

Female Genital Mutilation in Uganda: A Glimpse at the Abolition Process

Jamil Ddamulira Mujuzi*

Abstract

This article looks at three legal steps that have been taken in Uganda to abolish the practice of female genital mutilation: (1) a process during the drafting of the constitution that resulted in the enactment of different constitutional provisions that implicitly rendered female genital mutilation unconstitutional; (2) the declaration by the Constitutional Court in the case of *Law and Advocacy for Women in Uganda v Attorney General* in July 2010 that the practice is unconstitutional; and (3) the enactment in April 2010 of the Prohibition of Female Genital Mutilation Act. This article highlights some of the challenges that are likely to be encountered in enforcing both the Constitutional Court decision and the Prohibition of Female Genital Mutilation Act.

INTRODUCTION

Female genital mutilation (FGM) is widespread in different parts of the world generally and in Africa in particular, and is carried out for different reasons. In Uganda, FGM is practised especially in the eastern part of the country. The African Commission on Human and Peoples' Rights (African Commission), the enforcement body of the African Charter on Human and Peoples' Rights, has expressly noted "the persistence of traditional practices that are harmful to women and children in some African countries ([such as female] genital mutilation)".¹ The practice is prohibited by the Convention on the Elimination of All Forms of Discrimination against Women, which Uganda ratified on 22 July 1985, as interpreted by the Committee on the Elimination of Discrimination against Women (CEDAW Committee).² FGM is expressly prohibited by article 5(b) of the Protocol to the African Charter on

* LLD (University of the Western Cape), LLM (human rights and democratization in Africa) (University of Pretoria); LLM (human rights, specializing in reproductive and sexual health rights) (University of the Free State); LLB (hons, Makerere University). Senior lecturer, Faculty of Law, University of the Western Cape. The author is grateful to Farouk Nyende of the Uganda Human Rights Commission for providing some of the material used in this article and to the anonymous reviewers for their invaluable comments. The usual caveats apply. Email: djmujuzi@gmail.com.

1 African Commission on Human and Peoples' Rights "Resolution on the situation of women and children in Africa": ACHPR/Res.66(XXXV)04, preamble at para 6.

2 See CEDAW Committee "General recommendation no 14" on female circumcision (ninth session, 1990).

Human and Peoples' Rights on the Rights of Women in Africa, which Uganda ratified on 22 July 2010.³ Some African countries such as Benin,⁴ Burkina Faso,⁵ Ghana,⁶ Niger⁷, Nigeria⁸ and Senegal⁹ have passed legislation criminalizing FGM. In its combined fourth, fifth, sixth and seventh periodic reports to the CEDAW Committee, Uganda informed the committee of the measures being implemented by the government to eradicate FGM.¹⁰ Thus, in abolishing FGM, Uganda was not only fulfilling its treaty obligations, it was also following in the footsteps of other African countries. There follows a discussion of the different legal steps taken to abolish FGM in Uganda.

THE CONSTITUTIONAL STEP

The Uganda Constitutional Commission

In 1988 the Ugandan government established the Uganda Constitutional Commission, popularly known as the Odoki Commission because it was chaired by Justice Benjamin Odoki, to traverse Uganda and gather people's views on what they thought should be included in the new

