

Rite of Passage vs. Rights of the Child:
Establishing Female Genital Mutilation
(FGM) as a Form of Child Abuse Within
the Framework of the Principle on the Best
Interests of the Child Through a Case Study
of FGM in Indigenous Muslim Groups in
the Philippines

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I. INTRODUCTION

A. Background of the Study

Female Genital Mutilation (FGM) is a global concern, and the World Health Organization (WHO) estimates that more than 200 million women and girls have had FGM worldwide.¹ As to global prevalence, it has been revealed that the practice is predominantly carried out in Africa and in some areas of the Middle East, particularly Iraq and Yemen.² FGM is also reported to be practiced in Asian countries like India, Indonesia, Israel, Malaysia, Thailand, and the United Arab Emirates.³ This means that, as a global health issue, FGM constitutes a huge burden not only in African and Middle Eastern countries, but also countries in Europe, North and South America, including countries in Asia.⁴ The Philippines is not an exception.

In the southern part of the Philippines, specifically the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), FGM is practiced on the ground of religion and under the belief that women and girls need circumcision to be considered “pure” and “clean.”⁵ This is because particular communities believe that FGM is an obligation that is required by their

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1. World Health Organization, Female Genital Mutilation, *available at* <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> (last accessed Jan. 31, 2024).
 2. NGIANGA-BAKWIN KANDALA & PAUL NZINGA KOMBA, FEMALE GENITAL MUTILATION AROUND THE WORLD: ANALYSIS OF MEDICAL ASPECTS, LAW AND PRACTICE 8 (2018).
 3. World Health Organization, An Update on WHO’s Work on Female Genital Mutilation (FGM) Progress Report, *available at* https://www.who.int/reproductivehealth/publications/fgm/rhr_11_18/en (last accessed Jan. 31, 2024).
 4. KANDALA & KOMBA, *supra* note 2, at 190.
 5. Aie Balagtas See, *Researchers: Female Genital Mutilation ‘Prevalent’ in Southern Philippines*, BENAR NEWS, Dec. 7, 2020 *available at* <https://www.benarnews.org/english/news/philippine/female-mutilation-12072020142626.html> (last accessed Jan. 31, 2024) [<https://perma.cc/AZ5D-TX7Z>].

religion. To elaborate, *Sunna*⁶ in the Islamic religious tradition has been used by some members of the Muslim faith to describe and justify the act of FGM.⁷ Locally, *pagsunna* or *pag-islam*, or *turi* are the common terms used to refer to FGM.⁸ *Pagsunna* generally pertains to the “circumcision” of women, while *pag-islam* commonly refers to the circumcision of men.⁹ Be that as it may, no scriptural or other endorsement or justification for the act of FGM is mandated or supported by the Muslim faith.¹⁰ For instance, the often-cited evidence in Islam for the prohibition of FGM is verse 4:119 of the Qur’an which condemns the act of disfiguring or mutilating God’s creation and likewise considers it abominable in the sight of God.¹¹

Inherent in the practice of FGM is destroying genetically determined anatomical characteristics that are shared by all women and girls.¹² To illustrate, “the female external genital organ normally is constituted by the vulva, which comprises the *labia majora*, the *labia minora* or nymphae, and the clitoris covered by the prepuce, in front of the vestibule to the urinary meatus

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6. See Sh. G. F. Haddad, *The Meaning of Sunna available at* https://www.livingislam.org/n/ms_e.html (last accessed Jan. 31, 2024) [<https://perma.cc/Y7XY-FJRV>] (The Arabic word Sunna means ‘road’ or ‘practice’ and ‘denotes the whole of licit [lawful] practices followed in the Religion (*dīn*), particularly the pristine (*hanīf*) path of Prophets, whether pertaining to belief, religious and social practice, or ethics generally speaking’).
 7. GERRY CAMPBELL, ET AL., *HARMFUL TRADITIONAL PRACTICES: PREVENTION, PROTECTION AND POLICING* 35 (2020) (citing Comfort Momoh, *Female Genital Mutilation*, 15 *TRENDS IN UROLOGY & MEN’S HEALTH*, 11-14 (2010)).
 8. Ma. Kimberly T. Magtoto, *Female Genital Mutilation’s Blurred Lines: Where the Right to Cultural Integrity Ends and Where the Right to Health Begins*, 60 *ATENEO L.J.* 1122, 1125 (2016) (citing Sittinurussamsi A. Calsalin, *Female Circumcision Among Ykan in Basilan Philippines*, at 3 (Apr. 2008) (unpublished M.P.H thesis, Ateneo de Zamboanga University) (on file with Ateneo de Zamboanga University) & Francis F. Temprosa, Philippines, in *Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study*, 699-700, *available at* <https://hrrca.org/wp-content/uploads/2015/05/Women-and-Children-baseline-study-vol-3-Philippines-Vietnam.pdf> (last accessed Jan. 31, 2024) [<https://perma.cc/5XGM-HRNG>]).
 9. *Id.*
 10. *Id.*
 11. CAMPBELL, ET AL., *supra* note 7.
 12. *Id.* at 26.

and the vaginal orifice.”¹³ “Their constitution in female humans is genetically programmed and is identically reproduced in all the embryos and in all races[.]” such that any definitive and irremediable removal of a healthy organ would be considered mutilation.¹⁴ The WHO describes FGM as all procedures that involve the partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.¹⁵ WHO, UNICEF, and United Nations Population Fund (UNFPA) produced a typology of FGM that further classifies such into four major types, viz:

- (1) Type I — Clitoridectomy: partial or total removal of the clitoris and, in rare cases, only the prepuce.¹⁶
- (2) Type II — Excision: partial or total removal of the clitoral glans and the *labia minora*, with or without the removal of the *labia majora*.¹⁷
- (3) Type II — Infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the *labia minora*, or *labia majora*, with or without removal of the clitoris.¹⁸
- (4) Type IV — Other: all other kinds of other harmful procedure to the female genitalia for non-medical purposes such as pricking, piercing, incising, scraping, and cauterizing the genital area.¹⁹

In the Southern Philippines, it was found that the FGM is performed on girls before their menstrual period and approval to do it almost always comes from mothers, grandmothers, or aunts.²⁰ The procedure is done in an “arbitrary” and “unhygienic” manner as there is no uniform process.²¹ Depending on the province and depending on the tribe, FGM practices may

13. *Id.* at 27.

14. *Id.*

15. World Health Organization, Female Genital Mutilation: A Joint Statement by WHO, UNICEF and UNFPA (1997) at 3, available at <http://apps.who.int/iris/bitstream/10665/41903/1/9241561866.pdf> (last accessed Jan. 31, 2024).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *See, supra* note 5.

21. *Id.*

be established by using different materials such as bamboo strips, blades, nail cutters, needles, or even small knives to perform the practice.²²

It appears, however, that the perpetuation of FGM is not mainly rooted anymore in religious practice as the tribal groups would justify it.²³ As a form of gender-based violence, the primary motivation driving the perpetration of FGM is that it is part of the history and cultural tradition of affected communities, where failure to engage in the practice leads to social exclusion and importantly, a loss of personal and familial honor.²⁴ In other words, the continual practice of FGM is mainly because of the cultural practice established which relates to a particular heritage that needs to be adhered to and passed unto the next generation.²⁵ Simply put, FGM is seen as a rite of passage and a practice that *must* be performed to promote “cleanliness” in girls, both physically and spiritually.²⁶ In Bangsamoro, the practice stems from cultural traditions passed on to girls by their family matriarchs.²⁷ Most of the time, there is no other reason for girls to undergo such procedure other than the fact that older women in their families have done it.²⁸ Performance of FGM on one’s daughter is then an important part of the cultural identity of the community — their shared sense of who they are — providing community membership for the girl and all of the associated benefits.²⁹ Besides personal and familial honor, the so-called benefits include the belief that FGM helps safeguard purity and virginity before marriage and preserves chastity after marriage, prevents rape, and is used for aesthetic purposes.³⁰

In non-clinical settings, such as that performed in the indigenous Muslim groups, the first effect on patients includes excruciatingly unbearable pain, physical and psychological trauma, which such unbearable pain can result in loss of life.³¹ The second effect is the bleeding associated with the procedure,

22. *Id.*

23. *Id.*

24. U.N. Secretary-General, *In-Depth Study of All Forms of Violence Against Women*, at 30, U.N. Doc. A/61/122/Add.1 (July 6, 2006).

25. *Id.*

26. CAMPBELL, ET AL., *supra* note 7, at 35.

27. *See, supra* note 5.

28. *Id.*

29. CAMPBELL, ET AL., *supra* note 7, at 35.

30. *Id.* at 34.

31. KANDALA & KOMBA, *supra* note 2, at 100 (citing Poulain, A. C., *Les Mutilations Sexuellesfeminines: Pratiquesprofessionnellesdans les Maternities de Seine-Saint*

especially when the procedure involves removing the clitoris.³² WHO reports that a participant of FGM experiences a burning sensation when urinating and she may even experience vaginal infections due to poor care of the injury suffered.³³ Long-term consequences resulting from the procedures include urinary and vulvae infections.³⁴ Some may also experience dermoid cysts and some conditions may result in sterility and septicemia, hepatitis B or C and HIV/AIDS.³⁵

FGM, therefore, constitutes a serious form of child abuse as it is performed frequently on young girls and is considered a serious violation on the human rights of the victims and survivors because it is detrimental to both their physical and psychological well-being.

B. Statement of the Problem

FGM is a form of child abuse and the lack of a legal framework prohibiting such practice constitutes a violation of the country's international obligations under the Convention on the Rights of the Child (CRC), including Art. 19 (1) and Art. 24 (3).³⁶

To reiterate, the practice of FGM is rooted in cultural traditions and a girl who has not undergone FGM may face stigma, discrimination, and accusations about perceived promiscuity, bringing shame and dishonor both to herself and her family.³⁷ She may be isolated from community events and activities and she may ultimately be unable to marry because she is "unclean" and does not "share" an important characteristic of female members of the community.³⁸ In other words, the practice of FGM is brought about by the strength of social pressure from other family members of their community as a whole.

Article 3 of the CRC mandates that States Party must put paramount consideration to the best interests of the child in all actions concerning children, whether undertaken by public or private social welfare institutions

Denis (2007) (unpublished Ph.D. dissertation, University of Paris Val-De-Marne) (on file with Creteil Faculty of Medicine, University of Paris Val-De-Marne)).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Convention on the Rights of the Child arts. 19 (1) & 24 (3), *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

37. CAMPBELL, ET AL., *supra* note 7, at 35.

38. *Id.*

or by administrative authorities or legislative bodies.³⁹ Even when religions and strong cultural factors are involved, the courts have been clear in emphasizing that parents cannot endanger the lives or physical and mental well-being of their children simply to raise them within the confines of their own culture.⁴⁰ Even though parents and grandparents have fundamental rights to raise and educate their children, a long history of case law would establish that the government may intervene as long as there is a compelling reason to do so.

In *SPARK vs. Quezon City*, the parents submit that the curfew ordinances of Quezon City are unconstitutional because they deprive parents of their natural and primary right in the rearing of the youth without substantive due process.⁴¹ Subsequently, the Court ruled that children's welfare and the State's mandate to protect and care for them as *parens patriae* constitute compelling interests to justify regulations by the State.⁴² The case also cited *Prince vs. Massachusetts* wherein the U.S. Supreme Court clearly established that the right of parenthood can be limited by the State's authority to act in the interest of children,⁴³ viz —

The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death ... Parents may be free to become martyrs themselves. But it does not follow that they are free ... to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.⁴⁴

Regarding the proper exercise of the right to religion, Philippine case law would often cite the case of *Wisconsin vs. Yoder*, where Wisconsin had attempted to enforce a compulsory-education law against Amish parents who traditionally removed their children from public schools after the eighth grade.⁴⁵ The Supreme Court of the United States exempted the Amish from compulsory-attendance law because the latter successfully argued that their tradition of removing their children from school was inseparably intertwined

39. CRC, *supra* note 36, at art. 3 (2).

40. Patricia Schroeder, *Female Genital Mutilation: A Form of Child Abuse*, 331 NEW ENG. J. MED. 739 (1994).

41. *Samahan ng mga Progresibong Kabataan, v. Quezon City*, 815 Phil. 1067, 1083 (2017).

42. *Id.* at 1067-1174.

43. *Prince v. Massachusetts*, 321 U.S. 158, (1944).

44. *Id.* at 165.

45. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

with their faith and the case was not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare may be properly inferred.⁴⁶

It is generally recognized that FGM is not required by any religious doctrine.⁴⁷ Hence, the above-mentioned cases are not entirely on-point. There are no Supreme Court decisions, yet, in the Philippines which would establish that FGM is a form of child abuse. As represented by the cases above-mentioned, Philippine courts in deciding cases involving parental rights and the right to religion would heavily favor the best interests of the child and the physical and mental well-being of the children. In the case of FGM which leads to a serious and irreparable bodily injury on the part of female young adolescents, courts are to balance highly protected rights with that of the best interest of the child, which takes into consideration the child's physiological and psychological well-being.

In the Philippines, society's interest in the well-being of children has generated laws to protect them from being forced to work before the age of 15,⁴⁸ from being exposed to communicable diseases at school,⁴⁹ from forms of bullying and abuse,⁵⁰ and from developing irreparable mental and physical harm at the hands of their parents.⁵¹ Despite these laws, the practice of FGM still prevails in many indigenous Muslim communities.⁵² While it is essential

46. *Id.*

47. Schroeder, *supra* note 40, at 740.

48. *See* A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 137 (1974).

49. *See* An Act Providing Policies and Prescribing Procedures on Surveillance and Response to Notifiable Diseases, Epidemics, and Health Events of Public Health Concern, and Appropriating Funds Therefore, Repealing for the Purpose Act No. 3573, Otherwise Known as the "Law on Reporting of Communicable Diseases" [Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act], Republic Act No. 11332 (2019).

50. *See* An Act Requiring All Elementary and Secondary Schools to Adopt Policies to Prevent and Address the Acts of Bullying in their Institutions [Anti-Bullying Act of 2003], Republic Act No. 10627 (2013).

51. *See* An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation, and Discrimination Act], Republic Act No. 7610 (1992).

