

“ENTRENCHED CUSTOMS DIE HARD..” CAN HARMFUL TRADITIONAL PRACTICES BE JUSTIFIED BY CULTURAL RELATIVISM OF HUMAN RIGHTS? CASE STUDY OF FGM

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“Entrenched Customs Die Hard...”¹

“Injustice anywhere is a threat to justice everywhere” Martin Luther King²

Abstract: In my paper I would like to examine views of universalists and cultural relativists on the issue of human rights, in order to find out whether human rights are strictly a Western idea – whether they were present in all cultures or created in the Western culture in the eighteenth century. If they in fact were created in the Western civilization, would that mean they do not apply to certain parts of the globe? If so, are some people to enjoy smaller scope of rights than others?

I will relate it to legitimacy of controversial traditional practices, in specific Female Genital Mutilation (FGM), which is going to be used as a case study.

Keywords: Dignity, Female Genital Mutilation (FGM), Human Rights, Universal standards

I. INTRODUCTION

Discussion among scholars (including anthropologists, lawyers, sociologists, etc.) on either universalist or relativist perception of human rights has been going on for over 60 years now. To a major extent it started from the works on drafting the Universal Declaration of Human Rights (UDHR), which was a mile step in the protection of human rights worldwide. Since then, the discourse

brought up many times, assisting discussions on regional systems of human rights and standards used by them. Last year's 60th anniversary of Universal Declaration of Human Rights (UDHR) was a reason for many human rights' campaigns worldwide, including United Nations campaign, “*Dignity and justice for all of us*,” which was meant to remind the world of the source of all human rights – dignity, which altogether with universal justice cannot be treated as “a luxury or a wish-list”³

Even though it has been over 60 years from the UDHR and over 40 years since creating the International Covenants (over 30 years since they became binding), the sphere of human rights is still to be improved and future generations will constantly be facing human rights challenges. Enjoyment of equal human rights, regardless of a social group membership is still one of them. In spite of the fact that major conventions on human rights have been ratified by most of the World's states, no unity in human rights standards has been reached yet. Some blame it simply on the “lack or insufficiency of cultural legitimacy of human rights standards.”[2]

The Convention on the Rights of the Child [7] can easily serve as an example of almost universally ratified treaty in the world. Notwithstanding, children's rights are still far from being respected. Another example would be the Convention on the Elimination of All Forms of Discrimination against Women (1979) [6] which has been binding for almost 30 years now, over 180 States are parties to it, but still nobody could claim that women's rights are universally respected. One could ask if universal, full respect for human rights is even possible – no idealist would agree with such a statement but conventions

¹ *Unmasking Tradition. A Sudanese anthropologist confronts female “circumcision” and its terrible tenacity*, Abusharaf, Rogaia Mustafa, The Sciences, March / April 1998, p. 26

² As cited in: D. Chandler (2002). *Rethinking Human Rights. Critical Approach to International Politics*, Palgrave Macmillan.

³ <http://www.un.org/events/humanrights/udhr60/>

mean a lot, expressing not just political will but also some ideas and goals to be reached for.

Global failure to observe human rights is often an argument by human rights' skeptics, saying that the regime created by international human rights treaties is a myth. However, as Donnelly argues in a very apt way: The Universal Declaration, like any other list of human rights, specifies minimum conditions for a dignified life, a life worthy of human being. Even wealthy and powerful countries regularly fall far short of these requirements. As we have seen, however, this is precisely when, and perhaps even why, having human rights is so important: they demand, as rights, the social changes required to realize the underlying moral vision of human nature. [8]

In my paper I would like to show how important universal observance of human rights is and perhaps I will try to search for some means to achieve it. Moreover, I will try to prove that certain traditional practices (in that case FGM) cannot be justified by cultural relativism of human rights, as human rights apply to every human being equally. In a partly globalized world, where all cultures seem to overlap it is important to preserve all distinct cultures from vanishing, at the same time not forgetting that certain practices simply have to belong to the past due to their harmful impact on the community as a whole as well as at its singular members.

Limitations of this paper will allow me to show just a piece of the broad theme mentioned in its topic, nevertheless I will try to mention the most of contemporary trends and aspirations regarding FGM prevention, which has already some time ago become a global issue.

