

**PETITION TO ERADICATE FEMALE GENITAL MUTILATION (FGM) AMONG
COMMUNITIES LIVING ALONG THE KENYA-TANZANIA COMMON BORDER**

SUBMITTED TO: Office of the Clerk,

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24th August 2024

Office of the Clerk,

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Subject: Petition to Eradicate Female Genital Mutilation (FGM) among Communities Living along the Kenya -Tanzania Common Border

Dear Honorable Assembly Clerk,

I hope this petition finds you in good health and spirits. As devoted advocates for the rights and welfare of women and girls in the East African Community (EAC), we are petitioning to bring to your esteemed attention a matter of urgent humanitarian and socio-economic significance — the perpetuation of Female Genital Mutilation (FGM) along the porous common border between Kenya and Tanzania.

FGM, a grave human rights violation, continues to afflict countless lives, undermining health, seizing educational and economic opportunities, and perpetuating cycles of gender inequality and poverty. Despite national laws prohibiting this practice, its prevalence persists, fueled by cross-border movements that evade enforcement and seek refuge in the gaps of our collective legislative and social frameworks.

Enclosed herewith, you will find a petition meticulously outlining our proposed actions and recommendations for EALA's intervention in eradicating this harmful practice. The petition addresses the need for cohesive and harmonized legislation, enhanced cross-border cooperation and monitoring, community engagement and sensitization, support for survivors, and the allocation of resources towards eradicating FGM across our shared borders.

Given EALA's pivotal role in shaping the region's socio-economic and legal landscape, your leadership and advocacy are crucial to catalyzing significant strides against FGM. Our proposals underscore the urgent need for collective action, underscoring the principle that women's rights are human rights, essential to the fabric of our communities' prosperity and harmony.

It is with a spirit of collaboration and deep dedication to the dignity and rights of every girl and woman in our community that we submit this petition, hopeful for your support and action. Together, we can forge a future where gender-based violence, including FGM, finds no refuge

within our borders or societies. Our girls deserve no less than a concerted, relentless effort to safeguard their freedoms, health, and potential.

FACTS GIVING RISE TO THE PETITION

Kenya has made strides in the fight against FGM, enacting the Prohibition of Female Genital Mutilation Act in 2011, which provides for the protection against FGM, prohibits the practice, and proposes stiff penalties for violators. This legislative framework is part of Kenya's commitment to eradicating FGM, reflective of its obligations under international human rights treaties like the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), among others.

In contrast, while Tanzania also has legislation against FGM under the Anti-Female Genital Mutilation Act 1998, challenges persist in enforcement, cultural entrenchment, and public awareness. These challenges are exacerbated in border communities, where the movement of people across porous borders undermines national law enforcement efforts.

The facts emanating from this situation which underpins this petition to the East African Legislative Assembly (EALA) includes:

I. Disparity in Legislation and Enforcement:

- a) The disparity between Kenya and Tanzania in terms of anti-FGM legislation and enforcement can be attributed to these factors:

- i. **Strength of Legislation:** Kenya's law is more recent and provides a more comprehensive legal framework, including the establishment of a specific board to combat FGM, whereas Tanzania's law, while pioneering at its initiation, lacks equivalent institutional support for its enforcement.

- ii. **Scope of Law:** Kenya's law applies to all individuals regardless of age, thus protecting everyone from FGM, while Tanzania's law focuses on girls under 18, leaving adult women in a more vulnerable position concerning the statute.

- iii. **Enforcement and Penalties:** While both countries prescribe imprisonment and fines for perpetrators of FGM, issues of enforcement, particularly in rural or border areas, affect the deterrent effect of these penalties. Kenya's dedicated anti-FGM board has an oversight role that may enhance enforcement efforts, a structure Tanzania lacks.

- iv. **Cultural and Social Norms:** Enforcement is also hampered by cultural and social norms, especially in communities where FGM is a deeply entrenched practice. The success of laws against FGM not only requires effective legal frameworks but also sustained community education and alternative rites of passage programs.

2. Cross-Border Evasion of Law:

a) **Cross-Border Dynamics:** Perpetrators and families may exploit the legal and enforcement disparities by crossing into Tanzania where they perceive the risk of legal repercussions to be lower, thereby undermining Kenya's stricter enforcement efforts.

i. **Porosity of Borders:** The geographical proximity and the social ties that Kuria people have across the Kenya-Tanzania border facilitate ease of movement. Perpetrators, therefore, find it relatively easy to organize cross-border FGM ceremonies, moving girls from Kenya, where the anti-FGM campaign is highly enforced, to Tanzania, where they perceive the enforcement might be less stringent or the community might be more accommodating of the practice.

ii. **Legal and Operational Disparities:** Given the different operational capacities and resource allocations towards anti-FGM efforts in Kenya and Tanzania, perpetrators sometimes exploit these gaps, assuming they can evade arrest or prosecution more easily in Tanzania. This includes differences in surveillance, community reporting mechanisms, and the priority level placed on FGM as a prosecutable offense.

iii. **Cultural Practices and Traditions:** The shared culture and traditions across the Kenyan-Tanzanian border make it easier for communities to continue the practice of FGM under the guise of cultural preservation. This sometimes leads to planned cross-border movements during the circumcision season, with knowledge or complicity from community members.

