are various lines of argument on the advantages and disadvantages of both insider and outsider positions and their influence on the study (Darwin Holmes, 2020). However, being an insider helped me build rapport and trust with the research participants allowing me to ask insightful questions and secure more honest responses.

In conducting this research, consent was utmost paramount, and I always ensured that participation of the respondents was voluntary, and that they could quit at any point they felt like or opted not to respond to questions that they did not feel comfortable with. Before proceeding with the interviews, I sought their informed consent upon clarifying my position as a student researcher and the purpose of the research. I guaranteed the participants that their information would be handled with maximum care and their identity revealing information anonymized.

2.3.4 Scope and Limitations of the Research

The research focuses on exploring the challenges of eliminating FGM among the Somali community of Wajir county, Kenya and ways of overcoming those challenges through the lenses of a Child Rights-Based Approach. This research aims to understand why the practice of FGM continues despite the efforts to eradicate it completely. The study also examines the effectiveness of the law in tackling the continuation of FGM within the community and how the law is perceived by the local people. The study further explores how various stakeholders engage children in Anti-FGM campaigns and raise their awareness towards the practice of FGM. The study also intends to obtain primary data from government and non-governmental organizations who are actively involved in Anti-FGM programmes within the community and by extension in the country, to assess the factors that contribute to the continued practice of FGM.

The study was conducted in Wajir county even though FGM is also practiced in other regions occupied by Somali communities. Due to the shared values and cultural beliefs of the Somali communities living in Kenya, the results of this study can be applied across the regions though and within the Somali communities living in Kenya. The Somali community of Wajir county was selected as the focus of this study due to the uneven changes in the prevalence

rates of FGM over the last decade despite the significant drop of the FGM national prevalence in Kenya.

This study faced various challenges. First, due to the limited time and resources for the research, it was not possible to engage participants drawn from other parts of the county. This study engaged a few organizations and participants that were based in Wajir town and Nairobi. I could not involve the many local and national organizations located in various parts of the Sub-counties, which limits the depth and richness of the data obtained. Secondly, the lack of up-to-date and segregated data on the prevalence of FGM in Wajir county posed a significant challenge to analyzing the FGM situation there.

CHAPTER THREE: FINDINGS AND ANALYSIS

3.1 Introduction

This chapter presents the findings of the research on ways in which FGM within the Somali community of Wajir County could be reduced significantly or eliminated. The presentations of the findings will be arranged as per the research sub-questions.

3.2 Why Does FGM Persist in the Somali Community in Wajir County, Despite A Legal Ban Being in Place and While in other Parts of Kenya FGM as Dropped Significantly?

This question aims to address why FGM continues to be practiced within the Somali community despite the various efforts from governments (primary duty bearer) and non-state actors, including the Anti-FGM law that bans and criminalizes FGM. This research found various reasons that contribute to the continuation of FGM within the community over many generations.

Among the reasons that contribute to the continued practice of FGM is the existence of varying definitions of FGM. Within the community, only the severest forms (all the four forms of FGM) that have serious adverse effects on the health and wellbeing of girls and women are regarded as FGM. Most research participants strongly emphasized the misappropriation of the term FGM as a major hindrance to reducing FGM. For example, according to the female participant GG who works with the department of children in the local government: *"FGM is a very complex issue within the community and the majority of the people don't see sunnah as FGM".*

In my quest to find out whether *sunnah* was regarded as a form of FGM, when meeting the religious leaders, I purposely asked them how they defined FGM. Both religious leaders whom I interviewed differentiated *Sunnah* and FGM and stated that FGM are the severest forms which are harmful. Participant II, who is a local mosque imam,[5] mentioned that: *"FGM is the Pharaonic type and these days the majority of the people don't practice that, the sunnah is not something big and has no problem".*

FGM also persists within the Somali community due to the shift of forms of FGM practiced over time and over generations. The shift from the severest forms of FGM (pharaonic) to the sunnah form which is less severe and popular within the community was regarded as detrimental to the elimination efforts. However, while significantly hindering elimination efforts, the shift of forms is also seen as a positive move towards the reduction of the suffering of girls and women subjected to the practice. According to female participant CC who is the executive director of a survivor-led organization: *"These days sunnah is widely practiced and pharaonic circumcision is rarely found in town. The shift from pharaonic to sunnah is a positive move but again challenges the total abandonment".*

There is a strong link between FGM and religion within the Somali community. This has been the most widely mentioned reason why the practice continues to be practiced by the Somali community. 80% of the respondents reiterated the strong link between FGM and religion, and how the community twists between culture and religion to justify the practice

[5] Imam here refers to religious leaders who lead prayers in the mosque.

of FGM. Participant HH who is a deputy principal and a programme officer with a community-based organization echoed how the perception of FGM as a religious requirement hinder efforts to reduce FGM. Participant FF from a local government department of children also mentioned religion as a strong hindering factor: *"the idea that FGM is a religious practice instead of a cultural practice seems a major challenge. It makes it hard to tell the community that is harmful, they believe it is a religious requirement that they must do"*.