-
- 3 See list of countries that have signed, ratified or acceded to the protocol at: <<http://www.africa-union.org/root/au/ Documents /Treaties /List/Protocol%20on%20the%20Rights%20of%20Women.pdf>> (last accessed 17 August 2010).
 - 4 See "Periodic report of the Republic of Benin on the implementation of the rights and freedoms enshrined in the African Charter on Human and Peoples' Rights" (2008) at 5, 8 and 18, where Benin informs the African Commission that Benin's Act No 2003-04 of 3 March 2003 criminalizes FGM.
 - 5 The Burkina Faso minister for the promotion of women's rights informed the African Commission that in Burkina Faso "there are laws against female genital mutilation which are supported by awareness creation campaigns". See "Report of a promotion mission of Commissioner Rezag Bara to Burkina Faso" (26–30 March 2007) at para 36. See also "Periodic report of Burkina Faso to the African Commission on Human and Peoples' Rights on the implementation of the African Charter on Human and Peoples' Rights" (October 1998 – December 2002) at 57.
 - 6 The deputy minister of women and children's affairs informed the African Commission delegation that FGM was outlawed in Ghana; see "Report on the promotion mission to the Republic of Ghana" (1–5 September 2008) at para 148.
 - 7 See "Initial and periodic report of the Republic of Niger to the African Commission on Human and Peoples' Rights on the implementation of the African Charter on Human and Peoples' Rights" (1988–2002) at 74.
 - 8 In its report, Nigeria informs the African Commission that Edo State Law on FGM 2000 bans the practice of FGM and prescribes the punishment of a fine or six months' imprisonment for its violation. Bills prohibiting FGM have been passed in eleven states. See Nigeria's "Third periodic country report (2005–08) on the implementation of the African Charter on Human and Peoples' Rights in Nigeria" (2008) at 20.
 - 9 See Senegal's third, fourth, fifth, sixth and seventh periodic reports in "Application of article 62 of the African Charter on Human and Peoples' Rights on the implementation of the African Charter on Human and Peoples' Rights by the Republic of Senegal" (undated) at 14, available at: <http://www.achpr.org/english/state_reports/Senegal /Senegal_2nd%20report.pdf> (last accessed 17 August 2010).
 - 10 Uganda's "Combined fourth, fifth, sixth and seventh periodic reports to the CEDAW Committee": CEDAW/C/UGA/7 (25 May 2009) at paras 175–76.

constitution.¹¹ The Odoki Commission's report indicated that, although Ugandans were of the view that the constitution should protect everyone's right to practise their culture,¹² they also expressed the view that there were some cultural practices, including FGM, "which no longer fit with modernity".¹³ The report expressly stated:

"The tradition of *female circumcision*, still practiced in some societies, attracted numerous comments. It is a tradition which does not fit with modernity. It is often carried out with little regard to freedom of the girl to choose. It causes infections and other illnesses and loss of enjoyment of marital relations; it carries complications during child-birth; and it deforms a girl's sexual organs. Although there are some male elders in the societies concerned who maintain the legitimacy of the practice, the almost unanimous views of Ugandans call for the complete abolition of the tradition."¹⁴

The Odoki Commission recommended that the new constitution should recognize every person's "right to enjoy, practice, profess, maintain and promote any culture ... but subject to the provisions of the Constitution and to the condition that the rights so protected do not offend the rights of others".¹⁵ The commission also recommended that: "[a]ll customary practices which dehumanise, discriminate or are injurious to the integral well-being of a person should be prohibited. All cultural practices and traditions should be under effective control of the Constitution and the laws of the country. They should not go against the provisions of the Constitution."¹⁶

The Odoki Commission recommended further that: "[c]ulture should always develop to fit smoothly into the contemporary values and aspiration of society. It should recognise and respect especially the rights ... of women".¹⁷ Specifically on the question of the right to practise one's culture versus the rights of women, the Odoki Commission recommended that: "[l]aws, cultural practices and customs which are against the dignity, equality, welfare and interests of women should be prohibited by the new Constitution, the laws of the country and the relevant cultural groups in the country".¹⁸ It is clear that, although Ugandans were of the view that the constitution should protect everyone's right to practise their culture, that right should not violate other peoples' rights such as the right to human dignity. In particular, Ugandans were of the view that cultural practices which were against the dignity and

11 See *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (1992, Uganda Printing and Publishing Corporation) at 1.

12 Id at para 7.132.

13 Id at para 7.69.

14 Id at para 7.69(d) (emphasis original).

15 Id at para 7.135(a).

16 Id at para 7.135(b).

17 Id at para 7.135(c).

18 Id at para 7.141(e).

welfare of women should be prohibited by the new constitution. A Constituent Assembly was constituted to debate and consider the recommendations of the Odoki Commission in the process of promulgating a new constitution. The onus was now on the delegates of that assembly to ensure that the views people had expressed on the question of FGM and which were captured in the Odoki Commission report found their way into the new constitution.

