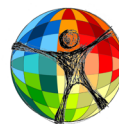


The Right to No Rite: Ending Female Genital Mutilation Through Human Rights Education Practices

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ABSTRACT

Most governments, organizations, and individuals agree that Female Genital Mutilations is a dangerous practice which women and girls should not have to undergo. Yet, the controversial practice is still prevalent in many African regions, some parts of the Middle East, and, to a lesser extent, Asia. In many of these countries, FGM has been banned, both through the ratification of human rights treaties, and through the implementation of regional laws—with no effect. As we will see, State action—while an important step—is not enough to change tradition. To efficiently end the practice of FGM, one crucial component must be added: Human Rights Education (HRE). The following paper will examine how community-based HRE initiatives are often a more useful tool in changing individual perceptions surrounding FGM than State actions banning the practice. Combining HRE initiatives with the ratification of human rights instruments, as well as the well-timed implementation and enforcement of regional laws banning the practice, is the best way to have a transformative impact on communities who consider the practice a fundamental part of their culture.

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Introduction

In her biography, *Desert Flower*, model, activist and writer Waris Dirie writes the following passage, referring to when she underwent female genital mutilation (FGM)¹ in her home country of Somalia:

I feel that God made my body perfect the way I was born. Then man robbed me, took away my power, and left me a cripple. My womanhood was stolen. If God had wanted those body parts missing, why did he create them? I just pray that one day no woman will have to experience this pain. It will become a thing of the past. People will say 'Did you hear, female genital mutilation has been outlawed in Somalia?' Then the next country, and the next, and so on, until the world is safe for all women. What a happy day that will be, and that's what I'm working toward. In'shallah, if God is willing, it will happen.²

While Dirie's powerful words offer a seemingly straight-forward solution to the complex issue that is ending FGM, it is not enough for States to follow a legal path to end FGM. In 2012, just one year after *Desert Flower* was published, Somalia implemented a new provisional constitution which banned the practice.³ Yet, the practice remains rampant in Somalia⁴ and elsewhere; globally, an

¹ For the purpose of this paper, the term "Female Genital Mutilation" will be used. While different terms, like female circumcision and female genital cutting, are often used, FGM is consistent with the World Health Organisation, and is also the term most used by anti-FGM advocates. For consistency reasons, it will be used throughout the report.

² (Waris Dirie & Cathleen Miller, *Desert Flower: The Extraordinary Journey of a Desert Nomad* (New York: William Morrow Paperbacks, 2011) at 240.

³ In 2016, Somalia's then prime minister Omar Abdirashid Ali Sharmake signed a petition to ban Female Genital Mutilation (FGM), but no criminal laws have been implemented to ban FGM. Serina Sandhu, "Somalia's Prime Minister Backs campaign to ban FGM," *The Independent* (24 March 2016) online: <http://www.independent.co.uk/news/world/africa/somalia-fgm-a6949776.html>; Article 15(4) of the Federal Republic of Somalia's Provisional Constitution states that "Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited." *Provisional Constitution* (Somalia), 2012, Art. 15(4) online: <<http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>>.

⁴ According to UNICEF, about 95% of girls will still undergo FGM in Somalia. UNICEF, *Eradication of Female Genital Mutilation in Somalia* (Somalia:

estimated 100 and 140 million girls have undergone FGM, with another 3 million being at risk of undergoing the procedure every year.⁵ In many of the countries where girls and women undergo FGM, international human rights instruments incompatible with the practice have been ratified by the State, and the practice is often illegal.⁶ As we will see, state action—while an important step—is not enough to change tradition. To efficiently end the practice of FGM, one crucial component must be added: Human Rights Education (HRE).

The following paper will examine how community-based HRE initiatives are often a more useful tool in changing individual perceptions surrounding FGM than State actions banning the practice. Combining HRE initiatives with the ratification of human rights instruments, as well as the well-timed implementation and enforcement of regional laws banning the practice, is the best way to have a transformative impact on communities who consider the practice a fundamental part of their culture.

This paper will begin by introducing the topic of female genital mutilation, including what it is, and why it is practiced. The application and difficulties of applying a human rights-based approach to FGM will then be reviewed, followed by a discussion of the failures of a law-based approach to ending the practice. The topic of HRE will be presented, followed by an analysis of specific HRE initiatives that have been launched to target the practice of FGM.

UNICEF, 2004) at 2, online:

<https://www.unicef.org/somalia/SOM_FGM_Advocacy_Paper.pdf >.

⁵ OHCHR, UNAIDS, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, *Eliminating female genital mutilation: An interagency statement* (Geneva: WHO, 2008) at 1, online: <http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442_eng.pdf>.

⁶ Susan Roberta Katz & Andrea McEvoy Spero, eds, *Bringing HRE to US Classrooms* (New York City: Palgrave MacMillan, 2015) at 212.

Understanding Female Genital Mutilation

In order to understand why a legal approach may not eliminate FGM, and why HRE initiatives can have the most impact, it is first important to understand the practice and why so many women and girls undergo it. The following section will attempt to provide a brief overview of these complex questions.

FGM: A Definition

According to the World Health Organization (WHO), the term FGM encompasses all procedures which involve the partial or total removal of the external female genitalia or other injury to female genital organs for non-medical reasons. The WHO recognizes four different types of FGM, with different levels of severity.⁷

The practice is usually carried out on girls between the ages of 0 and 15, although adult and married women are also sometimes subjected to the procedure.⁸ The age and reasons why girls and women undergo FGM varies from one community to another.⁹ FGM has been practiced for thousands of years, and is most prevalent in the western, eastern, and north-eastern regions of Africa, as well as in the Middle East and, to a lesser extent, in Asia.¹⁰ It is unclear when and where the practice originated.¹¹

⁷ According to the WHO, Type I involves the partial or total removal of the clitoris and/or prepuce (clitoridectomy). Type II involves the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision). With Type III, the vaginal orifice is narrowed, and a covering seal is created, by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation). Type IV includes all other harmful procedures to female genitalia for non-medical purposes, like pricking, piercing, incising, scraping and cauterization. *Supra* note 6 at 4.