Participant AA, who has been involved in FGM programmes since 2012 and heads a national organization, that works on engaging men in anti-FGM programmes, also referred to the strong link between FGM and religion by citing how religious leaders defend the continuation of the practice. He added that*: "if you are not well versed with the Islamic teachings, they (religious leaders) will convince you that FGM is a religious requirement especially for us non-Muslim actors. They always shift between culture and religion and tell you that is our religion ..."*. In our conversation, AA referred to how religious leaders convince and argue against those who are not well versed with the Islamic teachings about the religious position on FGM. The misinterpretation of FGM as a religious requirement may impact the elimination efforts as the implementing actors may hesitate to challenge a practice that is perceived to be a religious teaching, out of respect for religious matters.

There is a strong link between FGM, climate change, and poverty too. The link between FGM and climate change has been alluded to because the Somali community is a pastoral community living in the Northeastern part of Kenya, which is mainly an arid and semi-arid region characterized by hot and dry climatic conditions. Participant BB who is a programme officer mentioned that FGM practice rises in seasons where prolong droughts occur. He stated: "*There is a strong link between FGM and early marriage especially in the pastoral communities like the Somali. When drought happens like the recent long drought, families lose many livestock and for them to get back, they have to marry off a girl and get livestock as a form of dowry. We usually refer to it as FGM for restocking"*. During our conversation, participant BB further referred back to how child marriage and FGM incidences were on high rate during a recent long drought that occurred in the horn of Africa. When long droughts occur, men and boys in pastoral communities move away from home in search of grazing land for the animal, leaving girls to take care of younger siblings. Assigning girls the responsibility of taking care of their younger siblings tends to make them drop out of school leaving them at risk of being subjected to FGM and forced marriage.

Participant EE who is a senior officer from the local government department of gender, supported the link between FGM and poverty as she narrated how their team from the local government were told by the community while conducting a community dialogue, that traditional cutters walk around the villages asking families whether there are girls to cut so that the cutters can get a fee to overcome economic shocks. Poverty being on the high end in the northeastern regions, FGM is not regarded as a priority and there is little concern about ways of reducing the prevalence or eliminating it altogether. AS participant CC director at a survivor led organization explained: *"People have more pressing issues such as drought, lack of basic needs such as food and water, so to them FGM is not a priority. That is why as an organization we have taken up an integrated approach of climate change and FGM"*.

Incidences of cross-border FGM have been mentioned to significantly contribute to the continuation of FGM within the community. Due to the porous borders along the Kenya-Somalia frontiers, families cross the borders to cut girls in regions where the law is not strict. Cross-border FGM has been mentioned to be at high end during school holidays when girls

are out of school and vulnerable to harmful practices. Participant BB, who is a programme officer with the Anti-FGM Board, declared that: *"cross border FGM is also a challenge among the communities living in the border town, girls are taken across the borders especially during December holidays).*

Discussion of the above findings

Even though major children's rights treaties, including the UNCRC and the ACRWC have not explicitly specified FGM as a children's rights violations, the government and the non-governmental actors working within the Somali community view FGM as a gross violation of girls' right. As has been alluded to in the above findings section, FGM contravenes the children's rights to health, freedom from discrimination, and the right to life, survival and development which are all essential for the growth and wellbeing of every child.

Religion has been a perpetuating factor for the continuation of the harmful cultural practice like FGM in many countries where Islam is the dominant religion even though the religion completely prohibits all forms of FGM (Hidayana, 2024; Tønnessen and al-Nagar, 2024). This research found that the strong linkage between FGM and religion has led to various other challenges including misappropriation of definitions of FGM and the shift of forms of FGM practiced by the Somali community over generations. Among the Somali community, the disregard of sunnah circumcision as a form of FGM reaffirms the existing debate on specific definitions of the term FGM. The definitions of FGM have varied across regions and societies due to the inclusion of the word "Mutilation" which has been contested for a long time for sparking controversy (Hidayana, 2024).