The right for everyone to practise his or her culture was one of the contentious issues debated by the Constituent Assembly. The delegates agreed with the Odoki Commission recommendation that the new constitution should include the following provisions: that the constitution be the supreme law of Uganda and that “[i]f any other law or any custom is inconsistent with any provision of this constitution, the constitution shall prevail”;¹⁹ that “laws and cultures, customs and traditions which are against [the] dignity, welfare or interest of women or which undermine their status are prohibited by the constitution”;²⁰ and that “[c]ustoms which discriminate against women on grounds of sex should be outlawed”.²¹ However, one delegate, Ssemaala Kiwanuka, moved the motion suggesting that he:

“would like [one of the above provisions] to read that ‘laws that are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution’ I would like the words ‘cultures, customs and traditions’ deleted. [This is because] ... the State has no part to play in creation of culture, customs, traditions, norms, practices and beliefs. Therefore, the State cannot regulate or set up laws that will govern the cultures and customs.”²²

Mr Kiwanuka added that “female circumcision is repugnant but we can eliminate this through education, advocacy and other things” and that it should not be the role of the State, through the constitution, to prohibit or regulate practices such as FGM.²³ In substantiating his view, he submitted that:

“Even if culture might be good to some other people, I do not want the state to impose a culture on me that I disapprove of. For instance, if female circumcision has been regarded by a member or a president who comes to power, a dictator, for instance and he uses this clause [prohibiting cultural practices,

19 *Proceedings of the Constituent Assembly (Official Report)* (1994, Uganda Printing and Publishing Corporation) at 2013 (emphasis original).

20 *Id* at 2012 (emphasis original).

21 *Id* at 2010 (emphasis original).

22 *Id* at 2009 (emphasis original).

23 *Ibid*. Another delegate submitted that he was aware that “the practice of circumcising women [in the eastern part of Uganda], at the present moment ... even in the absence of express legislation prohibiting female circumcision, the practice is optional and ... it is dying out fast. This is because of modernity, enlightenment and education but not because of express legislation.” See submission by Wagidoso Madibo, *id* at 2109.

customs and traditions that are contrary to the Constitution] to say, okay, all women in Uganda should be circumcised, I do not want my wife to be circumcised.”²⁴

Although all the other delegates opposed Mr Kiwanuka’s view that the words “culture, customs and traditions” should be deleted from the constitutional provision, there was consensus that the practice of FGM was one of the cultural practices that was impliedly prohibited by the new constitution. In opposing Mr Kiwanuka’s motion that the words “culture, customs and traditions” should be deleted, one delegate, Mrs Kulanya, submitted:

“I think the State has a right to protect its citizens especially where cultures are harmful and oppressive ... [On the issue of] female circumcision ... medically, we have been informed that there is nothing good out of it. If anything, women actually have a lot of problems during delivery, and may be also during sexual intercourse. Therefore ... most of these people who practice these cultures, they do it in ignorance and ... it is the State to alert its citizens that whatever they are doing is not correct ... So, such cultures ... should be eradicated and it is the State to see that they are not there.”²⁵

Another delegate, Mr Mwaka, submitted that the new constitution should protect everyone’s right to practise his or her culture but that such a right should not be absolute. He added that “some cultural practices which are bad and retrogressive ... like, the circumcision of women ... must be discarded”.²⁶ From the above discussions one can safely conclude that all the Constituent Assembly delegates were of the view that the right to practise one’s culture should be subject to the provisions of the constitution and that, should any cultural practice be contrary to any provision of the constitution, such a practice should be declared by the relevant courts to be invalid. Although the constitution does not expressly provide that FGM is contrary to the constitution, there was consensus among the Constituent Assembly delegates that FGM was against the dignity and welfare of women and that it was one of the practices that were impliedly prohibited by the new constitution. As a result of these debates, the following article 34(6), among others, was included in the constitution: “[l]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.” This was one of the provisions invoked before the Constitutional Court to challenge the constitutionality of the cultural practice of FGM. The discussion now turns to the Constitutional Court ruling which declared FGM unconstitutional.