3. Impact on Affected Communities:

The Kuria community, which resides in both Kenya and Tanzania, has historically practiced Female Genital Mutilation (FGM) as part of its cultural rites of passage. The cross-border nature of the Kuria people presents unique challenges in the fight against FGM, exacerbating its social, health, and economic impacts.

a) Social Impacts

i. Gender Inequality and Social Expectations:

FGM is deeply ingrained in the Kuria's cultural traditions, serving as a rite of passage for girls transitioning to womanhood. This practice perpetuates gender inequality, as it underscores the community's valuation of girls and women based on traditional norms that infringe on their rights. Girls who undergo FGM are considered ready for marriage, often leading to early and forced marriages, depriving them of their education and potential for self-determination.

ii. Stigmatization and Discrimination:

Girls or women who refuse to undergo FGM in the Kuria community may face stigmatization and social exclusion. This not only affects their psychological well-being but also their ability to partake fully in community life. The fear of exclusion can pressure individuals into conforming to this harmful practice.

b) Health Impacts

i. Immediate Health Risks:

The immediate aftermath of FGM includes severe pain, excessive bleeding (hemorrhage), genital tissue swelling, fever, and infections. The procedure, often carried out under unsterile conditions by untrained practitioners, significantly risks the health and life of the girl.

ii. Long-term Health Complications:

Women who have undergone FGM may experience chronic genital infections, increased risk of childbirth complications and newborn deaths, the need for later surgeries (e.g., to enable sexual intercourse or childbirth), as well as urinary and menstrual problems. Psychological effects, including post-traumatic stress disorder (PTSD), anxiety, and depression, are also prevalent.

c) Economic Impacts

i. Impediment to Education:

FGM often marks the transition into adulthood and readiness for marriage, resulting in school dropout rates soaring among girls. Losing the opportunity for education undermines women's economic empowerment and self-reliance, perpetuating cycles of poverty.

ii. Healthcare Costs:

The health complications arising from FGM place a significant burden on healthcare systems. The cost of managing immediate and long-term complications drains resources that could be used for other developmental needs.

d) Cross-Border Challenges

The cross-border dynamics between Kenya and Tanzania add layers of complexity to addressing FGM among the Kuria. Differences in legal frameworks, enforcement vigor, and cultural attitudes make a unified approach difficult. Perpetrators of FGM often exploit these disparities, crossing borders to evade prosecution or to access communities where FGM is less stigmatized or more socially accepted.

4. Regional Human Rights Obligations:

a) The Imperative for Harmonization

i. Enhancing Legal and Policy Frameworks: Despite the commendable progress by individual EAC member states in ratifying international human rights treaties, discrepancies in domestication and implementation pose significant challenges. A harmonized approach would involve collective efforts to align national laws with international norms, ensuring that human rights are uniformly protected across borders.

ii. Addressing Cross-Border Human Rights Issues: The EAC's integrated framework brings to light cross-border human rights concerns such as human trafficking, refugee and migrant rights, and gender-based violence. A unified legal stance enhances the capacity of EAC nations to collaboratively tackle these issues, offering more robust protection and redress

mechanisms.

iii. **Promoting Economic Integration through Social Cohesion:** Economic integration efforts within the EAC, including the establishment of a common market and customs union, must be underpinned by a strong commitment to social rights, ensuring that economic benefits do not come at the expense of labor rights, environmental standards, and equitable access to services and opportunities. Harmonization ensures that economic policies across the region adhere to international human rights standards.

iv. **Fostering Regional Stability and Security:** The interconnection between human rights observance and regional security is well-documented. By adopting a harmonized rights-based approach, EAC member states can address the root causes of conflict and displacement, such as inequality, discrimination, and marginalization, thus fostering long-term peace and stability.

LEGAL AND CONSTITUTIONAL FOUNDATION OF THE PETITION:

1. **The Treaty for the Establishment of the East African Community:** The EAC Treaty is the cardinal legal document that guides the operations and objectives of the Community, including the promotion of human rights and social welfare of the people of East Africa (Article 6(d) and Article 120(c)). A petition can argue that anti-FGM interventions align with these objectives, particularly in enhancing the social welfare and protection of human rights for women and girls.