The shift of forms of FGM, from the severest forms to a milder form has indeed reduced the negative effects of FGM on the health and wellbeing of girls and women. However, despite the reduced effects, *sunnah* circumcision remains to be a significant challenge that hinders the total elimination of FGM within the Somali community. The practice of *sunnah* circumcision remains popular in urban areas due to the widespread acceptance as less harmful (Newell-Jones, 2016). The shift of forms from infibulation to the sunnah circumcision has also been identified among the Somali diaspora communities who migrated to western countries (Johansen, 2019). Johansen further claimed that sunnah circumcision, in its less extensive form such as pricking, has been supported by some researchers and professional organizations as a way of reducing harm on girls and as a positive step towards total abandonment.

But while generally the sunnah type of FGM is less severe, often girls are subjected to a severer form of FGM under the guise of undergoing a sunnah circumcision, hence inflicting serious effects on girls and women. According to Kimani and Kabiru (2018), much clinical evidence suggests that many women who claim to have undergone the *Sunna*h circumcision are subjected to a severer form (infibulation) of FGM. Johansen (2019) states that the limited change in the physical damage of FGM performed, despite the claimed change of forms from infibulation to sunnah, is because of the close link between the physical damage caused by the milder form and the cultural meaning of infibulation.

In recent years there has been growing concern about the impacts of climate change on human and children's rights. In 2008, the United Nations Human Rights Council (UNHRC) adopted a resolution that recognized that "climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights" (UNHRC, 2008). Drought as a result of climate change

raises the vulnerabilities of young girls to being subjected to harmful cultural practices, including FGM and early marriage. UNICEF (2022) reported that FGM and early marriage were occurring at high rates during the most severe drought in forty years that ravaged the horn of Africa. The report also indicated that the number of young girls dropping out of school tripled due to the impact of the climate crisis, leaving many young girls at risk of undergoing FGM and being forced to marriage.

Due to the high demand for livestock among the pastoral communities, girls are subjected to FGM and married off as a way to regain the stock lost through dowery. The agency of the community to marry off the girls as way to escape from economic failures has also been found in the Northeastern part of Uganda (Ochen *et al.,* 2017). Despite FGM itself being a child rights violations, often it further rolls into early marriage which is also a violation of child rights, becoming a dual edged sword that severely impacts the girl child.

As mentioned in section 2.2 of this research paper, Article 28(1) of Kenya's Anti-FGM Act prohibits cross-border FGM by barring Kenyans and those permanently residing in Kenya from practicing FGM outside the country (Anti-FGM Board, 2019). Despite the law against FGM being extraterritorial in many countries, including Kenya, cross-border FGM continues to occur clandestinely, making it untraceable. Due to the porous borders and the transnational nature of the Somali community residing in Kenya, the community can easily move freely across orders to perform FGM. Cross-border FGM has been a trending issue in the East African region due to shared traditions among the bordering communities like the Somalis, jeopardizing the elimination efforts across the region (*UNFPA ESARO,* 2022).

3.3 How Could the Challenges Faced in Relation to Reducing FGM in the Somali Community in Wajir County be Overcome?

For obtaining potential solutions to the challenges that hinder the reduction of FGM prevalence or its total eradication among the Somali community in Wajir County, Kenya, research participant were asked what solutions could be developed to address those challenges. Various interventions were identified. Among the responses found, engagement and mobilization of religious leaders was most cited. Considering the critical role religious leaders play in influencing and guiding the community on religious matters, educating them on the dangers of FGM could make a significant contribution towards its elimination by delinking the practice from religion. According to participant AA who is a director of a national organization that works on engaging men in anti-FGM programmes: *"As I said earlier, FGM is linked to religion. Engaging and mobilizing religious leaders to separate FGM from the religion will be a game changer since their word is taken as final in the Somali community".*

Participant EE, a female participant from the local government department of gender, also confirmed the significance of engaging and mobilizing the religious leaders and encouraging them to preach against the practice of FGM, including the sunnah circumcision. She further added that including FGM topics in Friday summons should be encouraged to help people understand the religious perspective on FGM. Apart from the male religious leaders, participant CC (Director at a survivor led organization) emphasized the need to involve female Islamic scholars and mobilize them to be leading actors that advocate and educate young mothers on the need to have FGM eliminated. Female Islamic scholars are women who have attained a high level of religious education. They understand the religious position on FGM and have a better stand to convince and educate other women. According to

participant CC: *"A way to end FGM is engaging religious scholars so they can divorce FGM from the religion. Not only male but also female aalima,[6] so that they can preach to women in Madarsas.[7]"*

However, religious scholars have defended their position in support of the sunnah circumcision and clarified their role in contributing to the elimination of severest forms. As mentioned in section 3.2, both interviewed religious leaders expressed a strong support for the practice of sunnah based on the position that it is recommendable according to the Islamic teachings. Participant JJ (religious leader) stated that: *"the sunnah practice is less harmful and not like the pharaonic one, if people want it is fine to practice it and we cannot call it haram"*. Participant II, who is also a religious leader and imam, clarified the position of religion when he stated that *"FGM is completely prohibited in Islam, but the sunnah is mentioned in the hadiths. Practicing is not compulsory, but it is not haram as some people say"*.