24 Id at 2009.

25 Id at 2011.

26 Id at 2100.

THE CONSTITUTIONAL COURT RULING

The Ugandan Constitution empowers the Constitutional Court to declare as unconstitutional any law or any act or omission which is contrary to the constitution.²⁷ In *Law and Advocacy for Women in Uganda v Attorney General* the petitioner, a women's rights non-governmental organisation, petitioned the Constitutional Court and argued that "the custom and practice of Female Genital Mutilation as practiced by several tribes in Uganda"²⁸ is contrary to articles 2(2)²⁹ 22(1),³⁰ 24,³¹ 27(2)³² 32(2)³³ and 33³⁴ of the constitution and to Uganda's international human rights treaty obligations. In their petition, the petitioners advanced the following points to substantiate their argument that FGM was unconstitutional:

"That the custom and practice of [FGM] practiced by several tribes in Uganda, including but not limited to the Sabiny ... Pokot ... and Tepeth ... is inconsistent with the Constitution as follows: (a) The excision of female genitalia parts practiced as a custom of Ugandan tribes aforesaid causes excruciating pain to the victim of [FGM] and is thus a form of torture, cruel, inhuman and degrading treatment prohibited by Article 24 of the Constitution ...; (b) The excision of female genitalia may sometimes lead to death due to excessive bleeding and or sepsis and therefore endangers the right to life guaranteed by Article 22(1) of the Constitution ...; (c) The [FGM] is a custom and practice that is carried out by using crude implements which are used on victims to another and thus have the potential of spreading HIV/AIDS which endangers the right to life guaranteed by Article 22(1) of the Constitution; (d) The excision of female genitalia may lead to urinary incontinence whereby damage is caused to the urethra during the operation and thus causes failure to contain urine. The failure to contain urine leads the victim to smell and become a social outcast, which is a form of torture, cruel and degrading treatment and is against the dignity, integrity and status of women, which contravenes Article 24 and Article 33. (e) The custom and

27 Ugandan Constitution, art 137.

28 *Law and Advocacy for Women in Uganda v Attorney General* (constitutional petition no 8 of 2007) [2010] UGCC 4 (28 July 2010) at 1.

29 Ugandan Constitution, art 2 provides that the constitution is the supreme law of Uganda and that any other law or any custom which is inconsistent with the constitution shall, to the extent of the inconsistency, be void.

30 *Id.*, art 22(1) protects the right to life.

31 *Id.*, art 24 protects the right to freedom from "torture or cruel, inhuman or degrading treatment or punishment".

32 *Id.*, art 27(2) protects the right to privacy.

33 *Id.*, art 32(2) empowers Parliament to make relevant laws including laws for the establishment of an equal opportunities commission.

34 *Id.*, art 33 is a separate article guaranteeing women's rights. Most importantly it provides under clause 6 that: "Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution."

practice of [FGM] as aforesaid is carried out on girls and women in the open where the public spectate, without due regard to the privacy of the victim, thus invading the victim's right to privacy guaranteed under article 27(2) of the Constitution; (f) The custom and practice of [FGM] has no medical and social advantages, it is not justifiable in a free and democratic society and is inconsistent with the aforesaid constitutional provisions and thus should be declared void."³⁵

The attorney general did not contest the application, a fact that the court interpreted to mean that the government was in agreement with the petitioners that indeed the custom and practice of FGM violated the above-mentioned constitutional provisions.³⁶ The court heavily relied on two documents: a World Health Organisation (WHO) handbook³⁷ and a handbook on FGM in Uganda. These two documents illustrate, inter alia, the consequences of FGM and the extent to which it is practised in Uganda respectively. The court concluded that, although the practice of FGM had "existed in some [Ugandan] communities for centuries", it did not think that it was protected by article 37 of the constitution which protects everyone's right to practise their culture.³⁸ The court outlined different constitutional provisions that relate to women's rights and concluded that, in the light of the WHO handbook and the petitioners' affidavit, "[i]t is clear beyond any doubt that the practice of [FGM] is condemned by both the Constitution of Uganda and International Law [the treaties, covenants, conventions and protocols to which Uganda is a party]. In particular, the practice contravenes the provisions of articles 21(1), 22(1), 24, 32(2), 33(1) and 44(a) of the Constitution."³⁹

The court added that the practice of FGM also contravened article 2 of the constitution which provides that the constitution is the supreme law of the land and that any other law or custom which is contrary to the constitution is null and void to the extent of that inconsistency. The court noted that, although it had been brought to its attention that Parliament had passed the Prohibition of Female Genital Mutilation Act⁴⁰ (PFGM Act) while the court's decision was pending, it was not barred from declaring the practice of FGM to be unconstitutional and also contrary to Uganda's international human rights obligations.