In the first chapter of the paper I will just sketch the human rights' background, emphasizing on their source. In the second chapter I will show some of the arguments invoked by universalists and cultural relativists as well as signalize the relevance of the discussion when it comes to the FGM. Lastly, I will examine whether some balance among the two approaches can be kept. Finally, in the third chapter I will describe the FGM practice, its implications, so far achieved goals in the scope of its eradication and some prospects for the future.

II. WHAT ARE HUMAN RIGHTS ACTUALLY?

This very chapter is meant to complete the introduction. It includes relevant, basic information, as regards to human rights viewed from the universalist vs. relativist perspective.

In order to understand if human rights are universal or relative, it is essential to define human rights. As stated in *Encyclopedia of human rights*, human rights

are “guidelines for the protection of the individual and the peaceful coexistence of the species” [10], “they represent the basic moral values of our modern world and are thus truly the expression of the conscience of mankind” (E. Lawson, 1996) but are also continually re-evaluated by scholars and NGOs all over the world, which most probably is a never ending process.

Some scholars [14] say, the root of human rights can be even traced back to the early thirteenth century, which is when individuals started to gain rights “against” the State and its interference in their private life. In particular *Magna Charta Libertatum* of 1215 is often mentioned as the first one to have listed the principle of equality before law, right to property and religious freedoms, nonetheless it was applicable only to a certain social class - the barons. The idea of human rights, called at that time “natural rights”, came back in the eighteenth century in Europe and was then developed by such authorities, as John Locke, Jean – Jacques Rousseau, or Voltaire. At that time the idea started to be applied to all human beings, regardless of social class and status. This idea was subsequently expressed in The French Declaration of the Rights of Man (1789) and The United States (American) Declaration of Independence (1776).

Considering their roots and nature, human rights can be considered a bridge between morality and positive law, deriving themselves from common human dignity, which is an “inherent property” and “absolute inner value,”, therefore one should “treat others always at the same time as an end, never merely as a means” (I. Kant). So should the state. Some authors, such as Jack Donnelly, search the source of human rights also in “humanity” or “human nature”, whose notions are unfortunately “obscure” and “controversial” (Donnelly, 2003).

These historical roots of human rights have indicated that human rights refer to the relationship among individuals and the State and are to protect and remedy the weaker side of this relationship.⁴ Notwithstanding with the discussions over human dignity, as the foundation of human rights, it can be agreed that concept of human rights, present in philosophy for few centuries, has gained its international legal shape after the Second World War, as “the failure of national laws to protect citizens had been cruelly demonstrated” (Smith, 2003).

As R. Normand and S. Zaidi (2008) have rightly stated, “people have always yearned for freedom, security, and social justice; the modern human rights system was the first to assert these values as the

⁴ Horizontal theory of human rights.

birthright of everyone everywhere.”[12] I share the view that human rights are somehow coded in each one of us and sooner or later gain their expression in each society, its legal system and practice. It is only a matter of time that they become fully universal. And it does not necessarily mean losing diversity in the world, it just means living in a diverse world where everyone can enjoy their human rights in the borders of “global morality” (Normand, Zaidi, 2008). This idea might sound hopeful and utopian but it is a foundation of every human rights protection system and can be reached only by a lot of time and effort. History has shown that it took over seven hundred years (counting from first human rights' guarantees laid down in *Magna Charta Libertatum* (mentioned above) or, as some could claim, hundred and fifty years (counting from the late eighteenth century's declarations and constitutions) to create international system of human rights protection. It seems, not little time will be needed to ensure human rights' respect worldwide. Especially, with no symmetry in the stages of development. Still, I would be optimistic about human rights' development as yet in just 60 years, impressive framework has been created. It however needs constant and continuous improvement and keeping it up to date to face contemporary and future challenges.

III. THE QUEST FOR UNIVERSAL STANDARDS

Universal standards of human rights were for the first time codified after the Second World War, as mentioned above, by the Universal Declaration of Human Rights. It is vital to underline that United Nations consisted of 58 Member States at that time, however the only ones that refrained from signing the Declaration were: Byelarusian SSR, Czechoslovakia, Poland, USSR, Ukrainian SSR, Yugoslavia (because of the socialist / communist doctrines implemented in those countries at that time, which caused “interpretational differences”, as Baderin calls it), [4] South Africa (because of apartheid legislation) and Saudi Arabia. The remaining UN Member States signed the UDHR, regardless of the fact that they were not solely “Western” States as it is often claimed today.⁵ The following countries signed UDHR in 1948: Afghanistan, Argentina, Australia, Belgium, Bolivia, Canada, Chile, China, Colombia, Costa Rica, Cuba,

Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Sweden, Syrian Arab Republic, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen.