The localization of anti-FGM programmes and adoption of community-led intervention has been another solution that has been raised as a way to accelerate the eradication of FGM and as a way to overcome cultural resistances. 60% of the participants suggested the adoption of localized community-led interventions to raise awareness on the dangers of FGM within the community. The adoption of localization strategies was also mentioned to be a way of accessing hard-to-reach areas since the land is vast and wide. As participant AA, who is head of a national organization that engages men in anti-FGM programmes, explained: *"Localizing interventions to support grassroots organizations and agencies tend to be more effective. Partnering with local organizations who are part of the community can easily convey the message and educate the community instead of outsider organizations"*. Participant GG, who is a female participant from the local government department of children, supported the idea of localizing interventions to avoid misinterpretation of the anti-FGM programs as cultural and religious interference.

The engagement of multisectoral organs, including the government agencies, law enforcement agencies, education sector, men and women, and boys and girls, has been suggested too as a way to address the continued practice of FGM within the community. The involvement of men and boys in FGM issues has been suggested as a way to change the perceptions and attitudes of men and boys towards FGM and as a way to view FGM as a societal problem rather than a women's affair. The coordination of multiple actors to address the continuation of FGM within the community calls for enhanced partnership among the state institutions (primary duty bearers) and other stakeholders (secondary duty bearers) obliged by the UNCRC as custodians and protectors of children's rights. Participant AA (head of a national organization that engages men in anti-FGM programmes) explained that: *"As an organization we work to engage men in FGM issues. In my experience I have encountered men who complain about the FGM that their wives were subjected to. Some told me they had to 'de-infibulate' their pride"*. Participant AA mentioned de-infibulation of women when he was narrating to me how he first heard of men complaining about effects of FGM while he was working on anti-FGM programs with an international NGO. He further narrated how FGM affects all the members of the society, including men. Hence the need to engage men and boys in anti-FGM programmes.

[6] Aalima is a word used to refer to female Islamic scholars who preach and teach religious teachings to other women.

[7] Madrasa is an educational institution where Islamic subjects including the Quran are taught.

Discussion

Religious leaders hold high positions within the Somali community, command respect and have influence on public opinions (Abdi and Askew, 2009). Sensitizing religious leaders on the negative implications of FGM through dialogues and engagements has been effective in pronouncing FGM in many practicing communities. For example, UNFPA Somalia (2023) has taken an initiative to work closely with the religious leaders in Somalia where they agreed to adopt a *fatwa*[8] that prohibits all forms of FGM and declared the practice as a cultural practice rather than a religious requirement. Karmaker *et al.* (2011) reported that the government of Burkina Faso has also engaged religious leaders to encourage abandonment of FGM and support for change. However, Karmaker et al. did not specify the effectiveness of the intervention in reducing the prevalence of FGM in the country.

Localization of resources and adoption of grass root interventions has proven to be successful in ending FGM in many contexts. The Population Council in its report *"Encouraging abandonment of FGM/C among the Somali community in Wajir, Kenya"* mentioned that local and grass roots interventions such as community dialogues, school engagement and training elders and religious leaders to change attitudes and perceptions of the community would accelerate the elimination efforts (Population Council, 2010). The most widely community-based intervention adopted in Kenya to end FGM is that of "Alternative Rights of Passage" (ARP). ARP is the adoption of alternative models of transitioning to adulthood by girls instead of practicing harmful cultural practices like FGM to mark the ceremony. However, the ARP approach has not been an alternative for the Somali community since the community performs FGM on girls at a young age, below the transitioning age to adulthood. Abdi and Askew (2009) suggested that a religion-oriented approach would be the most suited community-based intervention to end FGM among the Somali community.

CRBA calls for enhanced efforts to tackle and prevent factors that contribute to children's rights violation. Localization of interventions and resources aims to address contributing factors such as climate change and poverty that perpetuate the continuation of FGM within the community. Puppo (2017) reported that various community-led interventions, including providing alternative incomes for traditional cutters, community dialogues, social media and radio engagement and involvement of diverse stakeholders to tackle factors perpetuating FGM have been adopted as alternative intervention to curb the continued practice of FGM.