2. **African Charter on Human and Peoples' Rights:** Also known as the Banjul Charter, it emphasizes the obligation of States Parties to eliminate discrimination against women and to ensure the protection of women's rights as a prerequisite for their social and political development (Article 2 and Article 18(3)). Though a broader African instrument, its principles are relevant and enforceable within the EAC framework.

3. **The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol):** This protocol explicitly calls on states to enact and enforce laws to prohibit and punish FGM (Article 5). While it binds AU member states individually, its objectives can be pursued through regional bodies like the EALA.

4. **The East African Community Gender Policy (2018):** This policy provides a framework for mainstreaming gender concerns in the EAC integration process. It supports gender equality and the empowerment of women, presenting a direct channel for advocating against harmful practices like FGM that hinder women's full participation in socio-economic development.

5. **National Laws and Constitutions:** Both Kenya and Tanzania have constitutional and legal provisions against FGM. Kenya's Prohibition of Female Genital Mutilation Act, 2011, and Tanzania's Sexual Offences Special Provisions Act, 1998, offer national legal backing that can be synergized into a regional anti-FGM campaign through the EALA platform. Such a petition would likely argue for the EALA to consider legislation that addresses cross-border challenges, encourages harmonization of laws within the EAC regarding FGM, and fosters cooperation between member states in law enforcement and public education. It may also suggest

the development of a regional mechanism or task force specifically focused on stopping FGM and protecting children's rights across the EAC.

The petition significantly relies on the essence of unity within the EAC, leveraging collective action to protect vulnerable populations and uphold human rights. Engaging with this issue legally requires not only an understanding of the existing statutes but also an appreciation of the cultural and societal dimensions that perpetuate FGM. Legal strategies must be intertwined with education and community engagement to ensure lasting change.

REASONS WHEREFORE our humble prayers are as follows:

1. Enactment of EAC- wide Anti-FGM Legislation:

THAT we humbly petition the EALA to spearhead the formulation and enactment of comprehensive, EAC- wide legislation that prohibits FGM in all its forms, provides for substantial penalties for violators, and establishes mechanisms for protection, rehabilitation, and reintegration of FGM survivors.

2. Cross-Border Monitoring and Enforcement Mechanism:

THAT we request the establishment of a robust EAC cross-border monitoring system to prevent the movement of girls and women across borders for the purpose of FGM. This should include measures for increased cooperation between Kenyan and Tanzanian law enforcement, immigration, and community stakeholders to enhance detection, prevention, and prosecution of FGM-related activities.

3. Community Education and Sensitization Programs:

THAT we seek EALA's support in implementing comprehensive community education and sensitization programs across the Kenya-Tanzania border. These programs should aim at changing community attitudes towards FGM, promoting gender equality, and emphasizing the health risks associated with FGM, with a special focus on involving traditional and religious leaders in the advocacy against FGM.

4. Support and Protection Services for Survivors:

THAT we urge the EALA to advocate for and support the establishment of accessible services for FGM survivors, including healthcare, psychological support, and legal aid. Additionally, we call for the creation of safe houses and support networks for women and girls at risk.

5. Research, Data Collection, and Sharing:

THAT we ask for the EALA's backing in conducting comprehensive research and data collection on FGM practices along the Kenya-Tanzania border. This should include the development of a shared database accessible to both governments and relevant NGOs for effective planning and intervention strategies.

6. Resource Allocation and Fund Establishment:

THAT we pray for EALA’s commitment to allocate adequate resources towards anti-FGM efforts, including the establishment of a dedicated fund aimed at supporting community-based initiatives, awareness campaigns, and cross-border surveillance to prevent FGM.

7. Regular Reporting and Evaluation:

THAT we request the EALA to mandate regular reporting and evaluation of the EAC member states’ efforts to combat FGM. This includes creating a framework for monitoring the implementation of anti-FGM laws and interventions, with a specific emphasis on the effectiveness of cross-border initiatives.

8. Partnership and Collaboration:

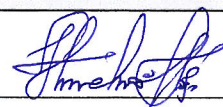

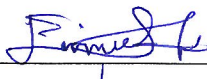
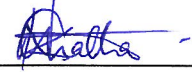

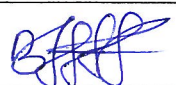
THAT we seek EALA’s facilitation of partnerships and collaborations among member states, international organizations, NGOs, and grassroots groups to leverage expertise, resources, and innovative strategies in the fight against FGM.

We are keen to discuss this petition further and explore avenues for collaboration. Your office’s acknowledgment and consideration of our appeals would mark a beacon of hope and a critical step toward our shared vision of equality and empowerment.

Thank you for your attention to this urgent matter. We look forward to the possibility of engaging with your esteemed office and contributing to meaningful action against FGM in the East African Community.

Yours respectfully,

SIGNED at MIGORI, KENYA this 24th AUGUST 2024.

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