⁸ It should also be noted the average age girls undergo FGM is decreasing in some countries. *Ibid.*

⁹ *Ibid* at 6.

¹⁰ FGM is also practiced in certain immigrant communities in North America and Europe. *Ibid* at 1.

¹¹ Katz & McEvoy, *supra* note 7 at 212.

Health Ramifications of FGM

Unlike male circumcision¹², FGM has no known health benefits and in fact very often leads to many short and long-term health issues. Immediate consequences can include severe pain, shock, hemorrhage, urine retention, ulceration of the genital region, and injury to surrounding tissue. Severe hemorrhaging and infection can lead to death. Long-term consequences can include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, recurrent urinary tract and pelvic infections, dyspareunia (painful sexual intercourse), increased risk of fistulas, and sexual dysfunction. FGM has also been shown to significantly increase risks of complications during childbirth, including higher incidences of caesarean section, post-partum haemorrhage, and still-birth.¹³

FGM can also have important psychological and psychosexual impacts. Genital mutilation may leave a lasting mark on the lives and minds of the girls and women who have undergone FGM. In the long-term, girls and women may suffer feelings of incompleteness, anxiety, low self-esteem, post-traumatic stress disorder (PTSD), depression, and other mental health issues.¹⁴ The health ramifications of FGM are significant.

Why FGM is Practiced

FGM is a highly complex and controversial issue practiced for various sociocultural, socioeconomic, and religious reasons.¹⁵ Various factors may influence why a girl or woman will undergo the procedure. Some of these may include local tradition, religious

¹² Male circumcision has significant health benefits that outweigh the low risk of complications when performed by adequately-equipped and well-trained providers in hygienic settings. Circumcision has been shown to lower men's risk for HIV acquisition by about 60%. WHO, *supra* note 6 at 11.

¹³ The risk of complications increases with the severity of the type of FGM practiced, with the more severe procedures, specifically infibulation, causing more complications. Infibulation has been linked to a 50% higher risk of still birth. *Ibid.*

¹⁴ Human Rights Watch, "Q&A on Female Genital Mutilation" (16 June 2010), *Human Rights Watch* (news), online: <<https://www.hrw.org/news/2010/06/16/qa-female-genital-mutilation>>.

¹⁵ The cultural variation in West Africa contributes to the complexity of the practice. LandInfo, *Report: Female genital mutilation of women in West Africa* (Norway: LandInfo, 2009) at 3, online: <https://landinfo.no/asset/768/1/768_1.pdf>.

beliefs, and private and internal considerations.¹⁶ FGM is practiced among some adherents of Islam, Christianity, and Judaism, although none of the holy texts of these religions prescribe the custom.¹⁷

Women and girls often undergo FGM as a rite of passage, signifying their acceptance into society and establishing eligibility for marriage. The procedure is often followed by a ceremony where girls are officially welcomed into society.¹⁸ FGM is also often believed to inspire submissiveness in young women, and to reduce the likelihood of sex outside of marriage. Many also believe the practice enhances hygiene, fertility, and the survival of newborn children, which is of course untrue.¹⁹

In areas where FGM is widely practiced, it is supported by the entire community, including women and men. In fact, girls and women often choose to undergo the procedure themselves. This is because FGM is “a social convention governed by rewards and punishments which are a powerful force for continuing the practice.”²⁰ Anyone who openly departs from the practice may be ostracised by the community. In terms of rewards, girls and women who undergo the procedure are sometimes rewarded with a celebration, gifts, and public recognition. Girls and women who refuse to undergo FGM, meanwhile, will likely be unable to find a husband, and are likely to be ostracized by the community.^{21 22} There therefore continues to exist lots of pressure on women and girls to undergo FGM.

¹⁶ *Supra* note 16.

¹⁷ In fact, the practice pre-dates both Islam and Christianity. WHO, *supra* note 6 at 6.

“Female Genital Mutilation: A Pedagogical Tool to Explore Global Violence Against Women” Susan Roberta Katz and Andrea McEvoy Spero, *Bringing HRE to US Classrooms* (New York City: Palgrave MacMillan, 2015) at 218.

¹⁸ Katz & McEvoy Spero, *supra* note 7 at 217-218.

¹⁹ *Ibid.*

²⁰ “Eliminating female genital mutilation: the imperative” interagency statement by OHCHR, UNAIDS, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO at

²¹ Marriage is often necessary to provide girls, and often their families, with economic stability. WHO, *supra* note 6 at 5.

²² Unfortunately, because of the length requirements of this paper, and because of the complexity of the practice of FGM, it will not be possible to fully delve into the reasons why FGM is practiced.

This introduction illustrates that FGM is deeply-rooted in collective and individual identities, culture and tradition. The next section of this analysis will show why FGM is considered to be a violation of human rights by the international community.

FGM as an Infringement of Human Rights: International Human Rights Instruments

Anti-FGM initiatives are far from new. In fact, the first documented actions aiming to bring attention to the practice of FGM dates back to the turn of the 20th century.²³ Since then, various approaches have been used to introduce anti-FGM campaigns; health concerns were at the centre of early crusades²⁴, followed by, more recently, a human rights-based approach.²⁵

This early “health approach” has since fallen from favour, mainly because of its unintended negative consequences.²⁶ Since the 1990s, the growing “culture of human rights” has led global campaigns to leave behind the health approach, instead using a human rights framework to justify FGM intervention.²⁷

Framing FGM within a human rights context is no easy task. While all types of FGM have been condemned by the international community, as well as by many States all over the globe,²⁸ there exists no international, legally-binding human rights covenants which specifically address FGM.²⁹³⁰ This, in turn, is the

²³ Anika Rahman & Nahid Toubia, *Female genital mutilation: a guide to laws and policies worldwide* (London: New York: Zed Books, 2000) at 9.