Multisectoral engagement including the education sector, families (both men and women), law enforcement agencies, and children themselves would contribute to the reduced prevalence of FGM. Engagement of the education sector, especially teachers, would have a significant shift in the perception towards the practice of FGM among children who are potentially at risk of FGM (Population Council, 2010). However, it is not always the case that all teachers are against the practice of FGM. Families and communities are obliged by the children's rights instruments, including UNCRC and ACRWC, as the secondary duty bearers to protect the rights of the child from violations. Khalil and Orabi (2017) suggested that engagement of diverse stakeholders, including family members, local authorities, and the broader community members changes the social attitudes and perception towards the practice of FGM, ensuring the factors contributing to the continuation of FGM are addressed appropriately.

[8] A fatwa is a formal ruling or interpretation of Islamic law given by qualified legal scholars in response to an issue raised by the people.

The engagement of men and boys, as the head of families and decision-makers in anti-FGM programmes will have a significant influence in ending the harmful practice. The Somali community is a patriarchal society where men have a significant influence on household decision-making, raising their awareness through dialogues and engagement will be paramount in eliminating the harmful practice. However, the sensitive nature of the topic makes it difficult for men in many African societies to openly denounce and debate FGM (Mwendwa *et al.,* 2022). The role of men in eliminating FGM is less emphasized, especially among the Somali community where FGM is perceived to be a women's affairs despite the practice affecting the whole community and by extension the whole Nation. This is also due to the perception that FGM is majorly supported by mothers and grandmothers without the involvement of men within the household (Mwendwa *et al.,* 2020).

3.4 Does Criminalization of FGM Potentially Contribute to Curbing the Practice in the Somali Community in Wajir County?

The research found varying opinions on the contributions of law to accelerating the abandonment of FGM within the Somali community. Participants from the government departments (both national and local levels) strongly emphasized the critical need to have a strict law that criminalizes FGM as a way to eradicate it. However, participants from the non-governmental sector have emphasized the need to have the law complemented by other approaches that are more impactful. Approaches such as women's education and empowerment, community sensitization and awareness raising, and multisectoral engagements have been mentioned to come before the law. According to participant AA (head of National organization that engages men in anti-FGM programmes): *"Though the government criminalized FGM, law should not be the first line of defence against FGM. Sensitizing and taking girls to school is for me the line number one to address FGM"*

Since the adoption of the devolution system in Kenya in 2010, the majority of administrative and governance roles have been delegated to the county governments. The Wajir county government, as part of the primary duty bearer, is obliged by the UNCRC and ACRWC to protect and uphold the rights of the child. Participants from the local government that I interviewed have reiterated the need to strengthen the law against FGM by having a local policy that will complement the national Anti-FGM Act. This would be a way for the local government to perform its obligations in protecting the rights of the child at the local level. Participant FF (a male staff of the local government department of children) concretized this as follows: *"Since the law is not strict in ending FGM, we the county are planning to formulate a county Anti-GBV steering committee that will advocate for stronger law to end gender-based violence including FGM".*

Participant DD, a male senior officer from the department of gender and social services, mentioned that: *"due to the law and fear of punishment, many mothers who used to cut have stopped the practice".* In his view this explained the significance of the law in contributing to the eradication of FGM. His colleague further added that, even though some traditional cutters have stopped cutting, there are other traditional cutters who are still performing FGM with modern skills such as using medical equipment like anaesthetics. The utilization of medical equipment by the traditional cutters to reduce pain and control bleeding during the procedure significantly contributes to the increased medicalization of FGM.

As part of its obligation to protect the rights of the girl child, the national government through the Anti-FGM Board has taken measures to work closely with the communities, elders, and other non-state actors as a way to strengthen the fight against FGM. Participant BB (part of the Anti-FGM Board programme team) supported the government's move to work closely with elders, chiefs, and whistleblowers who would be surveilling the village and report to the law enforcement agencies. During our interview over a phone call, participant BB was on his way to attend to an FGM incident in Meru County where a whistleblower had reported a suspected FGM scene to the police. The police apprehended ten people, including a government official and parents, who were suspected of carrying out an FGM practice.

However, participant CC, who has been involved in FGM programmes for a period of 17 years as Anti-FGM advocate and is head of a survivor led organization, clearly downplayed the role of the law and sanctions in fighting against cultural practices such as FGM. She cited that using force would only push the practice further away from the public and into secrecy, forcing communities to look for alternative cutters or even across the border: *"I don't think law is effective on the ground, it pushes the practice into secrecy and privacy which is a challenge to the elimination efforts"*.