There are at least two important observations to be made about the Constitutional Court decision. One relates to the question of international

35 *Law and Advocacy for Women in Uganda v Attorney General*, above at note 28 at 1–2.

36 *Id* at 4.

37 WHO Department of Reproductive Health and Research *Eliminating Female Genital Mutilation* (2008, an interagency statement by OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO), available at: <<http://www.who.int/reproductivehealth/publications/fgm/9789241596442/en/index.html>> (last accessed 30 August 2010).

38 *Law and Advocacy for Women in Uganda v Attorney General*, above at note 28 at 8.

39 *Id* at 10.

40 Act 5 of 2010.

law and the other to the question of the drafting history of the constitution. On the question of international law, the court should be applauded for holding that the practice of FGM violated Uganda's international human rights obligations. This was the case although the Ugandan Constitution does not oblige or empower the court to refer to international law in interpreting the Ugandan Bill of Rights. However, although the court found that the practice of FGM violated Uganda's international human rights obligations, it did not mention which treaties were violated. One would have expected the court to base its finding on solid ground by at least mentioning in passing which international human rights treaty provisions were violated by FGM. One would also have expected the court to refer to the drafting history of the constitution to substantiate its argument that the constitution prohibited FGM. As indicated above, the drafters of the constitution were unanimous in their belief that FGM violated women's rights to dignity and to freedom from discrimination amongst other rights. Drawing on the drafting history of the constitution would have enriched the court's jurisprudence and would have safeguarded it against those who might in the future accuse it of being an activist court.

THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT

The enactment of the PFGM Act was preceded by a visit (consultative tour) in 2009 by the Parliamentary Committee on Gender, Labour and Social Development (Parliamentary Committee) to some of the areas where FGM is practised in Uganda. In its report, the committee noted that the visit had the following objectives: "to get hands on information on the practice of ... [FGM], assess the dangers of the practice, interact with various stakeholders and come up with recommendations".⁴¹ The committee consulted district political leaders, female secondary school students, elders, surgeons or mentors (women who prepare girls for circumcision) and victims of FGM.⁴² The committee noted that "[t]he Bill [was] well appreciated [by the stakeholders] due to the dangers associated with FGM [and that the] stakeholders appreciate that the law be enacted so that whoever is convicted is punished in accordance with the law".⁴³ The committee also pointed out that it observed the following as some of the problems associated with FGM: it "violates women / girls human rights, interferes with privacy and exposes victims to ridicule and undermines their integrity. It imparts a permanent psychological and physical damage to the victims".⁴⁴ The committee also noted the following as some of the challenges associated with the prohibition of FGM in Uganda:

41 "Report of the Committee on Gender, Labour and Social Development on Female Genital Mutilation Bill 2009" (2009) at para 2.

42 Id at para 3.

43 Id at para 4(a).

44 Id at para 4(b).

“(c) The practice is viewed as a source of income for ‘surgeons’ and a source of wealth to the girls family because after FGM a girl is considered ready for marriage and going through the process increases the value in terms of bride price ... (d) There is a lot of stigma on women and girls who are not circumcised. Married women are mainly pressurized by in-laws and co-wives and the girls mainly by peers especially those who have undergone it. (e) FGM has affected enrollment in schools. It is difficult to find girls in upper primary and secondary schools. During the FGM season, girls are removed from school to be cut after which they qualify for marriage thus dropping out of school. (f) The celebrations for FGM were considered a social pride (High Social Status) for the family and a source of interaction between friends and relatives. But on the other hand, it is considered as an extravagant merry making function which promotes wastage that leads to poverty.”⁴⁵