²⁴ A series of conferences honouring the UN Decade of Women between spanning between 1975 and 1985 framed FGM as a health issue, an approach mirrored by the Inter-African Committee with their classification of FGM as a “harmful traditional practice.” Bettina Shell-Duncan, “From Health to Human Rights: Female Genital Cutting and the Politics of Intervention” (2008) 110: 2 Am. Anthropol PAGE at 225 (OCLC).

²⁵ *Ibid.*

²⁶ These consequences will be delved into in the section below on “the right to health.”

²⁷ Shell-Duncan, *supra* note 25 at 225.

²⁸ *Ibid* at 226.

²⁹ International covenants are legally binding to the countries that ratify them—something many African countries have done. *Ibid.*

³⁰ It is important to note there exists strong legal support for action against FGM found in more recent treaties, including the Women’s Convention (1979), and the Children’s Rights Convention (1989), which focus on the rights of

reason why what Karen Engle calls a “doctrinist approach” must be used: FGM must be assimilated into the dominant human rights framework.³¹

Major rights-based claims used in anti-FGM campaigns are usually centred on the rights of women, the rights of the child, the right to physical integrity, and the right to health.³² While each human rights approach is compelling in its own way, each also poses its own set of challenges, which can arguably be said to be one of the reasons FGM is still practiced to such an extent. These challenges will be studied in the following analysis.

The right to be free from all forms of discrimination against women

One of the most common rights-based approaches to anti-FGM campaigns is one centred on women’s rights. While early human rights instruments do not specifically recognize the practice of FGM as a violation of human rights, they “provide a foundation for the right of women to be free from various forms of violence.”³³

More specifically, the classification of FGM as a form of discrimination against women raises the possibility of invoking the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*³⁴. To fit within the CEDAW framework, FGM must fit the definition of “discrimination against women” outlined in Art. 1.³⁵ For this to be the case, FGM must be both a

women and girls (those affected by FGM) But these are not legally binding treaties. Rahman & Toubia, *supra* note 24 at 18.

³¹ Karen Engle, “Female Subject of Public International Law: Human Rights and the Exotic Other Female” in *After Identity: A Reader in Law and Culture* (New York : Routledge, 1995) at 210-276.

³² Rahman & Toubia, *supra* note 24 at 20-31.

³³ Katz & McEvoy Spero, *Supra* note 7 at 211.

³⁴ According to the Art. 5(a) of CEDAW, states have an obligation to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of [gender equality]. *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13, Can TS 1982 No 31.

³⁵ Art. 1 of CEDAW states that: “For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of

distinction based on sex, and must have the effect or purpose of impairing the equal enjoyment of rights by women.³⁶ At first glance, FGM does fit these criteria, but critics have argued that as men also undergo circumcision, FGM is not a distinction based on sex. Others have argued that the distinct severity of female circumcision, as well as the social message founded in the practice, show the impact on women is very different from that of male circumcision, and therefore does fit the criteria of discrimination against women. This is supported by the fact that CEDAW has issued specific recommendations on FGM.³⁷

The international community, especially the UN, also recognizes that FGM is a form of Violence Against Women (VAW)³⁸, with many conventions recognizing as a harmful practice.³⁹ The *Declaration on the Elimination of Violence Against Women (DEVAW)*, while not legally-binding, specifically notes that harmful traditional practices which are harmful to women, such as FGM, must be eliminated.^{40,41}

It should be noted using an anti-FGM approach routed in women's rights poses its share of challenges. While CEDAW has recognized FGM would fit the definition of discrimination against women, the fact remains that CEDAW has limited international effectiveness. This is because, of all the UN human rights treaties, CEDAW is subject to the greatest number of exemptions and exclusions of "traditional customs and practices".⁴² A women's rights approach also poses a challenge as it ignores the fact that

human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." *Ibid*.

³⁶ Rahman & Toubia, *supra* note 24 at 21.

³⁷ *Ibid* at 21.

³⁸ FGM was first classified as a form of VAW during the 1993 Vienna World Conference on Human Rights. *Ibid* at 25.

³⁹ Note VAW will also be discussed in the section on the right to life and physical integrity. *Ibid*.

⁴⁰ Art. 2 states that : Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation [...]. CEDAW, *supra* note 25.

⁴¹ Shell-Duncan, *supra* note 25 at 228.

⁴² For a full list of women's rights international human rights instruments relevant to FGM, see Rahman & Toubia, *supra* note 24 at 22.

many women choose to undergo FGM. Even in the case of children undergoing the procedure, the decision is often made by women in the family, and excisers are very often women as well, weakening the claim of gender discrimination.⁴³ Presenting communities with a women's rights approach may therefore not be convincing to women themselves—both those who undergo FGM and those who perform it. A women's rights approach can still be a very powerful tool, as it is the human rights approach which acknowledges the patriarchal, discriminatory values associated with FGM.⁴⁴

Rights of the child

As FGM is often carried out on girls under the age of 18, campaigns against the practice can also be advanced using an approach centred on the rights of the child. This method is appealing as the *Convention on the Rights of the Child (CRC)* is one of the most widely ratified international human rights instruments.⁴⁵ The CRC is also highly applicable to FGM as it calls for the abolishing of traditional practices which may prejudice the health of children.⁴⁶ The CRC also establishes the "best interest of the child" standard—FGM, many argue, is not in the best interest of any child.⁴⁷ Finally, while the CRC acknowledges that parents and family have the responsibility of making decisions for children, it also states the government is the ultimate decision-maker.⁴⁸ It should be noted that the *African Charter on the Rights*

⁴³ Rahman & Toubia, *supra* note 24 at 22.

⁴⁴ Katz & McEvoy Spero, *supra* note 7 at 159.

⁴⁵ Rahman & Toubia, *supra* note 24 at 28.