Apart from the varying opinions on the potential impact of the law on reducing FGM prevalence within the community, the religious leaders have mentioned that the law entangles or interferes with the culture and religion in the sense that the law limits one's freedom to practice one's religion freely. This was because the law criminalizes all forms of FGM in Kenya and beyond and calls for curbing the practice of all forms of FGM including the sunnah circumcision that is widely practiced in the community. Participant JJ (a religious leader and local mosque imam) shared the view that: *"The law criminalizes all forms of FGM instead of only the pharaonic type which is bad. The Sunnah is part of the religion and has no effect on women"*.

Discussion of the above findings

Criminalization of FGM has had little effect on protecting girls and women against FGM in various regions where law has been adopted to curb the continuation of the practice (Nabaneh and Muula, 2019). While the effectiveness and potential contribution of law in curbing FGM is very much contested, states and state agencies (primary duty bearers) continue to prioritize adopting it. As described in chapter two, states as the primary duty bearers of child rights are obliged by the international and regional children's rights intruments, including the UNCRC and the ACRWC to adopt policies and laws that protect and safeguard the rights of the child. Hence, the utilization of laws. The over- reliance on law against FGM by the states is due to the argument that adopting laws creates an enabling environment for anti-FGM campaigns and advocacy efforts to thrive, and to strengthen the position of those that support total abandonment (Muthumbi *et al.,* 2015). According to Meroka-Mutua *et al.* (2021) the ineffectiveness of the law against FGM is due to the wide acceptance of the practice in many communities, like the Somali community where milder form of FGM is widely accepted. Meroka-Mutua *et al.* further argued that laws and sanctions can easily thrive to curb unpopular practices that are widely seen as bad/wrong within societies.

For many years, laws against FGM have attracted fierce resistance from the local communities. The findings of this research suggest that among the Somali community, the law against FGM is seen as an entanglement or undue intervention with the culture and

religion. The resistance against the law arises due to impositions of punishments and sanctions to what is commonly perceived as a religious practice. The entanglement of law, culture and religion has been a long-term contemporary debate within the social policies in various regions, especially in contexts of FGM, due to it is strong link to the culture and religion. However, the resistance to law against FGM has always been giving rise to mixed feelings, a group of religious leaders who support the law and those that oppose it. Mixed reactions on the law and interventions to curb FGM from local religious leaders has been a long-standing factor that hindered the eradication of cultural practices such as FGM and early/forced marriage in many countries where these practices are criminalized (O'Neill, 2012; Tønnessen and al-Nagar, 2024). The resistance from the local communities, including the religious leaders confirms the existing debate and critiques of using law against cultural and religious issues.

As mentioned in section 2.2 of this paper, , imposing laws on cultural issues including FGM was thought to be a concerning issue as early as in the 1980s during the discussions of the UNCRC draft. Arts (1993) mentioned that Senegal urged the states to be cautious about using law to tackle cultural issues because sanctions will push the practice into secrecy. The findings of this research confirm that criminalizing FGM has further pushed the practice into secrecy and increased the fee for performing the harmful practice perpetuating the continuation of FGM within the community. Boyle and Corl (2010) stated that criminalizing FGM not only pushes the practice into secrecy but also reduces the number of women and families reporting the practice and results in a lowering of the age at which girls are subjected to it.

3.5 Does Pursuing a Child Rights-Based Approach to FGM in the Somali Community in Wajir County Potentially Contribute to Curbing the Practice?

A Child Rights-Based Approach is a very broad concept. As explained in chapter two, in this research, I focus on two important aspects of CRBA: the role of government and the principle of the views of the child. For these two aspects of the CRBA, the role of the government in curbing the practice of FGM through law has been described above. The participation of children in anti-FGM programmes is examined to showcase how pursuing a Child Rights Based-Approach (CRBA) potentially contributes to the elimination of FGM within the Somali community in Wajir County.

Since FGM is a deeply rooted harmful cultural practice to which girls are subjected at a young age, it is a child right issue that needs the involvement of children. Apart from the religious leaders who knew little about children's rights, all the actors that I engaged in this research accepted that FGM is a children's and women's rights violation that goes against their rights to health, freedom from discrimination, right to life, survival and development that are all specified in the national constitution of Kenya and various international and regional human rights elements, including the UNCRC and the ACRWC. Participant DD (from a local government department of gender and social services) expressed that: *"Children's rights are human rights, and yes FGM violates the girls' right to health, freedom from discrimination and the right to life..."*. Participant AA (head of a national organization that engages men ending FGM) also confirmed that FGM is a serious violation of children's rights that significantly impacts their health and wellbeing.