That proves that although some core values agreed on in the UDHR were first elaborated on and described in the “Western” tradition does not mean they were (and are) not present globally – regardless of geographical location and culture. Regardless of the area people live in, they react when their rights are infringed and stand up in order to protect their humanity and dignity.

Varying visions of human rights

Some people questioning human rights claim that the idea is purely Western and therefore imposed in other parts of the globe. The introduction to the 2nd chapter already challenged that view in a way. However, the aforementioned discussion has been going on for over 60 years now and does not appear to be solvable that easily. Hence both sides: universalism claimants and (cultural) relativism claimants use accurate and convincing arguments grounding their positions. In my paper I would like to present some of them and examine whether they apply to the FGM practice.

FGM as a harmful traditional practice - few words on the phenomenon

In this sub - chapter I would like to sketch the problem and scale of Female Genital Mutilation procedure, as it is essential for following the discussion presented further on. I realize that perhaps this chapter may give an impression of being misplaced, but it is a conscious measure, in order to signalize some important points of FGM practice in relation with universality of human rights.

According to the World Health Organization, “the term “female genital mutilation” (also called “female genital cutting” and “female genital mutilation/cutting”) refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons”. It is estimated that between 100 and 140 million girls and women in the world have undergone such procedures, moreover, 3 million girls are estimated to be at risk of undergoing the procedure every year.

Female genital mutilation has been reported to occur in all parts of the world, but it is mostly practiced in: the western, eastern, and north – eastern regions of

⁵ Some scholars, such as Wiktor Osiatyński, claim, that certain western countries, such as Great Britain or the United States, had no interest in enthusiastic opting for the UDHR, as Great Britain still owned colonies and the United States were allowing racial discrimination in their borders. Other international actors, such as China, supported the UDHR more.

Africa, some countries in Asia and the Middle East and among certain immigrant communities in North America and Europe. [15]

In my paper I am concentrated on that phenomenon in the African Continent (and also in certain European countries, among immigrant communities). However, I will not get into details of FGM in any specific country, but try to present it holistically altogether with all the phenomena assisting elimination of FGM as a harmful practice both on the national and international level.

Universal approach towards human rights

As a point of departure, I would like to cite point 5 of the Vienna Declaration and Programme of Action '93, which states that: All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms⁶.

If we make a contrary assumption, that certain human rights cannot be applied universally (and consequently, some peoples and belonging to them individuals deserve more respect than others), we might come to a rather hazardous conclusion, which has already caused shameful occurrences in world's history, especially visible throughout the twentieth century. As an example may easily serve all the crimes against humanity committed in the recent century. For that reason, I would with full consciousness opt for a full and global recognition of certain human rights (about which *consensus* in universal human rights documents has been achieved), notwithstanding their Western root. All in all, in every corner of the world humans have that same dose of inalienable dignity and must therefore be able to enjoy the same rights.

An obvious shortcoming is faced in the case of accessibility of universal protection measures (already known as effective only in creating universal framework of standards). The solution could then be creating effective regional systems of human rights protection, and above all, national instruments. Nevertheless, it is not the only solution and way to achieve broadest possible observance of human rights. In societies still far from the desired model, international organizations (both governmental and

non – governmental) should kick in, helping to promote human rights, create civil society and moreover, to protect citizens from their states, harmful traditional practices or even effects of historical conditionings (such as extreme patriarchy). That is the least the world can do to make up for the period of colonialism. [1]

Relativist approach towards human rights

An argument often mentioned by cultural relativists is that human rights have been developed in wealthy West, which unfortunately still can be put in the opposition to the poor South (before, during the Cold War, the world has been divided into West and East) and therefore cannot be fully enforced due to the biggest violation of human rights in the South, which is “degrading poverty and inhumane conditions of life of millions of individuals.” [11] That kind of approach can directly influence activism to achieve proper respect of certain human rights as being of second importance. Nevertheless, one needs to be cautious about weighting importance of certain rights. No poor social conditions could justify cruel, inhuman or degrading treatment of women (mostly by women directly and by men and tradition indirectly), which FGM undoubtedly is. Details of this practice are elaborated on in the sub - chapter 3.1 of the paper.