⁴⁶ Article 24 §3 specifically states that "[s]tates Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. While FGM is not specifically mentioned, it has been identified by many as being a traditional practice that can endanger the life of children. The concluding observations of the Committee on the Rights of the Child about particular countries often includes a call for government action to stop FGM. *Ibid.* at 30. *Convention on the Rights of the Child*, UN, 20 November 1989, 1577 UNTS. 3, 28 I.L.M. 1456 (entered into force 2 September 1990).

⁴⁷ Article 3(1) of the CRC states that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." *Ibid.*

⁴⁸ *Ibid.*

and Welfare of the Child (African Charter) uses a very similar approach.⁴⁹

There are issues with using a children's rights approach to promote an anti-FGM agenda. As Kay Boulware-Miller and Barrett Breiting point out, many parents living in areas where FGM is very common may view its performance as being in their child's best interest, as the cultural, economic and social benefits of the procedure are seen as taking precedent over the health risks. Yet, making this decision, they explain, would classify them abusive and incompetent parents.⁵⁰ Another issue, as explained by Shell-Duncan, is that "[...]by focusing on physical harm to the exclusion of social acceptance, this approach overlooks the fact that in societies with a high prevalence of FGC, a child's right to develop "normally" includes being circumcised."⁵¹ But, as Rahman and Toubia note, the "best interest" standard should be interpreted to support the call to end FGM, a view supported by the fact that the *Children's Rights Committee* has called for the elimination of the practice.⁵² Another issue is that the CRC recognizes that children have an "evolving capacity" to make decisions affecting their lives, meaning that, when criteria is met, they may consent to certain procedures.⁵³ Finally, this approach does not acknowledge that many adult women undergo the procedure. An approach based on children's rights therefore poses certain difficulties.

The right to life and physical integrity, including freedom from violence

Another approach taken by anti-FGM campaigns is to argue FGM infringes the rights to life and physical integrity, which are considered core human rights.⁵⁴ It is important to note that while the rights to life and physical integrity are usually associated to the right to be free from torture, these rights encompass

⁴⁹ See African Charter at articles 4(1), Article 5(2), Article 10, Article 14(1), Article 21(1). *African Charter on Human and Peoples' Rights (African Charter)*, 27 June 1981, 1520 UNTS 217, art 12(3), 21 ILM 58 (entered into force 21 October 1986).

⁵⁰ Shell-Duncan, *supra* note 25 at 228.

⁵¹ *Ibid.*

⁵² Rahman & Toubia, *supra* note 24 at 30.

⁵³ *Ibid.*

⁵⁴ *Ibid* at 23.

broader human rights principles, including the inherent dignity of the person, the right to liberty and security of the person, and the right to interfere with a person's rights to life and physical integrity—implicit to which is the right to make independent decisions in matters affecting one's body.⁵⁵ The *Human Rights Committee* has commented that the right to life should be broadly interpreted, and that protection of this right requires states to adopt positive measures.⁵⁶

While it is clear that a person's rights to liberty and security are deprived when FGM is performed against their will or when they are too young to consent, it is unclear whether said rights are infringed when this is not the case. Of course, as Rahman and Toubia explain on the question of consent, "[t]he effects of refusing FC/FGM on both [a woman or girl's] emotional life and her financial security may make meaningful consent to the procedure impossible."⁵⁷ The fact that the international community, specifically the UN, has recognized FGM as a form of VAW does support the theory that consent is moot to the question of whether rights to liberty and security have been infringed, but this remains to be seen.

The right to be free from torture

Another approach which falls within these rights is to view FGM as a form of torture. The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Torture Convention) defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... for reasons based on discrimination of any kind."⁵⁸ The CAT also requires that the torture be inflicted "with the consent or acquiescence of a public official or other person acting in an official capacity."⁵⁹ It has been argued that the failure of countries to enact legislation banning FGM, or to enforce such

⁵⁵ Rahman & Toubia, *supra* note 24 at 23.

⁵⁶ *Ibid.*

⁵⁷ *Ibid* at 25.

⁵⁸ See Art. 1. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 113, U.K.T.S. 1991 No. 117 (entered into force 26 June 1987) [Torture Convention].

⁵⁹ *Ibid.*

laws, constitutes the “consent or acquiescence of a public official.”⁶⁰

A technical issue with the OHCHR’s definition of torture in the *Torture Convention* is the question of whether intent to cause harm is required for the definition of torture to be met. The *Torture Convention* defines torture as “any act by which severe pain or suffering, whether physical or mental, is *intentionally* inflicted on a person (emphasis added) [...]” This arguably does not meet the motive of excisers, or of the parents and guardians who decide their daughters will undergo FGM. It is therefore unclear whether FGM can be regarded as torture at all.

Even in the case that FGM could be recognized as a form of torture, this approach still poses many issues. First, in many cases women and girls consent to undergoing the procedure. Defining FGM as torture is therefore difficult, as the very concept of “torture” is implied to be non-consensual.⁶¹ Another issue, writes Shell-Duncan, is that the use of the term “torture” could be seen as an attack on culture to the communities who practice FGM. This, in turn, could lead to even more resistance to ending the practice—the very opposite of the goal of human rights campaigns.⁶² Overall, an approach based on the right to life and physical integrity may not be the most efficient approach to changing perceptions on FGM.