Apart from recognizing FGM as a child rights violation, both state and non-state actors have reiterated the significance of involving children in anti-FGM programmes and giving their views due consideration. School-visiting programmes have been mentioned as a proper strategy to engage children (both boys and girls) in anti-FGM programmes, since the school provides a proper arena to educate children about FGM. However, engaging children in anti-FGM programmes has not been easy as the actors must discuss FGM issues in a child-friendly manner due to the sensitivity of the topic. According to participant AA: *"The way we engage children is different from the way we engage elders. For the elders we show them films and other materials showing complications of FGM. But for the children we cannot do that because of fear of traumatizing them. For them we tell simple things like science and anatomy ..."*. AA further revealed that engaging boys plays a key role in raising their awareness on the dangers of FGM on the health of girls and empowering them to protect their sisters from being subjected to the harmful practice by reporting it through the assistant Chiefs, who are the first point of referral mechanism, or by calling a toll-free line. However, not all chiefs necessarily support the Anti-FGM campaigns despite being government officials and the first point of contact. In the case presented above about the FGM incident in Meru, an assistant chief was involved in a suspected FGM case.

As part of its mandate as the primary duty bearer, the government of Kenya has taken an initiative to include FGM topics in the syllabus of the new curriculum-based teaching model by way of involving children in anti-FGM programs. Novels touching on FGM themes have also been added to the secondary school curriculum where students are taught stories and literature related to FGM. This is meant to raise the awareness of children on the dangers of FGM and to empower girls to protect themselves from being subjected to FGM. Participant BB, who is from the Anti-FGM Board, confirmed this by clarifying that: *"FGM topics have been added to the new syllabus beginning from grade 3 children so that they get to know about FGM. In secondary school also a set of books about FGM stories are taught ..."*.

Involving children in anti-FGM programmes has been mentioned as a critical element in empowering girls to protect their rights and to speak for themselves. Participant CC, who is head of a survivor-led organization, told me how involving children in anti-FGM programmes has helped her re-design their organization's approach to tackling FGM by placing children at a centre stage: *"I have been involved in FGM programmes for about 17 years and I have seen that, engaging children through dialogues and classrooms session empowered girls. Especially among the Massai, where FGM is practiced as an initiation period. It has been reported that last year many girls escaped from FGM and ran to a rescue centre"*. Rescue centres are safe spaces managed by the national government in collaboration with INGOs. Rescue centres accommodate young girls who escaped or are rescued from dangers such as FGM or forced marriage for a short period of time. However, rescue centres are only short-term solutions to protect girls from being subjected to FGM rather than a sustainable intervention to eliminate harmful practices.

Discussion

Children's participation is a significant entitlement and a core principle of the UNCRC, that changed societal perceptions of the position of children in decision-making processes (Cuevas-Parra, 2023). Despite the significant contribution of children's participation in policies and programs that impact their lives, child participation in anti-FGM programmes remains under-researched due to the sensitivity and brutality of the practice. The findings of this research suggest that children's participation in anti-FGM programmes has been a key and effective strategy to empower girls about their rights and bodily integrity. However,

children's participation mainly comes as a form of human capital investment through girl child education and conversations on FGM with the children. Boun, Otu and Yaya (2023) support investing in girls' educations as an ideal intervention to end FGM by suggesting that education remains a critical tool to fight against FGM.

Girl child education has been focused on as a way to end the practice of FGM since educated women are less likely to subject their daughters to FGM than unlettered women. A study conducted in Siera Leone found that 93% of the participants engaged had intended to cut their girls compared to 32% of women with formal education (Ameyaw *et al.,* 2020:4). Another research indicates that girls and women who attained primary education are 30% more likely to resist FGM than those with no formal education, and about 70% of women and girls with secondary education or higher (Boun, Otu and Yaya, 2023:4). The research also showed that mothers who have attained primary education are 40% less likely to subject their daughters to FGM than mothers with no formal education (Ibid.:4).

Inclusion of FGM materials into the school curricula empowers girls to be aware of the potential risks of FGM. Khalil and Orabi (2017:2) recommended that investing in basic education of children is key in eradicating FGM, and thus FGM-related topics should be integrated into the school curricula and teacher trainings. While girls in the Somali community are subjected to FGM before the schooling age, equipping them with the knowledge of FGM enables them to protect their younger siblings and their own daughters from the dangers of FGM in the future.