“The Western liberal tradition of rights has made substantial contributions to the concept of civil and political rights. But one of its limitations is the inadequate recognition of what economic inequality and deprivation signify for human dignity” (Leary, 1992). Unfortunately, this statement may be applied to the issue of eliminating FGM, which in the case of poor and undeveloped countries meets an obstacle of not yet emancipated women, still depending on men as the sole breadwinners. Not undergoing procedures of FGM in their early puberty (or childhood)⁷ may put women at risk of not getting married and therefore suffering poverty and social exclusion. On the other hand, however, undergoing it, puts them at risk of suffering grievous health implications (as indicated in chapter 3) or even death (estimated as consequence of one third of the cases).

Some authors indicate that protection from inhuman and degrading treatment should be determined by moral standards of one society (An-Na'im, 1992). This argument is hard to agree with in the case of FGM and other harmful practices. It leaves door widely open to justification of torture or other universally unacceptable practices on the basis of

⁶[http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/A.CONF.157.23.En?OpenDocument)

⁷ Girls usually undergo the procedure between the age of 5/6 – 10/11, adult women undergo it more rarely.

cultural relativism.

It is nonetheless true that “external imposition” (An-Na'im, 1992) of values may be simply ineffective and counterproductive when it comes to lives of traditional communities. I however would not call protecting millions⁸ of potential FGM victims a “Western imposition”. Therefore, human rights advocacy of women (and men) who were born in perhaps more favorable circumstances may spare the suffering of many.

In spite of the claim that “(...) many cultural traditions in the world have had little say in the formulation of those [universal] standards” (An-Na'im, 1992), as stated above, the fact that human rights have indeed been developed by Western theorists and philosophers does not mean they do not apply to the whole humanity as such.

Searching for aurea mediocritas

In the light of examined documents, articles and books, I could not deny that a reasonable degree of cultural relativism is needed – especially because common observance of human rights in communities can be best achieved by the convincing content of human rights standards.

A big supporter of relativism, An-Na'im, does not prevent himself from acknowledging that “the cross cultural approach is not an all – or – nothing proposition”, with what I must agree. It reflects a reasonable point of view that universalist approach and relativist approach do not necessarily lay on opposite poles and can be reconciled by inter cultural dialog, smart political steps and subsequent legislation.

Regional systems - one of the solutions

As already stated in point 37 of the Vienna Declaration and Programme of Action⁹³:

Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities⁹.

Indeed, universal standards sought by the common

denominator, which is already reflected in many international treaties, can be effectively realized by regional systems of human rights protection which in my opinion are one of the means to achieve fullest realization of human rights. Firstly, they represent relative homogeneity of cultures and traditions. Secondly, they facilitate consensus and ensure geographical proximity and linguistic accessibility. Thirdly, they enable or at least facilitate the enforceability as they are closer to the arising problem of human rights' protection. On the other hand, the easiness of reaching consensus may as well be considered a disadvantage, as might allow drifting too far from the universal standards of human rights and therefore result with varying standards of the same rights worldwide.

“The UN has provided an effective arena for airing views and negotiating rights principles, but its impact on the daily lives of women and men remains limited.”¹⁰ Indeed, a huge organization as the United Nations can only provide for a framework (on the basis of political decisions mostly) in the human rights protection, whereas real protection should belong to certain states, regional systems and civil society organizations, which can be achieved by “thickening [these] international aid networks.”¹¹

In addition to that, in order to achieve changes, all the attempts need to be based on persuasion. Psychologically, people are more likely to obey certain rules if they perceive them as deriving from their own culture. This however would in my opinion be no case when it comes to FGM – a practice causing excessive pain and suffering. A practice having its root in tradition but sacrificing too much in order to achieve some uneasy to understand and accept goals. If *inter alia* persuasion is to be used (and in fact was and still is used) in eliminating FGM, it needs to be an ultra – quick and ultra – effective one.

To sum up this sub - chapter, I might use one sentence long, simplistic postulate: set standards internationally, implement regionally. However, only if effective regional systems do not lose their connection with the universal standards.

⁸ It is estimated that approximately 3 million females *per annum* are subject to Female Genital Mutilation procedure.

⁹ ([http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/A.CONF.157.23.En?OpenDocument))

¹⁰ Oloka – Onyango. (2008). *Heretical Reflections*. In: R. Normand, S. Zaidi. *Human Rights at the UN. The Political History of Universal Justice*. Bloomington and Indianapolis: Indiana University Press.