Right to health

While anti-FGM campaigns have worked to distance themselves from a health approach, many scholars have reached the conclusion that the most promising of rights-based claims for opposing the practice is one based on the right to health and bodily integrity. This human right is defined in Article 25 of the UDHR.⁶³

⁶⁰ Shell-Duncan, *supra* note 25 at 228.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Article 25 of the UDHR states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances

Evidence showing the health repercussions of FGM make a “doctrinist approach” quite simple—FGM can, and often does, violate this right to an adequate standard of living.⁶⁴ FGM undoubtedly affects the highest attainable standard of physical and mental health outlined by international human rights law.⁶⁵ As Rahman and Toubia explain, “...any invasive procedure – no matter how “safely” performed – entails risks to the health of the person who undergoes it. Subjecting a person to health risks in the absence of medical necessity should be viewed as a violation of that person’s right to health.”⁶⁶

A health rights method has many advantages as it can be less judgmental and can be seen as being more politically acceptable, or compatible, than other rights claims.⁶⁷ Yet, like all the other rights-based approaches listed above, this method is still not perfect. Using a health rights approach can lead to the resurfacing of the risks that emerged during previous health-based campaigns. For example, medicalization of FGM may be seen as a solution as it would reduce many of the most pressing health complications—like hemorrhaging and infection—associated with the practice itself. Nonetheless, most scholars still agree the health rights angle is the “least problematic” approach to calling for the end of FGM, showing efforts to divorce a health-based approach from human rights have been unsuccessful.⁶⁸

It would seem this separation between a ‘health’ and a ‘human rights’ approach is, in fact, unnecessary. An approach which combines the technique used by pre-1990 anti-FGM campaigns—one centred on health—and a rights-based approach centred on women’s and children’s rights may be the most effective way to bridge the of FGM topic in affected communities while acknowledging the patriarchal roots of the practice. As Rahman and Toubia note, “[b]ecause FC/FGM implicates several human rights, the means by which to redress the practice need to

beyond his control.” *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71.

⁶⁴ See section above on Health Ramifications of FGM.

⁶⁵ International human rights law has established that individuals are entitled to enjoy “the highest attainable standard of physical and mental health.” Rahman & Toubia, *supra* note 24 at 26.

⁶⁶ *Ibid* at 27.

⁶⁷ Shell-Duncan, *supra* note 25 at 228.

⁶⁸ *Ibid*.

be multifaceted and reflect its complexity.”⁶⁹ This inclusive approach is reflected by USAID’s official policy on FGM, adopted in 2000, which states that: “[...] harmful, traditional practice that violates the health and human rights of women and hinders development [emphasis added].”⁷⁰ Such a framework places a highly specific issue, in this case FGM, within a much more broad social justice agenda, making it part, as Rahman and Toubia note, of the long-term process of holding governments accountable.⁷¹

Where laws and international conventions fail in combatting FGM

We could think of it as sin and send the religious, as illness and send physicians, as war and send in the military. Or we could think of it as a human rights violation and send the lawyers. Doing so can be a way of doing nothing, avoiding responsibility, simultaneously individualizing the harm and denying its specificity.

– David Kennedy⁷²

Learning from History: An Introduction

In the mid 1950s, a group of girls in Meru, Kenya, sang as they did punitive labour—their punishment for defying a recent ban on “clitoridectomy.”⁷³ News and defiance of the ban—unanimously passed in April 1956 by the Njuri Ncheke, an officially sanctioned local council of male leaders—had spread quickly and widely. In fact, Former Chief Mjuri M’Anampiu said he remembered returning from the meeting, only to learn that all the girls had been circumcised—many of the girls having performed FGM on one another.⁷⁴

⁶⁹ Rahman & Toubia, *supra* note 24 at 39.

⁷⁰ USAID, “USAID Policy on Female Genital Cutting (FGC),” online: <<https://www.usaid.gov/sites/default/files/documents/1864/200mac.pdf>>.

⁷¹ Rahman & Toubia, *supra* note 24 at 39. While it was not possible to discuss and list all relevant international and regional human rights instruments for each human rights approach, these can be found at Rahman & Toubia, *supra* note 24 at 22 (women’s rights), 29 (children’s rights), 24 (right to physical integrity), and 27 (the right to health).

⁷² David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton : Princeton University Press, 2008) at 34.

⁷³ Lynn Thomas, “Ngaitana (I will Circumcise Myself)”: Lessons from Colonial Campaigns to Ban Excision in Meru, Kenya” in Bettina Shell-Duncan and Ylva Hernlund, eds, *Female “Circumcision” in Africa: Culture, Controversy, and Change* (Colorado: Lynne Rienner Publishers, Inc, 2000) 129 at 129.

⁷⁴ *Ibid.*

In the three years following the enactment of the ban, over 2,400 girls, men and women were charged with defying this order, with thousands being fined for the same reason.⁷⁵ Various resolutions had been passed concerning FGM to 1956, but they were largely ineffectual. For example, while resolutions had stated the girls had to consent to the procedure before undergoing it, and that only the less severe forms of FGM could be performed, the resolutions were mostly ignored.⁷⁶ When the ban was passed, the practice went underground, causing the tradition to change drastically.⁷⁷

By 1957, anti-FGM campaigns in Meru had shifted their focus from one centred on prosecution to one routed in education and health propaganda. By this point in time, there were no more unexcised girls in Meru.⁷⁸

As Lynn Thomas writes, the history of colonial efforts to end the practice of FGM in Meru offers three lessons to anti-FGM campaigns. First, it is clear there are many difficulties and even dangers associated with enforcing legal prohibitions against FGM.⁷⁹ Second, this example shows it is possible for “traditions” to change very quickly—FGM practices are not set in stone.⁸⁰ This example also shows why it is important to understand that FGM is, for many women, a form of female initiation that many girls do not want to part with. As Thomas writes, “[f]ailure to consider how female genital cutting instills moral meanings of womanhood and animates relations of authority among girls and women will lead

⁷⁵ *Supra* note 74 at 129.

⁷⁶ In fact, clitoridectomies were performed on much younger girls than usual during this time in order to reduce pre-initiation abortions. This directly went against the goal of the new resolutions, as girls below a certain age cannot consent to such a procedure. *Ibid* at 133.

⁷⁷ After the ban, no celebrations or ceremony took place after FGM was performed. Girls excised each other, sometimes with the help of their mothers, instead of community excisers. They used razor blades instead of the triangular knives usually used for the practice. Girls no longer had their ears pierced, and no longer received their abdominal tattoos. *Ibid* at 137.

⁷⁸ *Ibid* at 145.