CHAPTER FOUR: CONCLUSIONS

FGM remains a major children's and women's rights violation across the globe. The practice of FGM persists in many countries in Africa despite the efforts by governments and non-governmental actors to end it. The Somali community of Kenya is among the many communities that widely practice FGM in Africa, leaving millions of girls to be at risk of being subjected to the harmful practice every year. The Somali community practices FGM for cultural and religious reasons, inflicting serious implications on the health and wellbeing of the women and girls that severely impact their potential developments.

This study aimed to explore why the practice of FGM persists within the Somali community despite the efforts from the government and non-governmental organization, including the banning of FGM. The research utilized two major theoretical frameworks to enrich the discussion of this research. The first theorical framework utilized is CRBA. CRBA was utilized as to assess which rights of the child are violated by FGM and the role of the government in protecting children's rights. The second theoretical approach employed in this research is the deterrence theory to assess the impact and contribution of law and sanctions in ending FGM. Criminalization of FGM as an alternative intervention to curb the continuation of FGM has been criticized to be ineffective in ending FGM.

This research used qualitative techniques as the main tool to obtain primary data from various participants drawn from governments, non-governmental organizations, and religious leaders. The interviews for this research have been conducted in Wajir and Nairobi counties, Kenya. The selection of the research participants has been guided by the CRBA framework, such that the participant selected had an obligation towards children as either primary or secondary duty bearers.

The Government of Kenya ratified the UNCRC and the ACRWC that oblige the state to protect children's rights enshrined in these treaties. As part of its mandate, the Government adopted an Anti-FGM Act that prohibits and criminalize all forms of FGM in the country. The Act also mandated the formation of a semi-autonomous Board that advises the government on matters related to FGM. However, the effectiveness and contributions of the law in curbing the continuation of FGM remains vague especially in the Northeastern part of Kenya where the prevalence of FGM among the Somali community remains as high as over 95% while in other regions and communities, the prevalence significantly dropped.

The research found that there are various reasons that perpetuate the persistence of FGM among the Somali community of Wajir, Kenya. The major reasons include the strong link between FGM and religion, the misappropriation of the definition of the term FGM, and the disregard of sunnah circumcision as a form of FGM due to its milder consequences, the presence of climate change and high levels of poverty in the region, and cross-border FGM. The study also laid down some potential interventions that could address challenges that perpetuate the persistence of FGM within the Somali community. The potential interventions discussed in this research include the mobilization and sensitization of religious leaders as change agents, integration of FGM topics into the school curricula to educate children on the dangers of FGM, mobilization of multisectoral and diverse stakeholders to curb FGM, and finally, localization and the adoption of community-led interventions to accelerate the eradication of the harmful practices.

Annexes

Annex 1 Questionnaire guide for government and NGOs during interviews

1. How long have you been working on FGM programmes?
2. What approach do your organization take to end FGM?
3. Do you see FGM as a children's right violation, and how? If not, how do you see/approach FGM instead?
4. What was the opinions of the children? And do you give much attention to their suggestion when planning, implementing and evaluating programs as well as policy formulations?
5. What are the challenges that hinder the elimination of FGM among the Somali Community?
6. How could this challenges be overcome?
7. Do you think criminalization of FGM is effective in ending FGM? Yes? No. How?
8. What approach and interventions would you suggest ending FGM?
9. Anything important that you think we forgot to discuss?

Annex 2 Questionnaire guide for religious leaders

1. Have you heard about FGM?
2. What is FGM?
3. How do you perceive FGM?
4. Do you see FGM as a children's right violation, and how? If not, how do you see/approach FGM instead?
5. What is the stand of the religion towards FGM?
6. What role do religious leaders play in ending FGM within the community?
7. What are the challenges that hinder the elimination of FGM among the Somali Community?
8. How could this challenges be overcome?
9. How do you see the law against FGM?

Annex 3 List of participants engaged and their code names

GENDER	NO OF PARTICIPANTS	SECTOR	MODE OF INTERVIEW	POSITION	CODES
Male	1	Non-governmental Organization	in person in-depth interview	Executive Director	AA
Male	1	National Government Agency	On phone interview	Program officer	BB
Female	1	Survivor-led Org	On phone interview	Executive Director	CC
Male and Female	2	Local government	in person in-depth interview	Department of Gender and Social service	DD EE
Male and Female	2	Local government	in person in-depth interview	Department of Children	FF GG
Female	1	Anti-FGM activist	On phone Interview	CBO	HH
Male	2	Religious leaders	In person interviews	Mosque Imams	II JJ

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