52. *See, supra* note 5.

that indigenous cultures are to be respected, the Philippines has the obligation to protect all children equally within its legal jurisdiction, regardless of where their parents and relatives are from and what customs they continue to practice for the sake of cultural traditions. Protection of these children in indigenous Muslim communities against the dangers of FGM is emphasized in Article 24 (3) of the CRC which states that “States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of the children.”⁵³

C. Objectives

This study has four main objectives that are all heavily intertwined with one another. The objectives are as follows:

First, this study aims to establish that FGM constitutes child abuse, which the Philippines is obligated to curb or abolish through the enactment of corresponding laws and policies. In the attainment of this objective, the proponent will first lay down the international law framework on the protection of children. Afterwards, a discussion on the physiological and psychological effects of FGM on a child, specifically on female young adolescents, will be introduced. It will also discuss FGM in comparison with circumcision of young male adolescents to understand the medical justifications and corresponding adverse effects of both practices.

Second, after the effects of FGM are established, the study will seek to prove that FGM is not contemplated in current Philippine child protection laws, especially Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, otherwise known as the “Child Abuse Law.”⁵⁴ To achieve this, the proponent will be analyzing Sec. 3 (b) and Sec. 10 of the said law, vis-à-vis Sec. 17 of the same which emphasizes the survival, protection, and development of children in indigenous cultural communities.⁵⁵

Third, the study seeks to propose a legal framework for the prohibition of FGM using the best interest of the child framework, in the full attainment of the child’s survival and protection. This will be analyzed with the interplay of different factors including the constitutional right to the free exercise of

53. CRC, *supra* note 36, art. 24 (3).

54. *See generally* Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act.

55. *Id.*

religion, as well as in the context of the exercise to the right of cultural integrity.

Lastly, the study seeks to determine the viability of proposing a separate special law prohibiting the practice of FGM as a form of child abuse that is separate from already existing municipal laws punishing certain acts of abuse against children. Given the peculiarity of the circumstances surrounding the practice of FGM, the researcher deems it necessary to consider a separate special law possibly regulating or totally abolishing the practice.

II. FEMALE GENITAL MUTILATION

Despite international recognition that FGM constitutes a violation of the rights of women and girls, it remains to be practiced in developing countries, predominantly in regions namely sub-Saharan Africa, the Middle East, and Asia.⁵⁶ FGM has deep sociological roots that create societal norms in order for families to be accepted by the communities. These social conventions place pressure on parents to consent on behalf of their daughters to undergo FGM in order to prepare them for marriage and adulthood.⁵⁷ Its cultural significance leads to the notion that it maintains girls' chastity, preserves fertility, improves hygiene, and enhances sexual pleasure for men.⁵⁸ FGM, therefore, is utilized as an initiation rite of passage to womanhood and it aims to ensure premarital virginity and marital fidelity by reducing her desire for extramarital sexual acts.⁵⁹ This is because when the vaginal opening is altered to create a smaller orifice, the fear of opening it further discourages extramarital sexual intercourse.⁶⁰ Parents and religious leaders enforce this practice of female "circumcision" in the belief that it is the will of their religion and, therefore, must be maintained through the next generations. On the contrary, FGM is a worldwide public health concern that needs to be addressed through cultural competence.⁶¹

56. Elizabeth Klein, et al., *Female Genital Mutilation: Health Consequences and Complications—A Short Literature Review*, OBSTET. AND GYNECOL. INT'L, July 10, 2018, at 2.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* (citing World Health Organization, *supra* note 1)).

61. *Id.* (citing Benedicta I. Odemerho & Marjorie Baier, *Female Genital Cutting and the Need for Culturally Competent Communication*, 8 J. NURSE PRACT. 452, 454 (2012)).

The cultural and traditional components of FGM vary between ethnic enclaves.⁶² The procedures for FGM vary depending on the community but it is almost always performed in a ceremonial manner accompanied by music, food, and gifts, where the operators can range from “circumcisers” with no medical training to midwives and birth attendants.⁶³ The tools used include knives, clippers, scissors, or hot objects.⁶⁴ When infibulation takes place, thorns or stitches may be used to hold the two sides of the *labia majora* together and the legs may be bound together for up to forty days.⁶⁵

The World Health Organization, in its 2016 report, states that female circumcision is practiced in 30 countries throughout Africa and the Middle East with an estimated 200 million women worldwide infibulated.⁶⁶ Despite worldwide and regional attempts in absolutely eradicating the practice, by law and intervention — as the practice is internationally recognized as an infringement on human rights — the custom persists because the multifaceted dynamic makes it difficult to eradicate.⁶⁷

In the context of the Philippines, the Bangsamoro Autonomous Region in Muslim Mindanao observes local customs, such as child marriages that occur between the ages of nine to fifteen years of age, which are often arranged by their parents.⁶⁸ Women and girls are expected to remain chaste, obey their elders, and marry within their community.⁶⁹ Among the prevalent local practices intertwined with child marriages is female genital mutilation,

62. M. Mazharul Islam & Mosleh M. Uddin, *Female Circumcision in Sudan: Future Prospects and Strategies for Eradication*, 27 INT’L FAM. PLAN. PERSP. 71 (2001).

63. Klein, et al., *supra* note 56, at 2.

64. *Id.* (citing Nawal M. Nour, *Female Genital Cutting: Impact on Women’s Health*, 33 SEMIN. REPRODUCTIVE MED. 41, 41-46 (2015)).

65. *Id.* (citing Charlot Feldman-Jacobs & Mark Mather, Women and Girls at Risk of Female Genital Mutilation/Cutting in the United States, *available at*, <http://www.prb.org/Publications/Articles/2015/us-fgmc.aspx> (last accessed Jan. 31, 2024) [<https://perma.cc/F5PV-9TF7>] & Jihad M. Abu Daia, *Female Circumcision*, 21 SAUDI MED. J. 921, 921-23, (2000)).

66. *Id.* (citing World Health Organization, *supra* note 1)).

67. *Id.* (citing WORLD HEALTH ORGANIZATION. ELIMINATING FEMALE GENITAL MUTILATION: AN INTERAGENCY STATEMENT 7 (2008)).

68. Care Philippines, Live Feed, Findings of Female Genital Mutilation Research, FACEBOOK, Dec. 3, 2020, *available at* https://www.facebook.com/watch/live/?v=382218166222042&ref=watch_permalink (last accessed Jan. 31, 2024) [<https://perma.cc/NJ3J-NY89>].

69. *Id.*

also known locally as *pag-sunnat*, *pag-islam*, or *turi*, which is a direct translation of female “circumcision.” According to a study conducted by Care Philippines, four out of five women have undergone the procedures of FGM in the Bangsamoro region.⁷⁰ The methods in region vary depending on the community as there is no uniform process just like FGM procedures in other countries. Depending on the province and the tribe, the instruments may include unsanitized bamboo strips, blades, nail cutters, needles, or small knives.⁷¹

A. Consequences and Complications of FGM

FGM has both physiological and psychological complications, including short-term and long-term complications.⁷² It is also important to note that the determination of the extent of the short-term complications may vary according to the method in which the procedure is performed. For instance, if the process was completed using unsterile equipment, no antiseptics, and no antibiotics, the victim may have increased risk of complications.⁷³ Primary infections include staphylococcus infections, urinary tract infections, excessive and uncontrollable pain, and hemorrhaging.⁷⁴ Immediate health risks include severe pain, shock, hemorrhage i.e., excessive bleeding, sepsis, difficulty in passing urine, infections, death, psychological consequences, unintended labia fusion, among others.⁷⁵

For the long-term complications, one of the most common long-term complications is the development of keloid scar tissue over the area that has been cut, and such disfiguring scar can be a source of anxiety and shame to the women who had FGM.⁷⁶ Neuromas may develop because of entrapped nerves within the scar leading to severe pain, especially during intercourse.⁷⁷

70. *Id.*

71. *See, supra* note 5.

72. Klein, et al., *supra* note 56, at 4 (citing Rachana Chibber, et al., *Female Circumcision: Obstetrical and Psychological Sequelae Continues Unabated in the 21st Century*, 24 J. MATERNAL-FETAL & NEONATAL MED. 833, 833-36 (2011)).

73. *Id.*

74. Christos Iavazzo, et al., *Female Genital Mutilation and Infections: A Systematic Review of the Clinical Evidence*, 287 ARCH. GYNECOL. OBSTET. 1137, 1146 (2013).

75. CAMPBELL, ET AL., *supra* note 7, at 39.

76. Nahid Toubia, *Female Circumcision as a Public Health Issue*, 331 N. ENGL. J. MED. 712, 713 (1994).

77. Hanny Lightfoot-Klein, *The Sexual Experience and Marital Adjustment of Genitally Circumcised and Infibulated Females in the Sudan*, 26 J. SEX RES. 375, 378 (1989).

First sexual intercourse, thus, can only take place after gradual and painful dilation of the opening left after mutilation and a study carried out in Sudan states that 15% of women interviewed reported that cutting was necessary before penetration could be achieved.⁷⁸ Other side complications include cysts, haematocolpos, dysuria and recurrent urinary infections, and possible infertility.⁷⁹ Longer-term health risks also include:

- (1) Need for surgery;
- (2) Urinary and menstrual problems;
- (3) Painful sexual intercourse and poor quality of sexual life;
- (4) Infertility;
- (5) Chronic pain;
- (6) Infections (e.g., cysts, abscesses and genital ulcers, chronic pelvic infections, urinary tract infections);
- (7) Keloids (i.e., excessive scar tissue);
- (8) Reproductive tract infections; and
- (9) Psychological consequences, such as fear of sexual intercourse, post-traumatic stress disorder, anxiety, depression.⁸⁰

The WHO reports that the health effects of FGM can include death caused by hemorrhage or infections such as tetanus and shock.⁸¹ A WHO-led study of more than 28,000 pregnant women in six African countries found that those who had undergone FGM had a significantly higher risk of childbirth complications, such as caesarean section and postpartum hemorrhage, than those without FGM.⁸² To add, the death rate for babies during and immediately after birth was higher for mothers with FGM than those without.⁸³

78. *Id.* at 380.

79. Klein, et al., *supra* note 56, at 4.

80. CAMPBELL, ET AL., *supra* note 7, at 39.

81. World Health Organization, Health Risks of Female Genital Mutilation, *available at* http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en (last accessed Jan. 31, 2024).

82. CAMPBELL, ET AL., *supra* note 7, at 38.

83. *Id.*

In terms of mental faculties, posttraumatic stress disorder (PTSD), anxiety, depression, neuroses, and psychoses are common delayed complications that are associated with FGM.⁸⁴ The initial traumatic effects of FGM include fear, helplessness, horror, anxiety, terror, humiliation and feelings of betrayal. Many women who have undergone FGM suffer from ongoing, serious psychological distress, psycho-sexual difficulties and social stigmatism related to the effects of this ritual surgery.⁸⁵

Despite the physical and mental health consequences, many women avoid seeking health support and this is because the effects of FGM are often ignored, dismissed, normalized, or attributed to other causes by other family members and some medical practitioners.⁸⁶

B. Female Genital Mutilation v. Male Circumcision

In debates as to comparisons on male and female genital cutting, the term “female circumcision” is rejected because of the suggested comparability with male circumcision: the first being regarded as an unacceptable violation of women’s human rights, whereas the second being regarded as unproblematic.⁸⁷

The predominant form of male circumcision entails the total or partial removal of the prepuce (the outer skin surrounding the head of the penis), and this form of male circumcision is most comparable to the most common form of female circumcision called *sunna* which involves the removal of the prepuce of the clitoris.⁸⁸ In both of these forms of male and female genital cutting, a part of the genitalia with a dense concentration of neuroreceptors specialized for sexual sensation and expression is removed.⁸⁹

84. Klein, et al., *supra* note 56, at 4.

85. CAMPBELL, ET AL., *supra* note 7, at 40.

86. *Id.*

87. Marjolein van den Brink & Jet Tigchelaar, *Shaping Genitals, Shaping Perceptions: A Frame Analysis of Male and Female Circumcision*, 30 NETH. Q. HUM. RTS. 417, 422 (2012).

88. *Id.* at 424.

89. Debra L. DeLaet, *Framing Male Circumcision as a Human Rights Issue? Contributions to the Debate over the Universality of Human Rights*, 8 J. HUM. RTS. 405, 413 (2009) (citing Steve Scott, *The Anatomy and Physiology of the Human Prepuce*, in MALE CIRCUMCISION: MEDICAL, LEGAL, AND ETHICAL CONSIDERATIONS IN PEDIATRIC PRACTICE 15–17 (George C. Denniston, et al. eds., 1999); & Christopher J. Cold & Kenneth McGrath, *Anatomy and Histology of the Penile and Clitoral Prepuce in Primates: An Evolutionary Perspective of the Specialized Sensory*

Both male circumcision and FGM have more invasive forms. For male circumcision, this includes “peeling the skin of the entire penis, sometimes including the skin of the scrotum and pubis” or a “subincision of the urinary tube from the scrotum to the glans.”⁹⁰ On the other hand, the most extreme form of FGM is infibulation or the “narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the *labia minora* and/or the *labia majora*, with or without excision of the clitoris.”⁹¹

Whether it is male circumcision or FGM, genital cutting can have serious health implications with the more invasive form of genital cutting having the higher risks of serious complications.⁹² On one hand, complications following male circumcision seem dependent primarily on the level of hygiene and professionalism of the practitioner executing it.⁹³ On the other hand, research shows that FGM even carried out by medical professionals still entails health risks and other consequences which are presumably linked to the level of invasiveness.⁹⁴

The rationales for male circumcision (that may overlap) generally fall into three categories:

The *first* category is of a cultural ritualistic nature. It confirms gender roles in adulthood and includes control of sexuality.

The *second* category points at perceived health benefits, such as the prevention of HIV/AIDS infections. Adapting to what is ‘normal’ may come under this heading as well.

The *third* category refers to religious reasons, which are more or less ritualistic. There is no question for Muslims and Jews as to the religious background of the practice. However, there is some debate on whether the obligation to circumcise a child constitutes a core obligation [] or is more of a secondary obligation.⁹⁵

Tissue of the External Genitalia, in MALE CIRCUMCISION: MEDICAL, LEGAL, AND ETHICAL CONSIDERATIONS IN PEDIATRIC PRACTICE 19-24 (George C. Denniston, et al. eds., 1999)).

90. *Id.* at 411-12.

91. *Id.* at 413. See also World Health Organization, *supra* note 15.

92. Van den Brink & Tigchelaar, *supra* note 87, at 425.

93. *Id.*

94. *Id.*

95. *Id.* at 426 (citing Sami A Aldeeb Abu-Sahlieh, *To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision*, 13 MED. & LAW. 575, 581-82 (1994)) (emphases supplied).