⁷⁹ Apart from November 1996 introduction of an ill-fated parliamentary bill to outlaw FGM, most efforts in Kenya have focused on educating people on the harmful effects of excision and organizing alternative rituals. *Ibid*.

⁸⁰ See *supra* note 76.

contemporary campaigns to suffer fates similar to that of the 1956 ban.”⁸¹

This historic—and still very relevant—example allows us to delve into the matter of both international and regional laws banning FGM, and why even today their ratification and implementation is often not enough to put an end to FGM practices.

Issues with International Human Rights Law

The ratification of international and regional human rights conventions which directly and indirectly condone FGM is the first step States must take in order to lead to social change. State ratification of conventions are binding legal obligations to uphold the rights protected by these treaties.⁸² Such actions can have important consequences on social justice movements as a whole.⁸³ For example, international human rights instruments are very important as many States base their constitutions and laws on them.⁸⁴ But, alone, international instrument ratification has a limited impact on the practice of FGM.⁸⁵

The main reason why international law, alone, has little impact on the practice of FGM is that, as a general rule, international human rights law governs the actions of States, and not of private parties. The practice of FGM, being typically performed by private individuals and not the government, is therefore largely unbothered by international law. This can also make holding governments accountable through international law much more difficult. Of course, governments may still be held responsible for failing to take steps to prevent or redress the practice of FGM⁸⁶, but it can be difficult to measure the compliance of governments, especially because the individualistic

⁸¹ Thomas, *supra* note 76 at 148.

⁸² Nahid & Toubia, *supra* note 25 at 58.

⁸³ Of course, it is crucial that states not undermine the human rights instruments they have ratified by entering reservations. *Ibid* at 44

⁸⁴ *Ibid* at 18.

⁸⁵ *Ibid* at 17.

⁸⁶ International human rights instruments impose on governments the duty to modify customs that discriminate against women, the duty to abolish practices that are harmful to children, the duty to ensure health care and access to health information, the duty to ensure a social order in which rights can be realized *Ibid* at 46.

nature of FGM means it is not within a government's power outright to eliminate the practice.⁸⁷

Another important issue is that the means by which international human rights laws can be enforced are very limited. First, international covenants are only legally binding to countries that ratify them.⁸⁸ Even in countries which have ratified the covenants, it is difficult to enforce said laws when there exists no global equivalent to national-level police forces, and international courts have limited jurisdiction.⁸⁹ It should be noted that the UN human rights system has set in place procedures for the reporting of current human rights conditions, the core of which is the Human Rights Commission, and, of course, the enforcement of human rights principles can occur at the national level. Some regional human rights mechanisms have also been active in enforcing human rights principles.⁹⁰

Finally, on an individual and community basis, it can be very easy to push aside human rights principles and laws that one is unfamiliar with, especially in countries in Africa, and dismiss them as being Western ideas simply not relevant with their culture and way of life.⁹¹ This argument finds support in the cultural relativist arguments of many scholars, who argue human rights is a Western construct which is often imposed on other cultures.⁹²

⁸⁷ Nahid & Toubia, *supra* note 25 at 52.

⁸⁸ *Ibid* at 18.

⁸⁹ *Ibid* at 17.

⁹⁰ *Ibid* at 17.

⁹¹ In fact, this cultural relativist approach is one Mr. Wakilou is so worried about that he chooses not to speak on international human rights conventions when holding information sessions on FGM—he says this would be counter-productive. Interview of Wakilou Senou by Nathalie Laflamme (22 Nov. 2017).

⁹² It is unfortunately not possible to fully delve into the cultural relativist critique of the international human rights movement. See: David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton : Princeton University Press, 2008). & Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia : University of Pennsylvania Press, 2002). Merry's definition of human rights—a conceptions which in an evolving "culture of human rights" that changes in response to social, economic, political and cultural influences—is an especially fitting counterargument which becomes apparent when studying the history of the anti-FGM movement. Sally Engle Merry, "Changing rights, changing culture" in Jane K. Cowan, Jane

While the effectiveness of international human rights law, on its own, is very doubtful, we will see why it is an important part of an effective approach to promoting human rights and ending harmful practices such as FGM. The same goes for regional laws, which, like international law, can do more harm than good on their own.

Issues with Regional Law

Unlike international human rights laws, regional criminal laws and sanctions are targeted at individuals, and intended to stop them directly. However, As Leslye Obiora writes, it is important to warn against a “naively idealized confidence in the law.”⁹³ Unfortunately, regional laws, when implemented without the support of human rights education, are no more efficient than their international equivalents; they can in fact have a negative impact on anti-FGM efforts.

In Africa, 25 countries have passed legislation banning FGM⁹⁴, with many other nations being under pressure to do so as well.⁹⁵ Many nations have incorporated human rights into their constitutions, with many proscribing FGM specifically. Of course, the severity of punishment associated with convictions varies greatly from one country to the next. In many countries, convictions are extremely rare, sometimes nonexistent.⁹⁶ It should

K.Cowan, Marie-Bénédicte Dembour, and Richard A. Wilson, eds, (Cambridge ; New York: Cambridge University Press, 2001) at 31-55.

⁹³ L. Amede Obiora, “Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign against Female Genital Circumcisions” (1997) 47: 2 Case W. Res. L. Rev at 352.

⁹⁴ Benin (2003); Burkina Faso (1996); Central African Republic (1996, 2006); Chad (2003); Cote d'Ivoire (1998); Djibouti (1994, 2009); Egypt (2008); Eritrea (2007); Ethiopia (2004); The Gambia (2015); Ghana (1994, 2007); Guinea (1965, 2000); Guinea Bissau (2011); Kenya (2001, 2011); Mauritania (2005); Niger (2003); Nigeria (2015); Senegal (1999); South Africa (2000); Sudan (state of South Kordofan 2008, state of Gedaref 2009); Tanzania (1998); Togo (1998); Uganda (2010); Zambia (2005, 2011). UNFPA, “Female genital mutilation (FGM) frequently asked questions,” (January 2017), online: < http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#banned_by_law>.