Against that background, the committee made the following recommendations:

“(b) Government should consider building more girls boarding schools in the ... districts [where FGM is practiced] ... to ensure more school retention. This will empower girls intellectually and will lead to attitude change ... Local leaders should be encouraged to work hand in hand with the community to ensure that [girls attain] education ... (c) Sensitisation against FGM should be done extensively especially at grassroots levels. There is need for extensive advocacy and awareness. Leaders at local levels should make concerted efforts to focus on total eradication of FGM and if need be involve churches and Mosques. (d) Reformed ‘Surgeons’ should be given alternative income generating activities as they claim FGM to have been their sole source of income ... (f) There is need for regional consultation with counterparts in Kenya because if the practice is fought in Uganda alone, people will still go for FGM in neighbouring countries.”⁴⁶

It is against that background that the committee concluded that “FGM which was once viewed as a cultural affair has now proved to be harmful because of its physical, psychological and social effects”⁴⁷ and called for the enactment of the PFGM Act. The PFGM Act was assented to by the Ugandan president on 17 March 2010 and commenced on 9 April 2010. The PFGM Act defines FGM to mean “all procedures involving partial or total removal of external female genitalia for non-therapeutic reasons”.⁴⁸ It creates several offences. First, the offence of carrying out FGM is punishable with a maximum sentence of ten years’ imprisonment.⁴⁹ Secondly, the offence of aggravated FGM, which

45 Id at para 4(c)–(f).

46 Id at para 5.

47 Id at para 6.

48 PFGM Act, sec 1.

49 Id, sec 2.

means FGM: (a) resulting in the death of the victim; (b) where the offender is a parent, guardian or person having authority or control over the victim; (c) where the victim suffers disability; (d) where the victim is infected with HIV as a result of FGM; or (d) where FGM is done by a health worker.⁵⁰ A person convicted of the offence of aggravated FGM is liable to be sentenced to life imprisonment.⁵¹ Although some of these grounds may not be difficult to prove, it is likely to be a challenge to prove that the victim contracted HIV as a result of FGM. This is because it will have to be established that the victim was HIV negative before FGM and that she contacted the virus not from any other source but as a result of the FGM procedure.

The PFGM Act also criminalizes the act of carrying out FGM on oneself, providing that the punishment for such an offence is imprisonment not exceeding ten years.⁵² An attempt to carry out FGM is punishable with imprisonment not exceeding five years.⁵³ Procuring, aiding and abetting FGM,⁵⁴ and participating in “any event leading to” FGM⁵⁵ are each punishable with imprisonment not exceeding five years. The PFGM Act expressly provides that consent of the person to FGM shall not be a defence under the act.⁵⁶ The act adds that “any culture, custom, ritual, tradition, religion or any other non-therapeutic reason shall not be a defence under this Act”.⁵⁷ The PFGM Act criminalizes discrimination against or stigmatization of a person who has not undergone FGM and the penalty for such discrimination or stigmatization is imprisonment not exceeding five years.⁵⁸ The PFGM Act also criminalizes discrimination against or stigmatization of a person whose wife, daughter or relative has not undergone FGM, punishment again being imprisonment not exceeding five years.⁵⁹ The PFGM Act empowers a court that has convicted a person of any offence under the act to order that person to pay as compensation to the victim “such a sum as in the opinion of the court is just, having regard to the injuries suffered by the victim, medical and other expenses”.⁶⁰ A literal interpretation of this provision would mean that, in assessing the “just” amount of damages to be awarded to the victim, the court is not obliged to assess the financial or otherwise status of the offender. All it is required to do is to have regard to the injuries suffered by the victim, and the medical and other expenses incurred by the victim in treating injuries suffered as a result of FGM. It is argued that the court should not close its eyes to the fact

50 *Id.*, sec 3(1).

51 *Id.*, sec 3(2).

52 *Id.*, sec 4.

53 *Id.*, sec 5.

54 *Id.*, sec 6.

55 *Id.*, sec 7.

56 *Id.*, sec 9.

57 *Id.*, sec 10.