FGM is equally based on these rationales, with the first rationale being the most dominant motivation for the practice.⁹⁶ FGM is usually referred to as a “social convention [—] that can only be discontinued by persuading the entire community to abandon the practice.”⁹⁷ In comparison with the third rationale, it is important to note that FGM is often lacking in religious basis, and this notion is what is emphasized most in campaigns seeking to eradicate the practice.⁹⁸

C. Chapter Synthesis

While both male circumcision and FGM are steeped in culture and tradition, and while male circumcision may seem similar as far as definition is concerned, the health consequences of each are drastically different.⁹⁹ There are no known health benefits associated with FGM and no research evidence to suggest that such procedures could reduce the risk of HIV/AIDS acquisition and other heterosexually acquired sexually transmitted infections,¹⁰⁰ unlike in male circumcision.¹⁰¹ Instead, FGM procedures are linked to extensive and in some cases lifelong health problems.¹⁰² Immediate complications include severe pain, shock, hemorrhage, sepsis, urine retention, ulceration of the genital region and injury to adjacent tissue, among others.¹⁰³ WHO also stated in a 2006 report, regarding a study on FGM and obstetric outcomes in six African countries, that deliveries of women who underwent FGM were significantly more likely to be complicated by Caesarean section, postpartum hemorrhage, episiotomy, extended maternal hospital stay, resuscitation of the

96. *Id.*

97. *Id.*

98. Van den Brink & Tigchelaar, *supra* note 87, at 426.

99. WORLD HEALTH ORGANIZATION & JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS, MALE CIRCUMCISION: GLOBAL TRENDS AND DETERMINANTS OF PREVALENCE, SAFETY AND ACCEPTABILITY 27 (2007) [hereinafter WHO & UNAIDS] (citing Carla Machlout Obermeyer, *The Consequences of Female Circumcision for Health and Sexuality: An Update on the Evidence*, 7 CULTURE HEALTH & SEXUALITY 443 (2005)).

100. *Id.* at 27.

101. See Aaron A. R. Tobian & Ronald H. Gray, *The Medical Benefits of Male Circumcision*, 306 J. AM. MED. ASSOC. 1479, 1480 (2011).

102. WHO & UNAIDS, *supra* note 99 (citing WORLD HEALTH ORGANIZATION, *supra* note 66, at 11).

103. *Id.*

infant and hospital inpatient peri-natal death, than deliveries to women who have not had FGM.¹⁰⁴

Apart from these complications, FGM is the manifestation of deep-rooted gender inequality that assigns women an inferior position in societies and is unambiguously linked to a reduction in women's sexual desire and an irreversible loss of capability for a type of sexual functioning that many women value highly.¹⁰⁵

It is for these reasons that international bodies such as WHO, the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), and other organizations consider FGM to be universally unacceptable, as it is an infringement on the physical and psychosexual integrity of women and girls and is a form of violence against them.¹⁰⁶

III. RIGHTS OF THE CHILD IN RELATION TO FGM

Under the CRC, a child is defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."¹⁰⁷ In Philippine law, children are defined as "person[s] below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation[,] or discrimination because of physical or mental disability or condition."¹⁰⁸ Since FGM performed by indigenous Muslim groups in Mindanao mainly affects women under the age of 18, the issue is fundamentally one of protection of the rights of the child.¹⁰⁹ In this section, various sources of international law will be demonstrated as to show how FGM violates the child's rights to survival and development, as well as the child's right to protection. Subsequently, a discussion on current Philippine laws linked with the objectives of these international instruments will be demonstrated to assess whether the practice of FGM is within the coverage of these laws.

104. WHO Study Group on Female Genital Mutilation and Obstetric Outcome, et al., *Female Genital Mutilation and Obstetric Outcomes: WHO Collaborative Prospective Study in Six African Countries*, 367 LANCET 1835, 1839 (2006).

105. WHO & UNAIDS, *supra* note 99.

106. *Id.*

107. CRC, *supra* note 36, art 1.

108. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 3.

109. *See, supra* note 5.

A. Analysis of International Law

Since this study is centered on a child rights perspective with the CRC as its core reference, it is only proper to emphasize that the CRC is expected to be implemented by all branches of government, including anyone who makes decisions that affect the lives and rights of children, in accordance with its four guiding principles. These principles are the right to non-discrimination, the principle of the best interests of the child, the right to life, survival and development, and the right to participation.¹¹⁰ Simply put, these principles require that any decision, law, court judgment, or policy, considering children, will protect and promote their right to life, survival, and development; will regard a child's best interests as the primary consideration when balancing competing or conflicting rights and interests of other parties (such as parents, other adults, and the public); and will not discriminate against children.¹¹¹ In addition, these principles require that a decision is only taken after a child is given the opportunity to meaningfully participate in the decision-making process and that the child also has the right to participate in the implementation process if found necessary.¹¹²

1. Life, Survival, and Developmental Rights

Article 6 (1) of the CRC, as one of the main guiding principles of the Convention, provides that, "States [p]arties recognize that every child has the inherent right to life."¹¹³ This right to life is at the core of international human rights law and is considered as "basic to all human rights."¹¹⁴ In *Villagran-Morales vs. Guatemala*, the Inter-American Court of Human Rights emphasized that failing to protect the right to life makes the realization of all

110. Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6)*, ¶ 12, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003) [hereinafter CRC, *General Comment No. 5*].

111. Noam Peleg, *International Children's Rights Law: General Principles*, in INTERNATIONAL HUMAN RIGHTS OF CHILDREN 140 (Ursula Kilkelly & Ton Liefwaard eds., 2019).

112. *Id.*

113. CRC, *supra* note 36, art. 6, ¶ 1.

114. U.N. Human Rights Committee, *CCPR General Comment 14: Article 6 (Right to Life) Nuclear Weapons and the Rights to Life*, ¶ 1, U.N. Doc. HRI/GEN/1/Rev. at 18 (Nov. 9, 1984).

other human rights “lack meaning.”¹¹⁵ Article 6 (1), however, is more than a negative obligation as it also obligates states parties to take positive actions, including amending legislation, implementing policies, and providing adequate public services.¹¹⁶

The provision further goes on to state that, “[s]tates parties shall ensure to the maximum extent possible the survival and development of the child.”¹¹⁷ In CRC General Comment No. 5, the Committee further explains that “development” in this provision must be interpreted in its broadest sense as a holistic concept, “embracing the child’s physical, mental, spiritual, moral, psychological and social development.”¹¹⁸ This right to development is a key right in enabling the child to have as many options as possible in living her life, enabling her to be aware of the range of available options and to increase her choices and freedoms.¹¹⁹

In relation to the context of FGM, it is important to reiterate that girl-children, who are made to undergo such, are deprived of the freedom to choose, whether to take part in an irreversible procedure that mainly affects their health and anatomy. FGM is a form of child abuse and violence that negatively impacts children’s survival and their “physical, mental, spiritual, moral[,] and social development.”¹²⁰ In CRC General Comment No. 13, short and long-term health consequences resulting from violence against children include

fatal injury; non-fatal injury (possibly leading to disability); physical health problems (including failure to thrive, later lung, heart and liver disease and sexually transmitted infections); cognitive impairment (including impaired school and work performance); psychological and emotional consequences (such as feelings of rejection and abandonment, impaired attachment, trauma, fear, anxiety, insecurity and shattered self-esteem); mental health problems (such as anxiety and depressive disorders, hallucinations, memory

115. Villagran-Morales (“Street Children”) v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 63, Merits, Judgment, ¶ 144 (Nov. 19, 1999).

116. Peleg, *supra* note 111, at 144.

117. CRC, *supra* note 36, art. 6, ¶ 1.

118. CRC, *General Comment No. 5*, *supra* note 110.

119. Peleg, *supra* note 111, at 147.

120. *See* CRC, *supra* note 36, art. 27, ¶ 1.

disturbances and suicide attempts); health-risk behavior] (such as substance abuse and early initiation of sexual behavior)].¹²¹

Since FGM can result in irreparable and severe physical and mental harm, and because it has been observed to produce no health benefit whatsoever, as it is a procedure done without any medical necessity, the right to health applies to victims of FGM because this practice has the effect of undermining female physical integrity.¹²² This right is initially found under Article 25 of the Universal Declaration of Human Rights (UDHR) which states, “[e]veryone has the right to a standard of living adequate for the health and well-being of himself [or herself].”¹²³

As FGM poses a health risk, the International Covenant on Economic, Social and Cultural Rights (ICESCR) would apply to victims and girl-children who are to be subjected to FGM. Article 12 (1) states that, “[s]tates [p]arties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹²⁴ In similar vein, the Article 24 (1) of the CRC reemphasizes the right of the child to the enjoyment of the highest attainable standard of health and supplements it with the right to “facilities for the treatment of illness and rehabilitation of health.”¹²⁵

However, scholars would argue that reference to “attainable” has been interpreted to mean that the right to health as herein stated is not an absolute human right and that its realization depends on the availability of current state resources.¹²⁶ The conflict would arise when the right to health of these children participating in FGM activities are conflicted with the state’s competing priorities which would demand proper allocation of scarce resources to meet its obligations to provide health care for its constituents. This would be a problem if a country with FGM prevalence might cynically consider that FGM represents a cultural value; thus, does not attract spending

121. Committee on the Rights of the Child, *General Comment No. 13 (2011): Article 19: The Right of the Child to Freedom from All Forms of Violence*, ¶ 15, U.N. Doc. CRC/C/GC/13 (Feb. 17, 2011) [hereinafter CRC, *General Comment No. 13*].

122. KANDALA & KOMBA, *supra* note 2, at 190.

123. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 25, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948) [hereinafter UDHR].

124. International Covenant on Economic, Social and Cultural Rights art. 12, ¶ 1, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

125. CRC, *supra* note 36, art. 24, ¶ 1.

126. JONATHAN WOLFF, *THE HUMAN RIGHT TO HEALTH* 4 (2012).

and properly allocating resources for the victims.¹²⁷ However, the phrase “right to health” should be taken to mean the right that individuals should not be exposed to “standard threats to health.”¹²⁸ To reiterate, the physical harm resulting from the practice of FGM can erode the health and well-being of victims and ultimately endanger the lives of the girl-children.¹²⁹ Thus, protection from “standard threats” as in the context of FGM, would refer to the notion that the state must protect the victims and make FGM interventions unlawful and liable civil suits and criminal proceedings.¹³⁰

It must also be noted that FGM, being a harmful traditional practice undermining girl-children’s right to health, is sought to be eliminated by the CRC. In Article 24 (3) of the Convention, states parties are obligated to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.¹³¹ While Article 24 (3) makes no specific reference to FGM, the Committee on Rights of the Child, together with the Committee on the Elimination of Discrimination against Women have interpreted the CRC and the CEDAW to prohibit FGM, as one of the traditional practices that discriminate against and harm girl-children, in Joint General Recommendation No. 31 of the CEDAW/General Comment No. 18 of the CRC on harmful practices.¹³²

The Joint General Recommendation notes that harmful practices, such as FGM, are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles.¹³³ Gender and age, among other things, have often been justified by invoking sociocultural and religious customs and values, in addition to misconceptions relating to some disadvantaged groups of women and children.¹³⁴ Harmful practices are, therefore, “persistent practices and forms of behavior that are

127. KANDALA & KOMBA, *supra* note 2, at 191.

128. HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY 17, 29-34 (1996).

129. ANIKA RAHMAN & NAHID TOUBIA, FEMALE GENITAL MUTILATION: A GUIDE TO LAWS AND POLICIES WORLDWIDE 8-9 (2000).

130. KANDALA & KOMBA, *supra* note 2, at 191.

131. CRC, *supra* note 34, art. 24, ¶ 3.

132. Committee on the Elimination of Discrimination Against Women & Committee on the Rights of the Child, *Joint General Recommendation No. 31*, at 6-7, U.N. Doc. CEDAW/C/GC/31/CRC/C/GC/18 (Nov. 14, 2014) [hereinafter CEDAW & CRC, *Joint General Recommendation No. 31*].

133. *Id.* ¶ 6.

134. *Id.* ¶ 7.

grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.”¹³⁵ To be regarded as a “harmful practice,” the CEDAW and the CRC present the following criteria:

- (1) They constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions;
- (2) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic[,] and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;
- (3) They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age[,] and other intersecting factors;
- (4) They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free[,] and informed consent.¹³⁶

Both Committees note that since FGM is performed, more often than not, as a requirement for marriage and is believed to be an effective method of controlling the sexuality of women and girls,¹³⁷ then such practice which causes immediate and/or long-term health consequences without medical justification is therefore considered as a “harmful practice” grounded in discrimination based on sex.¹³⁸

While it is true that a girl child belonging to indigenous groups, in accordance with Article 30 of the CRC, is not to be denied the right to enjoy her own culture,¹³⁹ the Committee explains that such cultural practices must be exercised in accordance with other provisions of the Convention and under

135. *Id.* ¶ 15.

136. *Id.* ¶ 16.

137. *Id.* ¶ 19.

138. CEDAW & CRC, *Joint General Recommendation No. 31*, *supra* note 132, ¶ 7.

139. CRC, *supra* note 36, art. 30.

no circumstances may be justified if deemed prejudicial to the child's dignity, health and development.¹⁴⁰

In order to eradicate traditional harmful practices such as FGM, the CRC Committee continues to push governments, including religious and community leaders, to take an active role in supporting efforts to eliminate the practice of FGM.¹⁴¹ Besides drafting specific legislation to prohibit the practice of FGM, the Committee also encourages that public campaigns involving all sectors of society, including traditional leaders, to be developed and pursued with a view to changing attitudes in favor of the rights of the child,¹⁴² and to address gender roles and stereotypes that contribute to such harmful practices.¹⁴³

2. Protection Rights

Girl-children subjected to FGM traditions have the right to be protected from such practice since it is a form of gender-based discrimination and a form of degrading and inhumane treatment which is prejudicial to the life of the child.

Article 2 of the UDHR provides that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, and this includes discrimination as to sex.¹⁴⁴ In Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") defines "discrimination against women" 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

140. CRC, *General Comment No. 11: Indigenous Children and Their Rights Under the Convention*, ¶ 22, U.N. Doc. CRC/C/GC/11 (2009) [hereinafter CRC, *General Comment No. 11*] (citing UNICEF INNOCENTI RESEARCH CENTRE, *ENSURING THE RIGHTS OF INDIGENOUS CHILDREN* 7 (2003)).

141. Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Sudan*, ¶ 13, U.N. Doc. CRC/C/15/Add.10 (Oct. 18, 1993).

142. Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Togo*, ¶ 48, U.N. Doc. CRC/C/15/Add.83 (Oct. 21, 1997).