⁹⁵ WHO, *Sexual Health, Human Rights and the Law*, (Geneva : WHO, 2015) at 45, online: <http://apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf?ua=1>.

⁹⁶ *Ibid.*

also be noted that, while FGM is illegal in many countries, many of the laws are not enforced due to cultural norms and religious beliefs.⁹⁷ As for constitutions, they have little impact on the people's individual decisions. If laws are not enforced, they can become as easily dismissed by individuals as the human rights conventions many of them are based on.

The implementation of criminal laws and sanctions, when used alone, can in fact have a negative impact on anti-FGM efforts when not implemented correctly, as illustrated by what took place in Meru. First, in areas where law enforcement mechanisms are weak or lack resources, customs which govern private behaviour in communities are unlikely to support legislation which specifically aims to put an end to traditional practices like FGM.⁹⁸ Another risk is that, as many African societies are often kinship-based, approval of the community is often required for behaviour change to occur at the individual level.⁹⁹ As we have already established, this is unlikely to happen with implementation of criminal law alone, meaning denouncers could experience severe social and economic repercussions from the community.¹⁰⁰ Finally, criminal laws could fuel ethnic animosity in areas where FGM is only common among one of the many ethnic groups in said community.¹⁰¹ It is therefore crucial that criminal sanctions not be used too strongly or hastily to end FGM—the case of Meru should serve as an example.

It is important to note that if the implementation of laws banning FGM—criminal or otherwise—is well-timed and properly enforced, it can be a strong political and legal tool. For this to be the case, social change must already be underway—in fact laws should not be implemented until this point.¹⁰² Numerous commentators have emphasized that legal strategies are unlikely to work in isolation from efforts to end the practice of FGM.¹⁰³ In fact, "...poorly timed or hastily introduced laws can backfire by

⁹⁷ Katz & McEvoy Spero, *supra* note 7 at 212.

⁹⁸ Rahman & Toubia, *supra* note 25 at 61.

⁹⁹ *Ibid* at 62.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*.

¹⁰² *Ibid*.

¹⁰³ Obiora, *supra* note 96 at 352 & Shell-Duncan, *supra* note 24 & Rahman & Toubia, *supra* note 25 at 61-68.

truncating an emerging social dialogue, causing social rifts, and driving the practice underground.”¹⁰⁴

As is the case with international human rights law, regional laws, alone or paired with their international parentages, are unlikely to effectively put an end to FGM practices. As we will see in the ensuing section, they must be combined with Human Rights Education (HRE) efforts in order to successfully lead to transformative change.

HRE as an Approach to Ending FGM Practices

HRE and Equitas: An Introduction

“If you communicate with someone and that person does not understand what you mean, you should not condemn the person. Instead, you should be angry with yourself, because you did not find the right strategy to make yourself clear.

*—Interview with Moumini Ouédraogo, Ouagadougou,
February 2008 by Johanna Richter¹⁰⁵*

For three weeks every June, John Abbott College, located in Ste-Anne-de-Bellevue, is transformed: this is when Equitas’s International Human Rights Training Program (IH RTP) is held. This internationally-recognized program, which has been taking place for 38 years, brings together roughly 90 participants from about 45 countries. During this program, the participants—who mainly work for civil society organizations, national and regional human rights institutions, and government bodies across the globe—unite to acquire new tools, knowledge, and inspiration that will strengthen their capacities as global human rights activists and leaders.¹⁰⁶ In fact the IH RTP is the “only training program in the

¹⁰⁴ Rahman & Toubia, *supra* note 25 at 58.

¹⁰⁵ Johanna Richter, *Human rights education through Ciné Débat: film as a tool to fight against female genital mutilation in Burkina Faso* (Wiesbaden: Springer Fachmedien Wiesbaden, 2016) at 5.

¹⁰⁶ Equitas, “International Human Rights Training Program: Program Information” (2016), *Equitas* (information package), online: <
<https://equitas.org/wp-content/uploads/2015/09/Information-package-IH RTP-2016-.pdf>>.

world specifically dedicated to building the capacity and skills of human rights educators.”¹⁰⁷

Equitas views “non-formal human rights education as an essential component in the process of building a global culture of human rights.”¹⁰⁸ Equitas was founded 50 years ago, following the ratification of the UDHR—considered by many as the starting point of human rights education.¹⁰⁹ The UDHR’s preface made the first call for HRE and for the promotion for human rights and freedoms by teaching and educating to ensure their universal acknowledgment worldwide.¹¹⁰ But what exactly does Human Rights Education mean?¹¹¹

HRE activities can take the form of training for the application of human rights standards in the context of a professional activity, like the training of judges, lawyers, police officers, etc. HRE can also be much broader, involving teaching human rights in schools and universities, or disseminating information on human rights standards to the general public or to vulnerable populations.¹¹² While the IH RTP is an example of the former form of HRE, the following paper will concentrate on the latter.

¹⁰⁷ Equitas, “International Human Rights Training Program,” online: <<https://equitas.org/training/international-human-rights-training-program/>>.

¹⁰⁸ “International Human Rights Training Program: Participant’s Manual” (Montreal: Equitas, 2017) at iii.

¹⁰⁹ Heping Dang, *International Law, Human Rights and Public Opinion* (Oxford; New York: Routledge, 2017) at 23.

¹¹⁰ *Ibid.*

¹¹¹ The United Nations Declaration on Human Rights Education and Training states that:

“Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms. Human rights education contributes to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding, and by developing their attitudes and behaviors, to empower them to contribute to the building and promotion of a universal culture of human rights.” “Guidelines on Human Rights Education: For Human Rights Activists”, OSCE, Poland (2013) at 13 online: <<http://www.osce.org/odihr/105050?download=true>>.