¹¹ Michael Duffield, as cited by Vanessa Pupovac (2002). *The International Children's Rights Regime*. In: Chandler, D. (2002). *Rethinking Human Rights. Critical Approach to International Politics*. Palgrave Macmillan Ltd

IV. FEMALE GENITAL MUTILATION AND WHY IS IT NOT TRADITIONAL CULTURE'S OWN BUSINESS?

In this chapter, I will show certain world - wide trends concerning FGM and so far achieved framework as regards to its complete abandonment.

FGM and its impact on woman's health

FGM influences women's physical and mental health. As regards to the physical consequences, WHO classifies FGM into four types: type I / Clitoridectomy (involves partial or total removal of the *clitoris* and/or the clitoral hood), type II / Excision (involves partial or total removal of the *clitoris* and the *labia minora*, with or without excision of the *labia majora*), type III / Infibulation (involves narrowing of the vaginal orifice with creation of a covering seal by cutting and placing together the *labia minora* and/or the *labia majora*, with or without excision of the *clitoris*), type IV / Unclassified: (involves all other harmful procedures to the female genitalia for nonmedical purposes, for example, pricking, piercing, incising, scraping, and cauterization) (WTO, 2008).

The WHO Report mentions major, numerous health consequences of FGM, which are divided into: "immediate risks of health complications" and "long-term health risks", occurring at any time during life.

The former include: severe pain (it needs to be emphasized that FGM is usually performed without any kind of anesthesia), shock, excessive bleeding, difficulty in passing urine, infections, human immunodeficiency virus (HIV), death, psychological consequences, unintended labia fusion, repeated female genital mutilation (due to unsuccessful healing).

The latter include: pain, infections, keloid, reproductive tract infections and sexually transmitted infections, human immunodeficiency virus (HIV), quality of sexual life, birth complications, danger to the newborn, psychological consequences and more.

Which international documents does FGM violate?

FGM practice violates numerous international human rights provisions. *Inter alia*: art. 25 of the UDHR (right of all human beings to live in conditions that enable them to enjoy good health and health care), art. 12 of the ICCPR (prohibition of discrimination on the grounds of sex, and universal right to the highest attainable standard of physical and mental health), art. 2f of CEDAW, which expects States to "take all appropriate measure to modify or abolish customs and practices which constitute discrimination against women" and art. 5a of thereof, which requires State Parties to "modify 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". It also violates the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights, and many more.

African Union has its own human rights treaty, which is the African Charter on Human and People's Rights, adopted on 27 June 1981 and binding since 21 October 1986. It reflects specificity of African values, whose core is expressed by an African proverb: "If you want to go fast, go alone. If you want to go far, go together." In African societies, it is the community's interest that prevails over individual interest in most of the cases. Moreover, the African Charter not only speaks about the rights but also stipulates the duties of an individual towards its community and State.¹² The Charter mentions women's rights in article 18, par. 3: "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

Notwithstanding, a major step towards eradication of FGM was signing the Protocol on the Rights of Women in Africa on 11 July 2003, which started to bind on 25 November 2005, having been signed by 15 Member States of the African Union. Currently 45 States out of 53 African Union Member States have signed it, however just 27 had ratified it (Dec. 2009)¹³.

Article 5 of this protocol mentions FGM explicitly: States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including: a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes; b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation

¹² Read more: Steiner, H. J., P. Alston and R. Goodman. (Eds.) (2008). *International Human Rights in Context. Law, Politics, Morals. Third Edition*. Oxford: Oxford University Press

¹³ <http://www.africaunion.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Rights%20of%20Women.pdf>.

of female genital mutilation and all other practices in order to eradicate them; c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting; d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

This provision encouraged many African States to pass laws prohibiting FGM¹⁴.

Obviously, good laws are important in fighting FGM but they cannot succeed alone.¹⁵ Other steps to be taken are *inter alia*: women's education and thus making them more independent, building consciousness and awareness in local communities, etc. Only coherent and multi - dimensional steps can lead to a complete eradication of FGM.

The Chairman of the African Union Commission, Alpha Oumar Konare summed it up that way: "We need to mobilize our communities, religious leaders, traditional leaders, women and men - through education and information - to change their mindset and involve them in combating FGM"¹⁶.