58 *Id.*, sec 11.

59 *Id.*, sec 12.

60 *Id.*, sec 13(1).

that ordering a poor offender to compensate a substantial amount of money (as per the financial status of the offender) to an FGM victim could result in the offender's inability to pay the money. The court should therefore take the perpetrator's financial position into consideration when making such orders.

The PFGM Act empowers a magistrates' court to issue a protection order "upon application by any person" if the court is "satisfied that a girl or woman is likely to undergo" FGM.⁶¹ Under section 14(1), any person, which could mean the potential victim of FGM, her relatives, a religious leader or a human rights activist, among others, could apply to the magistrates' court for a protection order to protect the potential FGM victim from being subjected to the practice. Section 14(2) provides that "[w]here the protection order is issued in respect of a child, the Family and Children Court may issue appropriate orders for the child as it deems necessary." The Family and Children Court is established under section 13 of the Children Act⁶² and has the power to issue supervision orders,⁶³ care orders⁶⁴ and exclusion orders.⁶⁵

Section 15 of the PFGM Act establishes an extra-territorial jurisdiction and provides that the act "shall apply to offences under this Act committed outside Uganda where the girl or woman upon whom the offence is committed is ordinarily resident in Uganda". FGM in Uganda is prevalent among ethnic groups living near the Uganda - Kenya border. These Ugandan groups share the same language and cultural practices with some Kenyan groups and, therefore, section 15 is meant to ensure that girls and women are not moved from Uganda to Kenya for FGM to be carried out in Kenya and then brought back to Uganda. It is likely that this provision will most probably be effective against those who procure, aid or force these girls and women to cross the border to Kenya for FGM, because these are people who are more likely to be residing in Uganda. Once the victims cross to Kenya, FGM may well be carried out by Kenyan residents. Unless such people come to Uganda and are arrested or are extradited to Uganda, they are likely to escape the arm of Ugandan law. The PFGM Act obliges any person "who knows that a person has committed or intends to commit" an offence under the act to report that fact to the police within 24 hours.⁶⁶ Failure to report is punishable with imprisonment not exceeding six months or a fine.⁶⁷ A person who threatens, injures or inhibits any person who is reporting or is about to report any offence under the act commits an offence also punishable with a fine or imprisonment not exceeding six months.⁶⁸ Although the Parliamentary

61 *Id.*, sec 14(1).

62 Children Act 1997, chap 59.

63 *Id.*, secs 22–32.

64 *Id.*, secs 27–33.

65 *Id.*, sec 34. The purpose of an exclusion order is to prohibit the named person or persons from having contact with the child or with persons looking after the child.

66 PFGM Act, sec 16(1).

67 *Id.*, sec 16(2).

68 *Id.*, sec 16(3).

Committee emphasized measures such as education and sensitization about the negative effects of FGM in the areas where it is practised as some of the effective ways to eliminate the practice and Uganda's report to the CEDAW Committee outlined these measures, the PFGM Act's focus is on criminalizing FGM. One would have expected the PFGM Act also to include provisions on measures other than criminalization that should be adopted to eliminate FGM in the region. These measures could have included education and sensitization about the negative effects of FGM. In other words, the act should have taken a holistic approach to the fight against FGM.

CONCLUSION

This article has discussed the different approaches that have been adopted in Uganda to abolish FGM. It has illustrated that, during the process of drafting the constitution, many Ugandans thought that FGM was against the dignity of women and should be abolished. The article has also dealt with the Constitutional Court ruling in which the court declared the practice of FGM to be unconstitutional and in violation of Uganda's international human rights obligations. The relevant provisions of the PFGM Act have also been outlined. It has been illustrated that, although the Parliamentary Committee emphasized measures such as education and sensitization about the negative effects of FGM in the areas where it is practised as effective ways to eliminate the practice, and Uganda's report to the CEDAW Committee outlined these measures, the PFGM Act's focus is on criminalizing FGM. One would have expected the PFGM Act also to include provisions on measures other than criminalization that should be adopted to eliminate FGM in the region. In other words, the act should have taken a holistic approach to the fight against FGM.