143. CRC, *General Comment No. 11*, *supra* note 140.

144. UDHR, *supra* note 123, art. 2.

of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil[,] or any other field.¹⁴⁵

Since the practice of FGM is rooted in cultural traditions, and a girl who has not undergone FGM is prone to face stigma, discrimination, and accusations about perceived promiscuity,¹⁴⁶ the shame and dishonor immediately imputed against them for not undergoing such procedure is discriminatory in nature. The effect of the practice is to fully deny women the enjoyment of their human rights and this perpetuates the discriminatory notion that women are condemned to play a subordinate role in society, which is to “serve” their male counterparts.¹⁴⁷ Girl-children are exposed to male pressure to undergo it to gain social acceptability,¹⁴⁸ since the practice is often a pre-requisite to marriages like in the Islamic Muslim groups in the Southern Philippines. Hence, discrimination resulting from non-compliance to the practice is heavily prejudicial to young women who freely choose to abandon the existing norm.

In relation to the child’s right to life, survival, and development, the CRC highlights the child’s right to be protected from all forms of violence and ill-treatment, and this is indicated in Articles 19 and 37 (a) of the Convention. In stressing the right to be free from all forms of violence, Article 19 (1) of the CRC states that states parties are to take all appropriate measures “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment[,] or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”¹⁴⁹ In legally analyzing Article 19 (1), the Committee in CRC General Comment No. 13, has maintained the position that *all* forms of violence against children are unacceptable.¹⁵⁰ They highlight that *frequency*, severity of harm, and *intent to harm* are not prerequisites for the definition of violence.¹⁵¹ As in common parlance, the term “violence” against children is

145. Convention on the Elimination of All Forms of Discrimination Against Women, art. 1, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW] (emphasis supplied).

146. CAMPBELL, ET AL., *supra* note 7, at 35.

147. KANDALA & KOMBA, *supra* note 2, at 191.

148. *Id.*

149. CRC, *supra* note 36, art. 19, ¶ 1.

150. CRC, *General Comment No. 13*, *supra* note 121, ¶ 17.

151. *Id.*

often understood to mean only “physical” harm and/or “intentional” harm.¹⁵² However, the CRC emphasizes that the choice of the term “violence” under the Convention must not be used in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm, such as mental and psychological harm.¹⁵³ In the same General Comment, the Committee goes on to classify FGM as one of the forms of violence contemplated under Article 19 (1) which is classified under harmful practices.¹⁵⁴ They state that harmful practices include, but are not limited to:

- (1) Corporal punishment and other cruel or degrading forms of punishment;
- (2) Female genital mutilation;
- (3) Amputations, binding, scarring, burning[,] and branding;
- (4) Violent and degrading initiation rites; force-feeding of girls; fattening; virginity testing (inspecting girls’ genitalia);
- (5) Forced marriage and early marriage;
- (6) “[Honor]” crimes; “retribution” acts of violence (where disputes between different groups are taken out on children of the parties involved); dowry-related death and violence;
- (7) Accusations of “witchcraft” and related harmful practices such as “exorcism”;
- (8) Uvulectomy and teeth extraction.¹⁵⁵

Article 19 (1) which emphasizes the right of children to be protected from all forms of violence is supplemented by Article 37 (a) of the same Convention which states that, “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”¹⁵⁶ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) contributes to this the legal framework for the protection and promotion of girl-children’s rights which are violated by the practice of FGM. Although it can be inferred that FGM practices are not within the ambit of what is classified as “torture” under the Convention, the Human Rights Committee appreciated FGM as amounting to “cruel, inhumane, or

152. *Id.* ¶ 4.

153. *Id.*

154. *Id.* ¶ 29.

155. *Id.* (emphasis supplied).

156. CRC, *supra* note 36, art. 37 (a).

degrading treatment,” or “ill-treatment.” To delineate, the CAT defines “torture” as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason[,] based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁵⁷

This provision is followed by Article 2 which obligates each state party to take effective measures to prevent acts of torture in any territory under its jurisdiction.¹⁵⁸

From the mentioned provisions, it can be inferred that FGM cannot be qualified as “torture” as it is not intentionally inflicted on girl-children to impose physical punishment or to extract a confession of any kind. Article 16 of the same Convention, however, points out that, “[e]ach [s]tate [p]arty shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture”¹⁵⁹ when such acts are committed with the “acquiescence of a public official or other person acting in an official capacity.”¹⁶⁰ This means that FGM is a form of cruel, inhuman, or degrading treatment, which is under the ambit of Article 2, which obligates states parties to take effective measures so as to prevent such acts within any territory under its jurisdiction.

In General Comment No. 2 on CAT, the Committee Against Torture lists FGM as a form of ill-treatment and gender-based violence which is sought to be prevented by Article 2 of CAT.¹⁶¹ The Committee clarifies that where State authorities or others acting in an official capacity or under color of law, know or have reasonable grounds to believe that acts of ill-treatment are being committed by non-State officials or private actors and they fail to exercise due

157. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

158. *Id.* art. 2.

159. *Id.* art. 16.

160. *Id.*

161. Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, ¶ 18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

diligence to prevent such groups, the State bears responsibility for acquiescing in such impermissible acts.¹⁶²

These provisions from the CEDAW and CAT regarding girl-children's non-discrimination and freedom from ill-treatment goes hand-in-hand with the provisions of the International Covenant on Civil and Political Rights (ICCPR), specifically Article 24 stating that "[e]very child shall have, without any discrimination ... the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State,"¹⁶³ and Article 7 which states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹⁶⁴

The obligation of the State to prevent FGM as a form of ill-treatment, however, does not stop upon legislation. Rather, it is a continuous obligation on the part of the state to implement such legislation to the best of its capacity to protect the rights of the child. In the case of *Diene Kaba vs. Canada*,¹⁶⁵ the Human Rights Committee stated that although there is a Guinea law prohibiting female genital mutilation, such legal prohibition is not complied with,¹⁶⁶ and therefore, the child's deportation back to Guinea would constitute a violation of Article 7 and Article 24 of the ICCPR if read in conjunction.¹⁶⁷ From this premise, it was shown that an institutionalized prohibition on female genital mutilation does not remove the threat of FGM among young women if such prohibition is not faithfully complied with. Hence, it is reasonable to infer that those countries without laws implementing the absolute prohibition on FGM run the heavier risk of widely exposing children within its jurisdiction to such practices.

B. Analysis of Domestic Law

To emphasize the binding effect of these international instruments, it is important to mention how international law becomes part of domestic law

162. *Id.*

163. International Covenant on Civil and Political Rights, art. 24, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

164. *Id.* art. 7.

165. Human Rights Committee, *Views of the Human Rights Committee Under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (Ninety-Eighth Session), Concerning Communications No. 1463/2006*, ¶ 10.2, U.N. Doc. CCPR/C/98/D/1465/2006 (May 21, 2010).

166. *Id.*

167. *Id.* ¶ 10.3.

through the doctrines of *incorporation* and *transformation*. According to the constitutionalist Joaquin Bernas, the Philippines in the case of treaties follows the doctrine of transformation, wherein international law becomes part of the law of the land when concurred in by the Senate, in accordance with Article VII, Section 21 of the Philippine Constitution, which sets down the mechanism for transforming a treaty into binding municipal law.¹⁶⁸ The provision states that “[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.”¹⁶⁹ With regard to customary law and treaties which have become customary law, Bernas explains that Article II, Section 2, allows the Philippines to incorporate international law to domestic law¹⁷⁰ when it stated that the Philippines “adopts the generally accepted principles of international law as part of the law of the land.”¹⁷¹ Through these doctrines, international law can therefore be used by Philippine courts to settle disputes, determine obligations, and uphold protected rights in much the same way they would use domestically legislated laws passed by Congress.

In the Philippines, various domestic laws were promulgated to protect girl-children from violence, such as the Republic Act No. 9710, otherwise known as the Magna Carta of Women,¹⁷² and Republic Act No. 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.¹⁷³

1. The Magna Carta of Women

The Magna Carta of Women is a comprehensive women’s human rights law that seeks to eliminate discrimination against women by recognizing, respecting, protecting, fulfilling, and promoting the rights of Filipino women, especially those in the marginalized sector.¹⁷⁴ This instrument is designed to

168. JOAQUIN G. BERNAS, S.J., INTRODUCTION TO PUBLIC INTERNATIONAL LAW 60 (2009).

169. PHIL. CONST. art. VII, § 21.

170. BERNAS, *supra* note 168, at 61.

171. PHIL. CONST. art. II, § 2.

172. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009).

173. *See generally* Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

174. Philippine Commission on Women, Approving and Adopting the Implementing Rules and Regulations of Republic Act No. 9710 Otherwise Known as the

condemn discrimination against women in all its forms and it pursues the policy of eliminating discrimination against women in keeping with the CEDAW and other international instruments consistent with Philippine law.¹⁷⁵ One of the objectives of the law is to eliminate violence against women, which is considered as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, whether ... whether occurring in public or private life.”¹⁷⁶ Violence against women includes

[p]hysical, sexual, psychological, and economic violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, *and other traditional practices harmful to women*, non-spousal violence, and violence related to exploitation.¹⁷⁷

The law puts the state as the primary duty-bearer who has the responsibility to take measures and to establish mechanisms in order to promote the integrated implementation of the Magna Carta to effectively stop discrimination against and advance the rights of women.¹⁷⁸ Included in this responsibility is to protect girl-children from all forms of abuse and exploitation.¹⁷⁹ As the primary duty-bearer, the Philippine government is mandated to fulfill the duties prescribed in the Magna Carta through the development and implementation of laws, policies, regulatory instruments, administrative guidelines, and other appropriate measures, including temporary special measures.¹⁸⁰ Likewise, the government is mandated to establish mechanisms to promote the coherent and integrated implementation of the Magna Carta of women and other related laws and policies to effectively stop discrimination against Filipino women.¹⁸¹ Since the Magna Carta of Women guarantees the rights of girl-children against discrimination and traditional practices harmful to them, then the Philippine government is

“Magna Carta of Women”, Board Resolution No.1, Series of 2010 [Board Reso. No. 1, s. 2010], whereas cl. para. 1 (Mar. 30, 2010).

175. The Magna Carta of Women, § 2, ¶ 2.

176. *Id.* § 4 (k).

177. *Id.* § 4 (k) (1) (emphasis supplied).

178. *Id.* § 5.

179. *Id.* § 32 (b).

180. Philippine Statistics Authority, Q & A: Magna Carta of Women (Republic Act No. 9710), available at <https://web.archive.org/web/20230329221101/https://psa.gov.ph/content/q-magna-carta-women-republic-act-no-9710>.

181. *Id.*

bound to comply and create a law tending to eradicate FGM. The question, therefore, is whether there is a law protecting girl-children from FGM?

2. The Special Protection of Children Against Abuse, Exploitation and Discrimination Act

Before the effectivity of the Magna Carta of Women, Republic Act No. 7610 or the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act” was already passed back in 1992.¹⁸² In its Declaration of State Policy and Principles, Section 2 of R.A. 7610 provides that

[i]t is hereby declared to be the policy of the State to provide special protection to children from all f[or]ms of abuse, neglect, cruelty[,] exploitation and discrimination[,] and other conditions, prejudicial [to] their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation[,] and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher[,] or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation[,] and discrimination[,] or when such acts against the child are committed by the said parent, guardian, teacher[,] or person having care and custody of the same.

...

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, *consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child*. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.¹⁸³

Not only did Republic Act No. 7610 acknowledge its compliance with the CRC in promulgating this law, but a reading of this provision would reasonably infer that the purpose of the law was directly in line with Article 19 (1) of the CRC, which had almost the same wording as that in Section 2 of Republic Act No. 7610. Article 19 (1) of the CRC provides that

States [p]arties shall take all appropriate legislative, administrative, social[,] and educational measures to protect the child from *all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or*

182. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 36.

183. *Id.* § 2 (emphasis supplied).

*exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*¹⁸⁴

A careful analysis of the wording between these two provisions will lead to the conclusion that Republic Act No. 7610 intentionally omitted the use of “mental violence,” to limit the scope of the law. In Section 3 of Republic Act No. 7610, the law limits the definition of “child abuse” to refer to maltreatment of the child, whether habitual or not, which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse[,] and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades[,] or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.¹⁸⁵

Nowhere in the definition is harmful traditional practices nor FGM is found. From the comparison of these premises alone, it can be reasonably inferred that the *not all kinds of violence against children* are within the ambit of Republic Act No. 7610.

In his dissenting opinion in the 2017 case of *Quimvel vs. People*, Justice Caguioa explained that “[w]hile the Senate, in its deliberations, would appear to equivocate in the protection of children against all or specific types of abuse, it cannot be escaped that the overriding impetus for the passage of the law is based on a certain recurring theme.”¹⁸⁶ Senator Rasul, as one of Republic Act No. 7610’s sponsors, stated:

But undoubtedly, the most disturbing, to say the least, is the persistent report of children being sexually exploited and molested for purely material gains. Children with ages ranging from three to 18 years are used and abused. We hear and read stories of rape, manhandling[,] and sexual molestation in the hands of cruel sexual perverts, local and foreigners alike. As of October 1990,

184. CRC, *supra* note 36, art. 19 (1) (emphasis supplied).

185. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 3 (b).

186. *Quimvel v. People*, 808 Phil. 889, 979 (2017) (J. Caguioa, dissenting opinion).

records show that 50 cases of physical abuse were reported, with the ratio of six females to four male.

...

No less than the Supreme Court, in the recent case of *People v[s]. Ritter*, held that we lack criminal laws which will adequately protect street[]children from exploitation by pedophiles.¹⁸⁷

The case referred to by Senator Rasul, *People vs. Ritter*,¹⁸⁸ is a 1991 case which involved Ritter, an Austrian national who was charged with rape with homicide for having caused the death of Rosario, who is a street child, by inserting a foreign object into her vagina during the course of performing sexual acts with her. Ritter was acquitted based on reasonable doubt on account of the failure of the prosecution to: (1) establish the age of Rosario to be within the ambit of statutory rape, and (2) show force or intimidation as an essential element of rape in the face of the finding that Rosario was a child prostitute who willingly engaged in sexual acts with the accused.¹⁸⁹ The Court in this case made the following pronouncements, stating:

[T]he Court deplors the lack of criminal laws[,] which will adequately protect street children from exploitation by pedophiles, pimps, and, perhaps, their own parents or guardians who profit from the sale of young bodies. The provisions on statutory rape and other related offenses were never intended for the relatively recent influx of pedophiles taking advantage of rampant poverty among the forgotten segments of our society. Newspaper and magazine articles, media exposes, college dissertations, and other studies deal at length with this serious social problem but pedophiles like the appellant will continue to enter the Philippines and foreign publications catering to them will continue to advertise the availability of Filipino street children[,] unless the Government acts and acts soon. We have to acquit the appellant because the Bill of Rights commands us to do so. We, however, express the Court's concern about the problem of street children and the evils committed against them. Something must be done about it.¹⁹⁰

The fact that the protection of street children from exploitation is the thrust of Republic Act No. 7610 is further bolstered by Senator Lina's

187. *Id.* at 979-80 (citing S. REC., Vol 3, No. 104, at 1204, 8th Cong, 4th Reg. Sess.. (Mar. 19, 1991)).