Why is FGM so hard to be eliminated?

Serious consequences of FGM started to be a focus in the late seventies of the twentieth century, as a proof may easily serve the WHO's Regional Seminar in Khortoum (Sudan) in 1979 or conference of Arab and African heads of state in 1984, which already pointed out a need of prohibiting and outlawing the practice of FGM (Galey, M., as quoted in R. Normand, S. Zaidi, 2008)

A really striking fact about this traditional practice is that its complete elimination has been a goal in the international arena for years. Numerous international organizations have devoted enormous funds to that purpose. Nonetheless, it is still practiced and the current ambitious plan is to eliminate this harmful practice in the upcoming years.

¹⁴ http://wunrn.com/news/2006/11_06_06/111206_fg_m_legislation.htm

¹⁵ Read more: Wheeler, P. (2003) Eliminating FGM: The role of the law. *International Journal of Children's Rights* 11, no. 3 (July 2003), 257-271. *Academic Search Complete*, EBSCOhost. Davis, K. (2009). The Emperor Is Still Naked: Why the Protocol on the Rights of Women in Africa Leaves Women Exposed to More Discrimination. *Vanderbilt Journal of Transnational Law* 42, no. 3 (May 2009), 949-992. *Academic Search Complete*, EBSCOhost.

¹⁶ www.gov.mu/portal/goc/women/file/state160606.do

One could ask, why then are women the keepers of this custom, even though it was a traumatic happening to them? Anthropologists list several reasons for that. One of them would be „practical reasons”, in particular: virgins are more likely to find a respectful husband. And often it would be simply a way to survive as in most of African states in which FGM is practiced, women would still strongly depend on men – better educated, therefore breadwinners. For these reasons, FGM will be extremely hard to be fought without improving education status of African women, which one day will lead to cessation of socioeconomic dependence.

Besides, African women would often struggle with more trivial problems of everyday life (running home, upbringing of many children) and not have time for even considering emancipation from harmful practices. However, as R. M. Abusharaf leaves us with hope, mentioning once widespread, nowadays fully abolished harmful practices of foot binding in China or widow burning in India.

Another reason for which the practice is so hard to be eliminated is that it has been established on the basis of patriarchal establishment of traditional societies and has been maintained by its dominant groups, in that case men. Even though, An – Na'im represents rather strong relative approach towards human rights, he rightly observes that: Dominant groups or classes within a society normally maintain perceptions and interpretations of cultural values and norms that are supportive of their own interests, proclaiming them to be the only valid view of that culture. Dominated groups or classes may hold, or at least be open to, different perceptions and interpretations that are helpful to their struggle to achieve justice for themselves. This however is an *internal* struggle for control over the cultural sources and symbols of power within that society. Even though outsiders may sympathize with and wish to support the dominated and oppressed groups or classes, their claiming to know what is the valid view of the culture of that society will not accomplish this effectively (An – Na'im, 1992).

FGM as a human rights violation; do arguments of relativists apply?

An – Na'im claims that “morality may be universal in the sense that all cultures have it, but that does not in any way indicate the *content* of that morality(...)” This would mean that every deviation from common human rights standard may be justified by a certain culture not sharing the common morality. That could mean every human rights violation in the world could be justified by cultural specifics of the very society in which violation is committed. Such a practice could be very risky and effect with weakening the gravity of international community's negative reactions to

certain harmful practices. This could subsequently lead to stagnation in the sphere of human rights protection in certain parts of the world and keeping local communities internally unbalanced (left under the leadership of the strongest social groups – regardless of other groups in the society).

That is why women in the communities touched by FGM need support from the outside, especially because tradition and custom is one of the toughest phenomena to be overcome, as it keeps the community together and makes its members feel safe.

Once again, it needs to be emphasized that the practice of FGM is against all the universally accepted rules of human rights (it is internationally recognized as such) and, as Executive Director of an international NGO FORWARD, Naana Otoo-Oyortey, said: "It is time to recognize that the right to genital autonomy belongs to all children, regardless of race, culture or gender."

The future of FGM and how international community helps to brighten it

Already much has been done in order to achieve FGM eradication. Certain international steps taken and to be taken will be mentioned in this sub - chapter. As FGM is practiced mainly on female children, it is vital to keep in mind that "It is children, whose individual development and social contribution will shape the world's future – and it is through children that entrenched cycles of poverty, exclusion, intolerance and discrimination can be broken for succeeding generations" (UN Secretary General's *We the children* report 2001). It is uneasy to imagine the future of a world which does not prevent its weakest inhabitants from being mutilated. If the custom continues, not much could be built on that poor soil watered by violence. I fully agree with FORWARD's core values, which *inter alia* state that it is important to acknowledge that positive social changes start from local communities. Only if marginalized and vulnerable groups are allowed to speak and actively participate in shaping their lives, certain goals can be achieved. Moreover, "human rights of girls and women must be upheld so that they are able to fully enjoy their sexual and reproductive health free from violence, coercion or ill – health"¹⁷.

On 25 February 2008 current United Nations Secretary-General, Ban Ki – Moon, launched a multi-year campaign (*UNiTE to End Violence against Women*)¹⁸, aiming to prevent and eliminate violence against women and girls in all parts of the world. The campaign is to last until 2015 and therefore assist

¹⁷ <http://www.forwarduk.org.uk>

¹⁸ <http://www.un.org/en/women/endviolence/about.shtml>

Millennium Development Goals (MDGs) Campaign¹⁹ in reaching its eight goals²⁰. Ban Ki – Moon, has stated that: "Violence against women cannot be tolerated, in any form, in any context, in any circumstance, by any political leader or by any government"²¹.

Additionally, well founded fear of being at risk of FGM, after over a decade of fighting for precedents has become subject to a Guidance Note issued by the United Nations High Commissioner for Refugees²² on 19 May 2009. This very note is based on so far developed jurisprudence of granting refugee status in many states of Western Europe and Northern America mainly. According to the guidelines included in the note, „UNHCR considers FGM to be a form of gender - based violence that inflicts severe harm, both mental and physical, and amounts to persecution"²³. The aforementioned documents have recognized FGM as a form of persecution resulting with a decision of granting asylum.

Moreover, also European Court's of Human Rights jurisprudence has shown that it is not in dispute that subjecting a woman to FGM amounts to ill – treatment contrary to Article 3 of the 1950 European Convention on Human Rights. [9]

V. CONCLUSION

Despite maximal possible universalisation of human rights would probably effect with their maximal observance, the case of female genital mutilation undoubtedly shows how complicated fully universal implementation of human rights is. It is mostly generated by discrepancies among States, caused by may that be varying traditions or economical distance (frequently many conditions at once).

As shown above, traditional practices are one of the hardest and most complicated to be changed and need years to be abolished. As experience has shown, elimination of harmful traditional practices is never an effect of one decision by a state authority or certain community but it is a complicated and time – consuming process. As an example of such phenomenon, emancipation of women in Europe may be recalled – it took over one century and is still lasting. Suffragist movement was just a sparkle, followed by gradual changes in common mentality (of both women and men), amendments of law and

¹⁹ <http://www.un.org/millennium/declaration/ares552e.pdf>

²⁰ <http://www.endpoverty2015.org/goals>

²¹ <http://www.un.org/en/women/endviolence>

²² <http://www.unhcr.org/refworld/docid/4a0c28492.html>

²³ <http://www.unhcr.org/refworld/docid/3d36f1c64.html>

social reforms. Nonetheless, the process is still in progress, and needs constant efforts and activism. This example or an example of FGM itself can serve as a proof how hard traditional practices are to be changed. They can only be changed by more or less rapid evolution.

Moreover, it is worthy to remember that principle of subsidiarity applies to human rights too. As mentioned in the sub - chapter 2.1.4.1, regional systems can create effective measures for fighting harmful traditional practices. Also, awareness building in local communities is vital and irreplaceable. Therefore, I hope the efforts taken by countries themselves along with the steps taken by the international community will gradually (but also as soon as possible) eliminate the harmful traditional practice of Female Genital Mutilation.

As I managed to show, certain cultural deviations from universal human rights exist, however they cannot be too great, in order to still allow making human rights "common language of mankind", [3] as the first High Commissioners for Human Rights, Jose Ayala - Lasso, once articulated.

All of that needs constant strengthening of civil society, mainly by time. It also inquires a lot of people's good will and energy, uncounted funds, and activism constituted by these elements. To be exact, not just external social activism, but mainly the internal one (as real changes cannot be imposed) and evidently by both women and men.

To sum up, human rights have indeed been written down and first described by Western theorists and philosophers but that does not mean they do not apply to the whole humanity as such.

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