188. *People v. Ritter*, G.R. No. 88582, 194 SCRA 690 (1991).

189. *Id.* at 690.

190. *Id.* at 723.

elucidation on the application of Section 6 following question from Senator Enrile,¹⁹¹ to wit

Senator Enrile: Pareho silang hubad na hubad at naliligo. Walang ginagawa. Walang touching po, basta naliligo lamang. Walang akapan, walang touching, naliligo lamang sila. Ano po ang ibig sabihin noon? Hindi po ba puwedeng sabihin, kagaya ng standard na ginamit natin, na under circumstances which would lead a reasonable person to believe that the child is about to be sexually exploited, or abused.

Senator Lina: Kung mayroon pong balangkas or amendment to cover that situation, tatanggapin ng Representation na ito. Baka ang sitwasyong iyon ay hindi na ma-cover nito sapagkat, at the back of our minds, Mr. President, *ang sitwasyong talagang gusto nating ma-address ay maparusahan iyong tinatawag na “pedoph[i]lia” or prey on our children.* Hindi sila makakasuhan sapagkat their activities are undertaken or are committed in the privacy of homes, inns, hotels, motels and similar establishments.¹⁹²

In addition, the Senate deliberations on Republic Act No. 7610 is replete with similar disquisitions tending to show the intendment to make the law applicable to cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography and other types of abuses; the passage of the law was the Senate’s act of heeding the call of the Supreme Court to afford protection to a special class of children and not to cover any and all crimes against children that are already covered by an existing Philippine penal law.¹⁹³

The structure of Republic Act No. 7610 confirms and demonstrates this intended application. As Justice Caguioa points out

Article I lays the preliminaries including state policy and defines the terms used in the statute. Article II mandates the creation of a comprehensive program to protect children from sexual abuse, exploitation, and discrimination — and thereafter enumerated the headings of subsequent articles that grouped prohibited acts according to the classes of abuse that RA 7610 penalizes. Article III penalizes child prostitution and other sexual abuse; Article IV, child trafficking; Article V, obscene publications and indecent shows; Article VI, other acts of abuse; and Article VII for sanctions for establishments wherein these prohibited acts are promoted, facilitated or

191. *Quimvel*, 808 Phil. at 981 (J. Caguioa, dissenting opinion) (citing S. REC, Vol. 1, No. 7, at 264-65, 8th Cong., 5th Reg. Sess. (Aug. 7, 1991) (emphasis supplied)).

192. *Id.* (emphasis supplied)

193. *Id.* at 982.

conducted. The remaining articles cover circumstances which gravely threaten or endanger the survival and normal development of children.¹⁹⁴

From these premises, specifically in the language of the law or in the legislative deliberations, it can be concluded that Republic Act No. 7610 does not subsume all instances of abuse against children, including FGM.

Even Section 10 of Republic Act No. 7610 which provides for “Other Acts of Neglect, Abuse, Cruelty or Exploitation[,] and Other Conditions Prejudicial to the Child’s Development” does not provide for a classification to which harmful traditional practices, such as FGM, may be accounted to as being a crime.¹⁹⁵ It may be couched in general terms, but it does not really address the practice of FGM. For instance, the imputation of direct liability by the said provision is unclear as regards to medical practitioners or any person not related to the minor who knowingly performs FGM on the minor child, even with the consent of the minor’s ascendants. Section 10 is composed of subsections which specifically illustrate certain situations which Republic Act No. 7610 contemplates as child abuse. This includes a specific subsection which aims to impute liability unto any person who shall induce, deliver, or offer a minor to anyone which are prohibited by Republic Act No. 7610. Subsection (c) of Section 10 states –

[a]ny person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor[,] as provided in the preceding paragraph[,] shall suffer the penalty of *prision mayor*[,] in its medium period[,] and a fine of not less than Forty thousand pesos (P40,000)[.] Provided, however, That should the perpetrator be an ascendant, stepparent[,] or guardian of the minor, the penalty to be imposed shall be *prision mayor*[,] in its maximum period, a fine of not less than Fifty thousand pesos (P50,000), and the loss of parental authority over the minor.¹⁹⁶

Although this provision makes reference to prohibited acts under Republic Act No. 7610, the said law does not actually delineate the practice of harming the female genitalia for socio-cultural reasons as that of child abuse. Without this specific imputation, medical practitioners or any person who knowingly performs FGM unto a minor child even with the ascendants’ consent cannot be clearly attributed with direct liability and the respective proper penalty.

194. *Id.* at 982-83.

195. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 10.

196. *Id.* § 10 (c).

Aside from providing specific acts that may constitute as “child abuse[,]” which excludes acts constituting harmful traditional practices, the purpose of Section 10 was to demonstrate how the Revised Penal Code (RPC)¹⁹⁷ was to operate side by side with Republic Act No. 7610.¹⁹⁸ Section 10 (a) of Republic Act No. 7610, as couched in general terms, provides that

[a]ny person shall commit *any other acts of child abuse, cruelty[,] or exploitation[,]* or to be responsible for other conditions prejudicial to the child’s development including those covered by Article 59 of Presidential Decree No. 603, as amended, *but not covered by the Revised Penal Code*, as amended, shall suffer the penalty of prison mayor in its minimum period.¹⁹⁹

This is confirmed by Senator Lima in his sponsorship speech of Republic Act No. 7610,²⁰⁰ thus,

Senator Lina: Senate Bill No. 1209, Mr. President, is intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. *It is intended to complement provisions of the Revised Penal Code where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children[,] and use of the young in pornographic activities.*

These are the three areas of concern which are specifically included in the United Nations Convention o[n] the Rights of the Child. As a signatory to this Convention, to which the Senate concurred in 1990, our country is required to pass measures which protect the child against these forms of abuse.

...

Mr. President, this bill on providing higher penalties for abusers and exploiters, setting up legal presumptions to facilitate prosecution of perpetrators of abuse, and *complementing the existing penal provisions* of crimes[,] which involve children below 18 years of age[,] is a part of a national program for protection of children.²⁰¹

Although there is no exact provision in Republic Act No.7610 which prohibits FGM in indigenous communities, the law still acknowledges the

197. An Act Revising the Penal Code and Other Penal Laws [REV. PENAL CODE], Act No. 3815 (1932) (as amended).

198. *Quimvel*, 808 Phil. at 995, (J. Caguioa, dissenting opinion).

199. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 10 (a).

200. *Quimvel*, 808 Phil. at 996, (J. Caguioa, dissenting opinion).

201. *Id.* (citing S. REC., Vol. 4, No. 111, at .191-93, 8th Cong., 4th Reg. Sess. (Apr. 29, 1991) (emphases supplied).

rights of indigenous communities' customs and traditions. Section 17, under Article IX entitled "Children of Indigenous Cultural Communities," states that, "[i]n addition to the rights guaranteed to children under [Republic Act No.7610] and other existing laws, children of indigenous cultural communities shall be entitled to protection, survival[,] and development *consistent with the customs and traditions of their respective communities.*"²⁰² Putting this provision in the context of the intendment of the Republic Act No.7610, this would mean that children of indigenous communities are also protected by the provisions of the law, but only to the extent of its scope, taking into consideration the customs and traditions of their respective communities. Although this article provides for provisions with regard to education, health and nutrition, non-discrimination, and participation of the children in indigenous cultural communities,²⁰³ no provision really accentuates on the prohibition of harmful traditional practices, which should have included FGM as a gender-based violence against girl-children.

3. The Revised Penal Code

On this note, it is also important to highlight that even the RPC does not criminalize the practice of FGM done in the context of Muslim practice. The closest provision that may criminalize FGM is Article 262 of the RPC on mutilation.²⁰⁴ Article 262 of the RPC states that, "[t]he penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed upon any person who shall intentionally mutilate another by depriving him [or her], either partially or partially, of some essential organ of reproduction."²⁰⁵ The elements for mutilation under this provision are that: (a) there is a castration, that is, mutilation of organs necessary for generation, and (b) the mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction.²⁰⁶ From the elements provided, the practice of FGM by indigenous Muslim groups may not be prosecuted under the RPC because of the fact that, although there is castration of the organs necessary for generation, the purpose is not carried out for the purpose of deprivation of an essential organ for reproduction.²⁰⁷ In other words, there is no criminal intent

202. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 17 (emphasis supplied).

203. *Id.* art. IX.

204. Magtoto, *supra* note 8.

205. REVISED PENAL CODE, art. 262.

206. LUIS B. REYES, THE REVISED PENAL CODE 534 (18th ed. 2012).

207. Magtoto, *supra* note 8, at 1174.

to be punished by the RPC in the practice of FGM by indigenous Muslim groups.

4. Prohibition of Child Marriage Law

The already existing Philippine laws, as presented above, are all catered to address the violence that Filipino children face at present day in our society. However, not all kinds of violence are addressed by these laws. That is why more laws are created to target separate offenses that are detrimental to the growth and development of a child. For example, Republic Act No.9262 or the Anti-Violence Against Women and Their Children Act of 2004 was created to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.²⁰⁸ If the general provisions of Republic Act No.7610 was sufficient to protect children from physical, sexual, psychological, and economic abuse, then the creation of Republic Act No.9262 would not be necessary. Another example would be the Anti-Hazing Act of 2018, which was further developed to prohibit hazing and to regulate other forms of initiation rites of fraternities, sororities, and other organizations.²⁰⁹ The fact that FGM is an offense surrounded by peculiar circumstances which constitutes as a harmful traditional practice, and a gender-based violence, are more reasons why a separate legislation should be established to make FGM a separate offense from all existing domestic laws.

A perfect example of a separate legislation which addresses a harmful traditional practice that is existent in the Philippines is the newly promulgated law on Child, Early, and Forced Marriage (CEFM) or Republic Act No. 11596, otherwise known as An Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof.²¹⁰ In the CRC General Comment No.13, the Convention points out that child, early and forced

208. *See generally* An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262, § 2 (2004).

209. *See generally* An Act Prohibiting Hazing and Regulating Other Forms of Initiation Rites of Fraternities, Sororities, and Other Organizations, and Providing Penalties for Violations Thereof, Amending for the Purpose Republic Act No. 8049, Entitled “An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities, Sororities, and Organizations and Providing Penalties Therefor [Anti-Hazing Act of 2018], Republic Act No. 11053, (2018).

210. *See generally* An Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof, Republic Act No. 11596 (2021).

marriage, is one of the harmful traditional practices that the Convention aims to abolish.²¹¹ According to the CEDAW and the CRC, a child marriage, also referred to as early marriage, is any marriage where at least one of the parties is under 18 years of age, and such practice is considered a form of forced marriage, given that one and/or both parties have not expressed full, free, and informed consent.²¹² Just like FGM, child marriages are grounded in discrimination based on sex and age, and have often been justified by invoking sociocultural and religious customs and values, in addition to misconceptions relating to some disadvantaged groups of women and children.²¹³

In the newly established law on CEFM, the unlawful and prohibited acts were properly enumerated. Direct liability is imputed to persons who are responsible for the facilitation and solemnization of child marriage²¹⁴, as well as to persons who are considered as adult partners who cohabits with a child outside wedlock.²¹⁵ Not only does it punishes perpetrators of the crime, but it also takes on a socio-cultural approach through its socio-cultural mechanism in enabling social environment. Section 7 on *Enabling Social Environment* of the said law states —

[t]o reinforce the prohibition and criminalization of child marriage, the government shall create an enabling social environment where the practice of child marriage shall not thrive, and for such purpose, the following policies shall be implemented, particularly for girls: (a) empowerment of children through the provision of information, skills and support networks; (b) enhancement of children's access to and completion of quality education; (c) provision of economic support and incentives to children and their families; and (d) application of strategic interventions to influence and empower parents and community leaders to discourage and eradicate the practice of child marriage.

Culturally-appropriate and comprehensive programs and services shall be formulated by the Department of Social Welfare and Development (DSWD)[,] in coordination with the government agencies identified in Section 8 of this Act[,], as duty bearers[,], and with concerned civil society organizations (CSOs) and nongovernment organizations (NGOs). This shall

211. CRC, *General Comment No. 13*, *supra* note 121, ¶ 27.

212. CEDAW & CRC, *Joint General Recommendation No. 31*, *supra* note 132, ¶ 20.

213. *Id.* ¶ 7.

214. An Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof, § 4 (a).

215. *Id.* § 4 (c).

be made and initiated by the DSWD within six (6) months from the effectivity of this Act.²¹⁶

It is a comprehensive law dedicated to CEFM which supplements and addresses the insufficiency of our already established domestic laws on child abuse. The socio-cultural mechanism of this law mandates implementing government agencies to be duty bearers who shall extensively undertake measures and programs to assure compliance with the law.²¹⁷ This comes with the responsibility of educating affected communities on the motivations for the harmful traditional practice, strengthening policies, and providing access to justice and legal services to victims. These are, among others, the advantages in establishing a separate legislation for a harmful traditional practice, and this type of separate legislation can also be attained to address the problem of FGM in Philippine Society.

IV. ANALYZING THE INTERPLAY BETWEEN THE RIGHTS OF THE CHILD AND THE RIGHTS TO FREELY EXERCISE PARENTHOOD, RELIGION, AND CULTURE

A. Analyzing FGM in Relation to Cultural Relativism

To better analyze the motivations of proponents of FGM in maintaining the practice, FGM must be analyzed under the context of cultural relativism, intertwined with the counterarguments of the human rights perspective. On one hand, the human rights perspective perceives FGM as a harmful traditional practice, and that human rights apply to individuals, and not to traditions.²¹⁸ On the other hand, cultural relativism would argue that all cultural traditions merit equal acceptance and respect,²¹⁹ and that a practice such as FGM lies at the heart of cherished tradition, value, and honor.²²⁰ The objective of this section is to strike a balance between the indigenous Muslim group's right to cultural integrity and the girl-children's protection rights and the rights to life, survival, and development.

216. *Id.* § 7.

217. *Id.*

218. Leonard B. Glick, *Defying the Enlightenment: Jewish Ethnicity and Ethnic Circumcision*, in *GENITAL CUTTING: PROTECTING CHILDREN FROM MEDICAL, CULTURAL, AND RELIGIOUS INFRINGEMENTS* 285 (George C. Denniston, et al. eds., 2010)

219. *Id.*

220. Rachele Cassman, *Fighting to Make the Cut: Female Genital Cutting Studied Within the Context of Cultural Relativism*, 6 *NW. J. INT'L HUM. RTS.* 128, 128 ¶ 2 (2008).

Cultural relativism is an approach which clarifies how human values vary a great deal in accordance with different cultural perspectives.²²¹ It argues that a culture is not to be judged using the standards of another culture, but through the analysis within its own terms.²²² When viewing FGM within the context of cultural relativism, one may learn to recognize the honor, tradition, and purpose that FGM plays while failing to recognize a legitimate human rights violation.²²³ Cultural relativism argues that opposition towards a culture tends to establish norms based on their own idea of right and wrongs, and this causes them to inadequately recognize how different cultures possess different concepts of moral rules, as well as different concepts of right and wrong.²²⁴ In the case of FGM, cultural motivations may conflict with laws against violence against women, but it does not act as a “substitute for human rights.”²²⁵ Cultural relativism does not disqualify the declaration that “human rights are universal, indivisible[,] and interrelated.”²²⁶ In conjunction with the expectation that international conventions ought to respect the lives and practices of those in other countries, is the assumption that human rights ought to be preserved, respected, and obeyed.²²⁷ Consequently, a practice which inflicts immense psychological and emotional pain and suffering conflicts with such preservation of human rights.²²⁸

Sexual control, protection from rape, reduction in the likelihood of pre-marital intercourse, marriageability, fear, money, hygiene, tradition, and

221. *Id.* at 128 ¶ 3 (citing Diana Ayton-Shenker, *The Challenge of Human Rights and Cultural Diversity* available at <https://web.archive.org/web/20120125090607/https://www.un.org/rights/dpi1627e.htm>).

222. *Id.* at 129 ¶ 4 (citing Sami Zeidan, *Agreeing to Disagree: Cultural Relativism and the Difficulty of Defining Terrorism in the Post-9/11 World*, 29 HASTINGS INT’L & COMP. L. REV. 215, 216 (2006)).

223. Ayton-Shenker, *supra* note 221.

224. Kristen Bowman, *Bridging the Gap in the Hopes of Ending Female Genital Cutting*, 3 SANTA CLARA J. INT’L L. 135, 142 (2005).

225. Ayton-Shenker, *supra* note 221.

226. Office of the High Commissioner for Human Rights (U.N. Human Rights), *What are Human Rights?*, available at <https://www.ohchr.org/en/what-are-human-rights> (last accessed Jan. 31, 2024).

227. Cassman, *supra* note 220, at ¶ 4.

228. *Id.*

religion are all driving forces of FGM.²²⁹ One of the most commonly cited justifications for FGM comes from the Islamic religion, many of whose adherents, like those of some indigenous Muslim groups in Mindanao,²³⁰ believe *sunna* circumcision is mandated in the Koran.²³¹ Such a belief is grounded in religious admonitions claiming that FGM is a positive *sunna*, which follows the tradition of the Prophet Mohammed.²³² However, it is important to reiterate that no scriptural or other endorsement or justification for the act of FGM is mandated or supported by the Muslim faith.²³³

Another contributing factor to the perpetration of FGM is the role of marriage, with a common prerequisite to marriage being mutilation of the potential wife.²³⁴ Hence, FGM is encouraged by mothers to ward against un-marriageability.²³⁵ In effect, the very gender that is physically pained and affected by its harmful consequences is the same gender supporting and perpetuating the practice, under the basis that daughters who have never been cut will be un-marriageable and will be ostracized from the community.²³⁶ This has been evidenced by women who refuse FGM and are subsequently faced with rejection from within their communities and social circles, and left to life without a husband for being considered ineligible for marriage.²³⁷

Attached to the factor of marriageability is the view that FGM is a justification to control the woman's "insatiable and irresponsible sex drive."²³⁸ Within cultures that practice FGM is a great interest in diminishing the power of men relative to men, as evidenced by the belief that female sexual organs

229. Alexi Nicole Wood, *A Cultural Rite of Passage or a Form of Torture: Female Genital Mutilation from an International Law Perspective*, 12 HASTINGS WOMEN'S L.J. 347, 356 (2001).

230. See, *supra* note 5.

231. Hope Lewis, *Between Irua and 'Female Genital Mutilation': Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1, 5 (1995).

232. Cassman, *supra* note 220, at ¶ 19 (citing Blake M. Guy, *Female Genital Excision and the Implications of Federal Prohibition*, 2 WM. & MARY. J. WOMEN & L. 125, 142 (1995)).

233. Magtoto, *supra* note 8.

234. Cassman, *supra* note 220, ¶ 19.

235. Frances A. Althaus, *Female Circumcision: Rite of Passage or Violation of Rights?*, 23 INT'L. FAM. PLAN. PERSPECT. 130, 131-132 (1997).

236. Cassman, *supra* note 220, ¶ 20.

237. *Id.*

238. *Id.* ¶ 23.

should not compete with that of the male genitalia.²³⁹ Hence, FGM is used with the intention of making women less sexually active prior to marriage, as well as less likely to seek an extra-marital affair during marriage.²⁴⁰

From the abovementioned factors, it is concluded that the practice of FGM is motivated by a cultural tradition passed down from generation to generation that is being justified under the guise of religion. FGM is considered violence against women and is a harmful traditional practice which discriminates against girl-children from freely exercising their rights to life, survival, and development. Violence against women, in the Philippine Magna Carta of Women is defined as, “[p]hysical, sexual, psychological, and economic violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, *and other traditional practices harmful to women*, non-spousal violence, and violence related to exploitation.”²⁴¹ Harmful traditional practices, on the other hand, is defined by the CRC and the CEDAW as “persistent practices and forms of behavior that are grounded in discrimination *on the basis of, among other things, sex, gender, and age*, in addition to multiple and/or intersecting forms of discrimination that often involve *violence and cause physical and/or psychological harm or suffering*.”²⁴² Given the premise that FGM is a harmful traditional practice and a form of violence against women, how can this be reconciled with indigenous peoples’ right to cultural integrity?

The Constitution states that, “[t]he State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”²⁴³ In the Philippines, there is Republic Act No. 8371, or the Indigenous Peoples’ Rights Act of 1997 (IPRA),²⁴⁴ that was devised for purposes of protection and promotion of the rights of indigenous peoples,²⁴⁵ perhaps to strengthen the mandate of the Constitution as regards

239. *Id.*

240. Wood, *supra* note 229, at 367.

241. The Magna Carta of Women, § 4 (k), ¶ 1 (emphasis supplied).

242. CEDAW & CRC, *Joint General Recommendation No. 31*, *supra* note 132, ¶ 15 (emphases supplied).

243. PHIL. CONST. art. II, § 22.

244. *See generally* An Act to Recognize, Protect, and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Fund Therefor, and for Other Purposes [Indigenous Peoples’ Rights Act of 1997], Republic Act No. 8371 (1997).

245. *Id.* § 2.

to the promotion of the rights of indigenous cultural communities.²⁴⁶ According to Sedfrey Candelaria, the IPRA is

one of the social reform agenda of the Philippine government. It aimed to correct the historical injustice[,] which placed the [indigenous peoples] at a disadvantage in comparison to the rest of society. It does not only contain a comprehensive list of rights of the [indigenous peoples,] it also establishes the lead agency for its implementation and the mechanism for the enforcement of these rights.²⁴⁷

In accordance with its purpose, the IPRA sets out the law on the right to indigenous peoples' cultural identity. Section 29 of the law states that. "[t]he State shall respect, recognize[,] and protect the right of [indigenous peoples] to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies."²⁴⁸ In recognition of cultural diversity, the IPRA states —

[t]he State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the [indigenous peoples] appropriately reflected in all forms of education, public information[,] and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with [indigenous peoples] concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding[,] and good relations among [indigenous peoples] and all segments of society. Furthermore, the Government shall take effective measures to ensure that the State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities[,] and international cooperative undertakings like festivals, conferences, seminars[,] and workshops to promote and enhance their distinctive heritage and values.²⁴⁹

In addition, the IPRA sets out the rights of indigenous peoples to religious/cultural sites, and ceremonies, to wit —

[indigenous peoples] shall have the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs[,] and ceremonies; the

246. Magtoto, *supra* note 8, at 1152.

247. Sedfrey M. Candelaria, Comparative Analysis on the Indigenous and Tribal Peoples Convention No. 169, U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP), and Indigenous Peoples' Rights Act (IPRA) of the Philippines (Working Paper) at 6 *available at* https://www.ilo.org/manila/publications/WCMS_171406/lang--en/index.html (last accessed Jan. 31, 2024) [<https://perma.cc/KHW8-YK97>].

248. Indigenous Peoples' Rights Act of 1997, § 29.

249. *Id.* § 31.

right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and, the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the [indigenous peoples] concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.²⁵⁰

In relation to these provisions under the IPRA, it is established that there is indeed an obligation on the part of the State to acknowledge, recognize, preserve, and protect the culture, customs, and traditions of the indigenous peoples.²⁵¹ However, this right to cultural integrity, although guaranteed, are not absolute.²⁵²

For instance, the UDHR, in support of the cultural traditions of indigenous peoples, provides that everyone has the right to freedom of thought, conscience, and religion, and this includes the right to manifest his or her religion or belief in teaching, practice, worship, and observance.²⁵³ The same international instrument, however, provides for limitations as to these freedoms, specifically in Article 29 which states:

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible[;]
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order[,] and the general welfare in a democratic society[; and,]
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.²⁵⁴

To be specific, the provisions of the IPRA must be read in consonance with other provisions, and the law must be appreciated holistically. For instance, although the IPRA promotes the indigenous peoples' rights to cultural integrity, the same law also promotes social justice and human rights of children and youth.²⁵⁵ Section 27 of IPRA states that, "[t]he State shall recognize the vital role of the children and youth of [indigenous peoples] in

250. *Id.* § 33.

251. Magtoto, *supra* note 8, at 1154.

252. *Id.*

253. UDHR, *supra* note 123, art. 18.

254. *Id.* art. 29.

255. Indigenous Peoples' Rights Act of 1997, § 27.

nation-building and shall promote and *protect their physical, moral, spiritual, intellectual[,] and social well-being.*"²⁵⁶ The provision also mandates the State to "support all government programs intended for the development and rearing of the children and youth of [indigenous peoples] for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and the youth."²⁵⁷ FGM, therefore, is inconsistent with the spirit of the law since it is a form of harmful traditional practice. In other words, the right to practice a cultural tradition may be limited if it tends to harm or violate the human rights of individuals, as in this case, the girl-children. To reemphasize, the CRC and the CEDAW sets out the criteria for which a practice may be considered as harmful, viz —

- (1) They constitute a denial of the dignity and/or integrity of the individual[,] and a violation of the human rights and fundamental freedoms enshrined in the two Conventions;
- (2) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic[,] and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;
- (3) They are traditional, re-emerging[,] or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age[,] and other intersecting factors; [and]
- (4) They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free[,] and informed consent.²⁵⁸

In relation to cultural relativism, both the CRC and CEDAW acknowledges that social norms are the contributing factors to and social determinants of certain practices in a community in order to strengthen its identity.²⁵⁹ They point out that as a social rule of behavior, members of communities are expected to observe such practices, and this in a sense, creates and sustains a collective sense of social obligation, even if they are not personally in agreement with the practice.²⁶⁰ In the case where FGM is the

256. *Id.* (emphasis supplied).

257. *Id.*

258. CEDAW & CRC, *Joint General Recommendation No. 31*, *supra* note 132, ¶ 16.

259. *Id.* ¶ 57.

260. *Id.*

social norm, parents are motivated to agree to its being performed on their daughters because they see other parents doing so and believe that others expect them to do the same.²⁶¹ In effect, the conformity to the social norm rewards them through social inclusion and praise.²⁶² Hence, reconciling cultural relativism with the rights of the child entails changing social norms and adopting a new set of social rules that are both beneficial to the children and to the established culture.

The Committees, therefore, recommend that states parties to the conventions, such as the Philippines, are to ensure that any efforts undertaken to tackle harmful practices, such as FGM, are holistic, community-based, and founded on a rights-based approach that includes the active participation of all relevant stakeholders, especially women and girls.²⁶³ The Committees note that combating harmful practices starts with prevention, and this is best achieved through rights-based approach to changing social and cultural norms, and raising awareness of the causes and consequences of harmful traditional practices.²⁶⁴ To highlight,

[c]ulturally sensitive interventions that reinforce human rights and enable practising communities to collectively explore and agree upon alternative ways to fulfil their values and honour or celebrate traditions without causing harm and violating the human rights of women and children can lead to the sustainable and large-scale elimination of the harmful practices and the collective adoption of new social rules.²⁶⁵

B. Indigenous Muslim Communities' Rights to Parenthood vis-à-vis the Principle on the Best Interest of the Child

To further discuss the obligations of parents towards their children, and vice versa, this study goes on to further examine the personal laws of the indigenous Muslim groups who perform the practice of FGM. Pursuant to Section 11 of Article XV of the Constitution which states “[t]he State shall consider the customs, traditions, beliefs[,] and interests of national cultural communities in the formulation and implementation of state policies,”²⁶⁶ the Code of Muslim

261. *Id.*

262. *Id.*

263. *Id.*

264. CEDAW & CRC, *Joint General Recommendation No. 31*, *supra* note 132, ¶ 57.

265. *Id.* ¶ 59.

266. PHIL. CONST. art. XV, § 11.

Personal Laws (CMPL) of the Philippines²⁶⁷ was promulgated. The Code has three main functions which include:

- (a) recognizing the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective;
- (b) codifying personal law; and
- (c) providing for an effective administration and enforcement of Muslim personal laws among Muslims.²⁶⁸

In terms of parental authority, the CMPL states that every parent and every person exercising parental authority shall see to it that the rights of the children are respected.²⁶⁹ Likewise, children have the duty to “*respect, revere, and obey their parents always*, unless the latter cast them into disbelief.”²⁷⁰ If children in Muslim groups are expected to always obey their parents, then does that mean that children have to obey them even if the parents’ decisions are contrary and violative of their human rights? To reiterate, FGM is the family matriarch’s decision, and decision-making does not involve the girl-children themselves.²⁷¹ The patriarchs, on the other hand, do not take active participation in the process, but, they are informed, aware, and they usually condone the practice.²⁷²

This brings the discussion to the principle on the best interests of the children. The CRC provides that the best interests of the child shall be a primary consideration in all actions concerning children.²⁷³ In the Philippines, the principle of the “best interest of the child” is defined as the “totality of the

267. A Decree to Ordain and Promulgate a Code Recognizing the System of Filipino Muslim Laws, Codifying Muslim Personal Laws, and Providing for its Administration and for Other Purposes [MUSLIM. CODE], Presidential Decree No. 1083 (1977).

268. *Id.* art. 2.

269 *Id.* art. 73.

270. *Id.* art. 72 (emphasis supplied).

271. Aminoding B. Limpao, et al., Pag-Islam: An Exploratory Action Research on Female Genital Mutilation/Cutting Practices in the Bangsamoro Region, Philippines, at 15, available at <https://rilhub.org/2021/04/26/pag-islam-an-exploratory-action-research-on-female-genital-mutilation-cutting-practices-in-the-bangsamoro-region-philippines> (last accessed Jan. 31, 2024) [<https://perma.cc/YX72-WJYG>].

272. *Id.*

273. CRC, *supra* note 36, art. 3, ¶ 1.

circumstances and conditions which are most congenial to the survival, protection[,] and feelings of security of the child and most encouraging to the child's physical, psychological[,] and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child."²⁷⁴

The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the CRC and the holistic development of the child.²⁷⁵ In undertaking to ensure children within its jurisdiction the protection and care necessary for their well-being, states parties are mandated to take all appropriate legislative and administrative measures necessary, *taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her.*²⁷⁶ As to acknowledging parental authority, the CRC points out that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights" under the CRC.²⁷⁷ In the case of FGM, cultural identity cannot excuse or justify the perpetuation by decision-makers, such as the parents, and authorities of traditions and cultural values that deny the child or children the rights guaranteed under the CRC.²⁷⁸

In addressing FGM, the Philippines, as a state party to the CRC and the CEDAW, is under the obligation to send a clear message of condemnation of harmful practices through legislation, to provide legal protection for victims, and to enable state and non-state actors to protect women and children at risk, including providing appropriate responses and care services.²⁷⁹ Both the Committees on CRC and CEDAW, however, points out that legislation alone is insufficient to combat harmful practices effectively.²⁸⁰ Legislation, in accordance with the requirements of due diligence, must be supplemented

274. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Therefor and for Other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344, § 4 (b) (2006).

275. Committee on the Rights of the Child, *CRC General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*, ¶ 4, U.N. Doc. CRC/C/GC/14 (May 29, 2013) [hereinafter CRC, *General Comment No. 14*].

276. CRC, *supra* note 36, art. 3, ¶ 2 (emphasis supplied).

277. CRC, *General Comment No. 14, supra* note 275, ¶ 4.

278. *Id.* ¶ 57.

279. CEDAW & CRC, *Joint General Recommendation No. 31, supra* note 132, ¶ 40.

280. *Id.* ¶ 41

with a comprehensive set of measures to facilitate the implementation, enforcement, monitoring, and evaluation of the results sought to be achieved.²⁸¹ The Committees recommend that States parties to the Conventions adopt or amend legislation with a view to effectively address and eliminate harmful practices, and in doing so, they must ensure that —

- (1) That the legislation is consistent and comprehensive and provides detailed guidance on prevention, protection, support[,] and follow-up services and assistance for victims, including towards their physical and psychological recovery and social reintegration, and is complemented by adequate civil and/or administrative legislative provisions[.]²⁸²
- (2) That the legislation adequately addresses, including by providing the basis for the adoption of temporary special measures, the root causes of harmful practices, including discrimination on the basis of sex, gender, age[,] and other intersecting factors, focuses on the human rights and needs of the victims and fully takes into account the best interests of children and women[.]²⁸³

Given that the Philippines are obligated under the CRC and the CEDAW to take legislative and administrative measures to eradicate the FGM, the question at hand is, can the State intervene with the children's parental authority? More specifically, can the State step in and intervene on a child's behalf when the parents' decisions and actions, regardless of motivations, could cause irreparable physical and mental harm to the child or could threaten the life of the child?

On the State's policy relative to the rights of parents in the rearing of children, the Constitution states —

[t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. *The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.*²⁸⁴

In the case of *SPARK vs. Quezon City*, this provision of the law was interpreted to mean that the rearing of children for civic efficiency and the development of their moral character are characterized, not only as parental

281. *Id.*

282. *Id.* ¶ 55 (d).

283. *Id.* ¶ 55 (e).

284. PHIL. CONST. art. II, § 12 (emphasis supplied).

rights, but also as parental duties.²⁸⁵ This means that parents are not only given the privilege of exercising their authority over their children; they are equally obliged to exercise this authority conscientiously.²⁸⁶ Moreover, the duty aspect of this provision is a reflection of the State's independent interest to ensure that the youth would eventually grow into free, independent, and well-developed citizens of the nation.²⁸⁷

Although parents are given the primarily role in child-rearing, it must be emphasized that “[w]hen actions concerning the child have a relation to the public welfare or the well-being of the child, the [S]tate may act to promote these legitimate interests.”²⁸⁸ Hence, “[i]n cases in which harm to the physical or mental health of the child or to public safety, peace, order, or welfare is demonstrated, these legitimate state interests may override the parents’ qualified right to control the upbringing of their children.”²⁸⁹ In *Nery vs. Lorenzo*,²⁹⁰ the Supreme Court recognized the State’s role as *parens patriae* when it stated that it is

the duty of protecting the rights of persons or individual who because of age or incapacity are in an unfavorable position, vis-a-vis other parties. Unable as they are to take due care of what concerns them, they have the political community to look after their welfare. This obligation the state must live up to. It cannot be recreant to such a trust. As was set forth in an opinion of the United States Supreme Court: “This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and for the prevention of injury to those who cannot protect themselves.”²⁹¹

Therefore, legislations combatting FGM are but means of legal restrictions designed to aid parents in their role of promoting their children’s well-being. This means that this would not qualify as an impediment to the right of exercising parental authority, but rather it is aid given by the state to the

285. *SPARK*, 815 Phil. at 1099.

286. *Id.*

287. *Id.*

288. *Id.* at 1100 (citing *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242, 1262 (M.D. Pa. 1975) (U.S.)).

289. *Id.* (emphasis supplied)

290. *Nery v. Lorenzo*, G.R. No. L-23096, 44 SCRA 431 (1972).

291. *Id.* at 438-39 (emphasis supplied).

parents to ensure the children's protected rights to life, survival, and development.

In addition, included in the elements to be taken into account when assessing the child's best interests is taking into consideration the child's personal views and understanding their situation of vulnerability.²⁹² Article 12 of the CRC states that, "States [p]arties 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."²⁹³ This means that CRC recognizes that children have a right to participate in decisions that affect their lives.²⁹⁴

In relation to the child's right to participation, the Committee on the Rights of the Child has pointed out that there is no minimum age for the child to exercise his or her right to express one's views, and a child should not have the burden to prove that he or she is capable of expressing a view.²⁹⁵ Any child capable of forming a view has the right to express that view, and what only changes with age and maturity is the weight given to the child's opinion.²⁹⁶ Recognizing the value of child participation and children's contributions is a critical step in elevating recognition of the human dignity in every child.²⁹⁷ Therefore, mainstreaming every child's right to be heard, especially on the discussion of FGM, is a necessity in advancing child-friendly laws and policies that can address persistent harmful tradition practices and forms of violence against children such as FGM.

V. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

There is no doubt that FGM is a continuing practice in the Philippines. In indigenous Muslim groups in the Southern Philippines, it was found that

292. CRC, *General Comment No. 14*, *supra* note 275, ¶ 53 & ¶ 75.

293. CRC, *supra* note 36, art. 12.

294. *Id.*

295. Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, ¶ 20 & ¶ 21, U.N. Doc. CRC/C/GC/12 (July 1, 2009) [hereinafter CRC, *General Comment No. 12*].

296. Jonathan Todres, Violence, Exploitation, and the Rights of the Child, *in* INTERNATIONAL HUMAN RIGHTS OF CHILDREN 14 (Ursula Kilkelly & Ton Liefwaard eds., 2019).

297. *Id.* at 13.

FGM is performed on girl-children before their menstrual period.²⁹⁸ It is usually a matriarchal decision that comes from mothers, grandmothers, or aunts who have undergone the same procedure by tradition.²⁹⁹ In this study, it was found that, although most indigenous Muslim groups would justify the practice through Islamic religion, no scriptural or other endorsement or justification for the act of FGM is mandated or supported by the Muslim faith.³⁰⁰ It appears that the perpetuation of FGM is not mainly rooted in religion anymore. It has been found out that the primary motivation driving the perpetration of FGM is that it has become part of the history and cultural tradition of affected communities, where failure to engage in the practice would lead to scrutiny, social exclusion, and discrimination. This means that the girl-children are made to carry the burden of social pressure, not just from their family matriarchs, but also from their community, which treats FGM as a *rite of passage*.

In the chapter on *Female Genital Mutilation*, the practice of FGM was discussed, along with its physiological and psychological effects on girl-children. It was also discussed in comparison with male circumcision, and it was found out that FGM, unlike male circumcision, has no known benefits whatsoever. Instead, the practice results in immediate and long-term complications. It is for such reasons that international bodies such as WHO, UNICEF, UNFPA, and other organizations consider FGM to be universally unacceptable for infringing on the physical and psychosexual integrity of women and girls.³⁰¹

In the chapter on *Rights of the Child against FGM*, the research question on whether FGM is contemplated in current child protection laws, especially Republic Act No. 7610, was answered. Although Republic Act No. 7610 was promulgated in compliance with the CRC, specifically Art. 19 which guarantees the right of every child to be free from all forms of violence,³⁰² it was concluded that not all kinds of violence against children are within the ambit of Republic Act No. 7610.

First, the law limited the definition of “child abuse,” to the exclusion of harmful traditional practices and gender-based violence such as FGM, viz —

298. *See, supra* note 5.

299. *Id.*

300. Magtoto, *supra* note 8.

301. WHO & UNAIDS, *supra* note 99.

302. CRC, *supra* note 36, art. 19.

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse[,] and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades[,] or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development[,] or in his permanent incapacity or death.³⁰³

Second, Section 10 of the law which provides for “Other Acts of Neglect, Abuse, Cruelty, or Exploitation and Other Conditions Prejudicial to the Child’s Development” does not specifically contemplate situations of harmful traditional practices. To be regarded as a “harmful practice,” the CEDAW and the CRC present the following criteria:

- (1) They constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions;
- (2) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic[,] and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;
- (3) They are traditional, re-emerging[,] or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age[,] and other intersecting factors; [and]
- (4) They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.³⁰⁴

Third, the reason for Republic Act No. 7610’s limited scope as to child abuse is because of a certain recurring theme at the time of its passage. It was concluded that that the overriding impetus for the passage of the law was because the country lacked criminal laws which adequately protected street children from exploitation by pedophiles.³⁰⁵ The intendment of the law was

303. Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, § 3 (b).

304. CEDAW & CRC, *Joint General Recommendation No. 31*, *supra* note 132, ¶ 16.

305. *Quimvel*, 808 Phil., at 889-1000, (J. Caguioa, dissenting opinion).

to address cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography, and other types of abuses.³⁰⁶ Nowhere in the provisions does it contemplate a situation where the law would punish harmful traditional practices such as FGM.

Lastly, although Republic Act No. 7610 provides for a separate article which covers *Children of Indigenous Communities*, the provisions under such do not sufficiently protect girl-children coming from indigenous communities against FGM because the law affords them the same protection as to those outside indigenous communities, with the only qualification that their customs and traditions will be taken into consideration. Therefore, the study concluded that although Republic Act No. 7610 was patterned to comply with Article 19 of the CRC, the law is bereft in recognizing that harmful traditional practices, such as FGM, are forms of abuse that must be considered punishable under the law.

It was also concluded that FGM is not covered under the RPC. The elements for the crime of mutilation under the RPC are: (a) there is a castration, that is, mutilation of organs necessary for generation, and (b) the mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction.³⁰⁷ From the elements provided, the practice of FGM by indigenous Muslim groups may not be prosecuted under the RPC because of the fact that, although there is castration of the organs necessary for generation, the purpose is not carried out for the purpose of deprivation of an essential organ for reproduction.³⁰⁸ In other words, there is no criminal intent to be punished by the RPC in the practice of FGM by indigenous Muslim groups. Subsequently, the Prohibition of Child Marriage Law of 2021 was cited as an example of a beneficial separate legislation which is specially geared towards addressing a harmful traditional practice. This law, which is dedicated to end Child, Early, and Forced Marriage or CEFM, is an example of a comprehensive law which supplements and addresses the insufficiency of our already established domestic laws on violence and child abuse. The presentation on the Prohibition of Child Marriage Law emphasized the advantages in establishing a separate legislation dedicated to eliminating harmful traditional practice in accordance with the CEDAW and the CRC. The law goes beyond criminalization, as it includes a strong foundation for socio-cultural mechanisms which are beneficial for both girl-children and their respective communities. This is more reason to

306. *Id.*

307. REYES, *supra* note 206.

308. Magtoto, *supra* note 8, at 1174.

create a separate legislation dedicated to eliminating FGM as a cultural tradition.

Finally, in the chapter on *Analyzing the Interplay Between the Rights of the Child and the Rights to Freely Exercise Parenthood, Religion, and Culture*, it was concluded that the right to practice a cultural tradition may be limited if it tends to harm or violate the human rights of individuals. In relation to cultural relativism, both the CRC and CEDAW acknowledge that social norms are the contributing factors to and social determinants of certain practices in a community to strengthen its identity.³⁰⁹ However, cultural motivations cannot act as substitutes for human rights. Hence, reconciling the right to cultural integrity with the rights of the child entails changing social norms and adopting a new set of social rules that are both beneficial to the children and to the established culture.

B. Recommendations

The Philippines should enact a separate special penal law prohibiting female genital mutilation in the country. In this study, it was concluded that FGM is a form violence and abuse which is violative of the rights of girl children. Although FGM is a form of child abuse, the study found out that such does not fall under the provisions of Republic Act No. 7610, because the latter's intentment was to combat cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography, and other types of abuses. Since FGM is a peculiar type of abuse which does not perpetuate from criminal intent, a separate law addressing the practice is more viable than simply amending an existing law.

The fact that this study mainly focused on indigenous Muslim groups in Southern Mindanao does not discard the possibility that the practice is alive and continuing in other places in the country. As what has been concluded in this study, FGM is a gender-based harmful traditional practice which constitutes as violence against women and girl-children. As much as FGM is considered as an abuse on the child's body, current Philippine laws are insufficient to prohibit and eradicate the said practice.

The separate law would limit its applicability to FGM done to a minor child. This means that instances where a girl attains the age of majority are not within the scope of the law because such person would have the proper discernment to give her consent, regardless if the FGM was done due to religious, cultural, or aesthetic reasons.

309. CEDAW & CRC, *Joint General Recommendation No. 31*, *supra* note 132, ¶ 57.

Since it was concluded in the study that FGM is mainly a matriarchal decision, it is only necessary that direct liability be imputed against them for consenting, permitting, or facilitating FGM unto a minor. To prevent the circumvention of the proposed law, anyone causing to exit the country to insist on the child to undergo the practice, shall be imputed with liability as well.

As per emergency situations, the proponent acknowledges the possibility that FGM may be justified when there is the necessity to preserve or protect the physical health of the minor, and FGM is considered a necessity. In such instance, the prohibition of the law may be relaxed since the spirit of the law prioritizes the protection of the child's bodily integrity.

The role of the State does not stop on legislating and implementing a law prohibiting FGM. The Philippines must develop and adopt comprehensive awareness-raising programs to challenge and change cultural and social attitudes, traditions, and customs that underlie forms of behavior that perpetuate harmful practices.³¹⁰ This is in accordance with Article 5 of the CEDAW which mandates the State to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.³¹¹ In other words, the framework for the proposed law on the prohibition of female genital mutilation goes beyond just criminalization. A huge part of the legislation is its socio-cultural dimension which seeks to eradicate the practice of FGM in a progressive way.

Included in the proposed legislation is the mandate for the government to implement policies which are dedicated to: (a) the empowerment of children through the provision of information, skills, and support networks, (b) enhancement of children's access to and completion of quality education, (c) provision of economic support and incentives to children and their families, and (d) application of strategic interventions to influence and empower parents and community leaders to discourage and eradicate the practice of female genital mutilation. Implementing government agencies will serve as duty bearers mainly for the educational, medical, and legal assistance for the affected communities. Since this study focused on Indigenous Muslim Groups in the Philippines, the proposed legislation includes the roles of both the National Commission on Muslim Filipinos (NCMF) and the National Commission for Indigenous Peoples (NCIP) in incorporating in its program of action

³¹⁰ *Id.* ¶ 81.

³¹¹ CEDAW, *supra* note 145, art. 5.

awareness-raising campaigns within Muslim communities and indigenous cultural communities, respectively, on the impacts and effects of female genital mutilation in the overall health and development of children. It is also their duty to monitor and report cases of female genital mutilation in communities under its jurisdiction, in accordance with the best interests of the child.

The proposed legislation shall also uphold the participation rights of children through continuing consultations, spearheaded by implementing government agencies, with women, girls, and youth organizations to guarantee the participation of children in the decision-making processes in accordance with the provisions of the CRC.

It is also noted that promulgation of a law cannot immediately change the perception of indigenous Muslim groups and other communities as regards to completely abolishing the practice of FGM, especially since it has been a practice that has been passed down from many generations. To ensure a progressive transition and to assure full compliance from the affected communities, the proposed law shall implement a transition period of one (1) year where the unlawful acts would be suspended as to Muslim Filipinos and indigenous cultural communities. In this transition period, the duty of the NCMF and the NCIP is to extensively undertake measures and programs to ensure compliance with the law within their respective jurisdictions. This is to be done with the help of other implementing government agencies. It must be remembered that the perpetuation of FGM comes from a long-standing tradition of gender stereotypes within communities. The obligation of the State, together with the relevant stakeholders, is to progressively change these traditional practices with rights-based social and cultural norms which are favorable to both the children and the existing cultures of the communities.

ANNEX A. PROPOSED DRAFT LEGISLATION ON THE PROHIBITION OF
FEMALE GENITAL MUTILATION³¹²

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manilla

EIGHTTEENTH CONGRESS
Third Regular Session

House Bill No. _____

AN ACT TO PROHIBIT UNLAWFUL FEMALE GENITAL MUTILATION OF A MINOR, TO PROVIDE FOR A CIVIL CAUSE OF ACTION, TO CREATE AWARENESS PROGRAMS CONCERNING AND STATISTICAL TRACKING OF UNLAWFUL FEMALE GENITAL MUTIALTION, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* — This Act shall be known as the “Prohibition of Female Genital Mutilation Act of 2021.”

SECTION 2. *Declaration of Policy.* — The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual, emotional, psychological, and social well-being. The State also recognizes its obligation to eradicate gender-based violence emanating from harmful traditional practices. Towards this end, the State shall:

- (1) Guarantee the fundamental rights of every child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and other conditions prejudicial to her development,

³¹² This draft legislation drew pattern from Republic Act No. 11596, otherwise known as An Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof of 2021, as modified to reflect the recommendations of the Thesis on the Prohibition of Female Genital Mutilation in the Philippines.

even while in the care of parents, legal guardians, or any other person who has the care of the child;

- (2) Guarantee the abolishment of harmful traditional practices such as female genital mutilation (FGM) which is prejudicial to the health of children; and
- (3) Comply with international treaties to which the Philippines is a signatory or a State party concerning the rights of children which include, but not limited to, the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

SECTION 3. *Definition of Terms.* — Whenever used in this Act, these terms shall have the following meaning:

- (1) *Child* refers to a person below eighteen (18) years of age or over, but is unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.³¹³
- (2) *Female genital mutilation* means a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including without limitation:³¹⁴
 - (a) A clitoridectomy;
 - (b) The partial or total removal of the clitoris and the *labia majora*, with or without excision of the *labia majora*;
 - (c) The excision or the partial or total removal of the clitoris and the *labia minora*, with or without excision of the *labia majora*;
 - (d) The infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the *labia minora* or the *labia majora*, with or without excision of the clitoris;

313. The definition of “child” is patterned from already existing domestic laws for the purpose of uniformity.

314. The definition used for “female genital mutilation” is the one defined by the World Health Organization as cited in this study.

- (e) Pricking, piercing, incising, scraping, or cauterizing the genital are; or
- (f) Any other action to purposely alter the structure or function of the female genitalia for non-medical reasons.

SECTION 4. *Unlawful Acts.* — *Provided* that the act is not necessary to preserve or protect the physical health of the minor upon whom the surgical or other medical procedure is performed, *and provided* that the act is performed on a minor who is not in labor or who has not just given birth and the act was performed for medical purposes connected with that labor or birth by a person licensed in the place of its performance as a health care provider, a person commits the offense of unlawful female genital mutilation of a minor if he or she:

- (a) Knowingly performs female genital mutilation on a minor; or
- (b) Is a parent or guardian or has immediate custody or control of a minor and knowingly consents to, permits, or facilitates female genital mutilation of the minor; or
- (c) Knowingly removes or causes, permits, or facilitates the removal of a minor from the Philippines for the purpose of facilitating the female genital mutilation of the minor.

SECTION 5. *Public Crimes.*³¹⁵ — The foregoing unlawful and prohibited acts are deemed public crimes and can be initiated by any concerned individual.

SECTION 6. *Prescription for damages.* — The court may award actual, compensatory, and punitive damages, and any other appropriate relief upon a party who files a civil action for recovery of damages for injury or illness suffered as a result of female genital mutilation as defined in Section 3 of this Act, which shall be brought within ten (10) years:

- (a) From the procedure being performed; or
- (b) After the victim attains the age of eighteen (18) years.

SECTION 7. *Jurisdiction.* — Jurisdiction over cases for the violation of this Act shall be vested in the Family Courts which has territorial jurisdiction over the place where the offense or any of its essential elements was committed

315. This is patterned after Sec. 5 of Republic Act No. 11596 or An Act Prohibiting the Practice of Child Marriage.

pursuant to Republic Act No. 8369, otherwise known as “Family Courts Act of 1997.”

SECTION 8. *Enabling Social Environment.*³¹⁶ — To reinforce the prohibition and criminalization of female genital mutilation, the government shall create an enabling social environment where the practice of female genital mutilation shall not thrive, and for such purpose, the following policies shall be implemented, particularly for girls: (a) empowerment of children through the provision of information, skills and support networks; (b) enhancement of children’s access to and completion of quality education; (c) provision of economic support and incentives to children and their families; and (d) application of strategic interventions to influence and empower parents and community leaders to discourage and eradicate the practice of female genital mutilation.

Culturally appropriate and comprehensive programs and services shall be formulated by the Department of Social Welfare and Development (DSWD) in coordination with the government agencies identified in Section 9 of this Act as duty bearers and with concerned civil society organizations (CSOs) and nongovernment organizations (NGOs). This shall be made and initiated by the DSWD within six (6) months from the effectivity of this Act.

SECTION 9. *Implementing Government Agencies as Duty Bearers.*³¹⁷ — The provisions of this Act shall be fully and promptly implemented by the following government departments and agencies within their respective jurisdictions:

- (a) *Department of Social Welfare and Development (DSWD)* — shall ensure that the child who is a victim of female genital mutilation is provided appropriate physical, mental, and psychosocial care, and support for their recovery and reintegration in accordance with existing laws. It shall also take the lead in the implementation of this Act and create programs that will address the prevalence of female genital mutilation and provide appropriate services,

316. Patterned after Sec. 7 of Republic Act No. 11596, this provision provides for the socio-cultural mechanisms that this proposed legislation provide, with the aim to be compliant with Article 5 of CEDAW which states mandates the Philippines to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

317. This is patterned after Sec. 8 of Republic Act No. 11596 or An Act Prohibiting the Practice of Child Marriage.

including but not limited to legal services, health services, psychosocial services, counseling, educational, livelihood and skills development, temporary shelter, and all other assistance necessary to protect victims of female genital mutilation. It shall include awareness campaigns on the negative effects of female genital mutilation;

- (b) *Council for the Welfare of Children (CWC)* — shall work closely with the DSWD in strengthening policies and creating programs to prohibit and end female genital mutilation. It shall include the advocacy to prevent female genital mutilation in the Philippine Plan of Action to End Violence Against Children (PPAEVAC);
- (c) *Department of Justice (DOJ)* — shall ensure that the penal provisions of this Act are carried out and provide access to justice and legal services to victims through the Public Attorney's Office (PAO);
- (d) *Department of the Interior and Local Government (DILG)* — shall institute a systematic information and prevention campaign against female genital mutilation through barangay-level education programs and initiatives that are culturally-sensitive and child centered. The DILG shall also mandate local government units (LGUs) to provide basic interventions for the rescue, recovery, rehabilitation and support of victims of female genital mutilation; and establish a system of reporting cases of female genital mutilation;
- (e) *Department of Education (DepEd)* — shall include culturally sensitive and age-appropriate modules and discussions on the impacts and effects of the female genital mutilation in its comprehensive sexuality education curriculum;
- (f) *Department of Health (DOH)* — shall ensure access to health services for the prevention of female genital mutilation by providing sexual and reproductive health services and mental health services for children;
- (g) *Supreme Court of the Philippines* — shall organize training programs for all relevant courts on the prevention of female genital mutilation and other provisions of this Act and shall ensure strict application of the law and its interpretation in the best interests of the child;

- (h) *Philippine Commission on Women (PCW)* — shall integrate dissemination of the provisions of this Act in programs on public awareness and behavior-change communications;
- (i) *Commission on Human Rights (CHR)* — shall monitor the implementation of this Act as Gender Ombudsman through its Child Rights Center/Desk;
- (j) *National Commission on Muslim Filipinos (NCMF)* — shall include in its program of action awareness-raising campaigns within Muslim communities on the impacts and effects of female genital mutilation in the overall health and development of children, monitor and report cases of female genital mutilation in communities under its jurisdiction, ensure the faithful implementation of this Act and its interpretation in the best interests of the child; and,
- (k) *National Commission for Indigenous Peoples (NCIP)* — shall include in its program of action awareness-raising campaigns within indigenous cultural communities/indigenous peoples on the impacts and effects of female genital mutilation in the overall health and development of children, monitor and report cases of female genital mutilation in communities under its jurisdiction, ensure the faithful implementation of this Act and its interpretation in the best interests of the child.

SECTION 10. *Participation of Women, Girls, Youth Organizations, and Civil Society Organizations*.³¹⁸ — Implementing government agencies shall ensure continuing consultations with women, girls, and youth organizations as well as CSOs, whose full and active participation shall be guaranteed in every step and stage of decision-making processes.

SECTION 11. *Penalties and Sanctions*. — The following penalties and sanctions are hereby established for offenses enumerated in this Act:

- (1) Any person found guilty of the unlawful and prohibited acts under this Act shall suffer the penalty of *prision mayor* in its medium period and a fine not less than forty thousand pesos (Php40,000.00): *Provided, however*, That should the perpetrator be an ascendant, parent, adoptive parent, step parent, or guardian of the child, the penalty shall be *prision mayor* in its maximum period,

318. This is in line with the provisions of the CRC with regard to upholding the children's right to participation.

and a fine of not less than fifty thousand pesos (Php50,000.00);³¹⁹ and,

- (2) In addition to Section 10 (a), when unlawful female genital mutilation is done by a medical professional, the agency authorized to issue a license to a medical professional may institute a separate disciplinary action against the licensed medical professional, including the revocation of any license.

SECTION 12. *Appropriations.* — The amount necessary to implement the provisions of the Prohibition of Female Genital Mutilation Act shall be included in the annual General Appropriations Act.

SECTION 13. *Implementing Rules and Regulations.* — Within sixty (60) days from the effectivity of this Act, the DSWD as lead agency shall, in coordination with the DOH, the DepEd, the CWC, the NCMF, the NCIP, and one (1) representative each from CSOs representing women, children, Muslim Filipinos, and indigenous cultural communities/indigenous peoples, and in consultation with other concerned government agencies and stakeholders, promulgate rules and regulations to implement this Act.

SECTION 14. *Transitory Provision.* — Within one (1) year from the effectivity of this Act, the NCMF and NCIP shall extensively undertake measures and programs in their respective jurisdictions to assure full compliance with this Act. During the transition period of one (1) year, the application of the acts in Section 4, and Section 5 of this Act to Muslim Filipinos and indigenous cultural communities/indigenous peoples shall be suspended.³²⁰

SECTION 15. *Suppletory Application of the Revised Penal Code.* — The Revised Penal Code shall be suppletorily applicable to this Act.

SECTION 16. *Separability Clause.* — If any part of this Act is declared unconstitutional or invalid, the other provisions not affected thereby shall continue to be in full force and effect.

SECTION 17. *Repealing Clause.* — All laws, presidential decrees, executive orders, administrative orders, rules, and regulations inconsistent

319. This is patterned after Sec. 4 of Republic Act No. 11596 or An Act Prohibiting the Practice of Child Marriage.

320. The transitory provision was inspired by Republic Act No. 11596. A law cannot immediately change the perception of a community, especially as to those which have been practiced from long generations. A year of transition is necessary to assure full compliance from the affected communities.

with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SECTION 18. *Effectivity.* — This Act shall take effect after fifteen (15) days following its complete publication in the Official Gazette or in at least two (2) newspapers of general circulation.