¹¹² Page 5 UN’s report “Human Rights Defenders: Protecting the Right to Defend Human Rights”

At this year's IHRT, it felt as though human rights defenders for every single violation on the planet was present under one roof. One of these participants was Mamane Lawal Barry Mamadou, a judge at the High Court of Niamey, Niger. Mr. Mamadou also leads awareness campaigns on women's rights and violence against women, including FGM, for CONGAFEN. Another participant present this summer was Wakilou Senou, a police officer working in Burkina Faso. Mr. Wakilou, like Mr. Mamadou, often leads information seminars on human rights: in his case, specifically on the dangers of FGM. These two incredible human rights defenders, among others present at this year's IHRT, inspired the topic for this paper, and were interviewed on the topic.

The next part of this paper will study why HRE is well-suited to anti-FGM goals, and how, in practice, its application can lead to concrete change within communities, and even, in some cases, completely eliminate the practice.

HRE and FGM: An Effective Approach

While the ratification of human rights covenants and conventions by States and the implementation of regional laws banning FGM shows States are committing to attempting to end harmful practices like FGM, these two steps, alone, lead to little change. For these perceptions to change on an individual basis, Human Rights Education (HRE) efforts must be added to States' ratification of international human rights law, and implementation of local law banning FGM. As for countries in which States have not ratified human rights conventions or implemented local bans, efforts to end FGM must use a "bottom-up" approach—meaning that NGOs and the international human rights community should initiate HRE initiatives to change individual perceptions first, and to influence State action second.¹¹³

For a human rights approach to effectively reduce—and eventually eliminate—the practice of female genital mutilation, it is crucial that community-based human rights education (HRE)

¹¹³ Many organizations make this recommendation in reports on abolishing FGM. See: UNICEF, *The Dynamics of Social Change: Towards the Abandonment of Female Genital Mutilation/Cutting in Five African Countries*, (Florence: UNICEF, October 2010), LandInfo, *supra* note 16, WHO, *supra* note 16.

initiatives be implemented.¹¹⁴¹¹⁵ Community-based HRE initiatives are very often described as being the most successful at combatting culture-based social practices like FGM.¹¹⁶ While this HRE approach can be provided by the State, NGOs may be better received by communities, so long as they are not dismissed as outsiders. It is also crucial that these initiatives use a culturally-sensitive approach¹¹⁷, so communities can be reminded that, as stated in a joint statement by WHO/UNICEF/UNFPA from 1996:

Culture is not static but it is in constant flux, adapting and reforming. People will change their behavior when they understand the hazards and indignity of harmful practices and when they realize that is possible to give up harmful practices without giving up meaningful aspects of their cultures.¹¹⁸

HRE initiatives are not always successful. Many of the community-based initiatives which have failed in initiating a dialogue surrounding FGM did so because they did not use a culturally-sensitive approach, instead using patronizing, demeaning language when discussing the practice.¹¹⁹ The use of a non-judgmental approach facilitates dialogue, leading to deep-seated feelings about FGM being voiced, and to collaboration within the community on how to end the practice.¹²⁰ It is also crucial that the role of the collective community not be disregarded—all citizens of the community must be included in the fight against FGM.¹²¹ HRE initiatives must therefore be carefully planned and implemented, in order to attain their goal: educating

¹¹⁴ Mary Nyangweso, *Female genital cutting in industrialized countries: mutilation or cultural tradition?* (Santa Barbara: Praeger, 2014) at 155. See also: Rahman & Toubia, *supra* note 25.

¹¹⁵ Please ignore this footnote.

¹¹⁶ “Community-Based Intervention” chapter in *Female Genital Cutting in Industrialized Countries* at 156. Must be supplemented by legal policies.

¹¹⁷ Richter, *supra* note 108 at 87.

¹¹⁸ Mary Nyangweso, *Female genital cutting in industrialized countries: mutilation or cultural tradition?* (Santa Barbara: Praeger, 2014) at 156.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid* at 157.

¹²¹ As Lanier and Neuhaus point out, the starting point of the fight against FGM is the inclusion of local people—involving the chiefs of the villages alone is not enough. Richter, *supra* note 108 at 87.

communities about why FGM should no longer be practiced, and ideally also teaching them about human rights in the process.

As we will see below, there are various effective ways that States and NGOs can implement HRE in order to facilitate a dialogue on issues with FGM, be transformative, and slowly but surely put an end the practice.

Specific approaches to HRE to end FGM: An Introduction

Human rights ideas are more readily adopted if they are packaged in familiar terms, but they are more transformative if they challenge existing assumptions about power and relationships. Activists who use human rights for local social movements face a paradox. Rights need to be presented in local cultural terms in order to be persuasive, but they must challenge existing relations of power in order to be effective. [...] to have local impact, human rights ideas need to be framed in terms of local values and images...

—Sally Engle Merry, 2006¹²²

In 1988, Kadidia Sidibe, the director of a Bamako women's group which is opposed to FGM, began (unsuccessfully) paying regular visits to Miriam Bagayoko, a powerful woman in the Mali capital. At the time, Bagayoko was a respected circumciser in the community. For seven years, Sidibe attempted to convince Bagayoko to stop performing FGMs on girls, finally succeeding by showing her many photos and videos of health complications caused by the procedure.¹²³

Isnino Shuriye also used to perform infibulations among the Somali community in northern Kenya. Videos and photos did not convince her to stop performing FGM, and neither did a visit from a doctor organized by members of the group Womankind—she felt the doctor was just trying to “plan Western ideologies.” Shuriye knew of gynecological complications, but believed they were caused by bad spirits, and not attributable to circumcision. What finally convinced her to stop after Womankind brought

¹²² Sally Engle Merry, *Gender Violence: A Cultural Perspective* (Oxford: Wiley-Blackwell Pub, 2009) at 5.

¹²³ Tina Rosenberg, “Editorial Observer; Mutilating Africa's Daughters: Laws Unenforced, Practices Unchanged,” *New York Times* (5 July 2004), online: <<http://www.nytimes.com/2004/07/05/opinion/editorial-observer-mutilating-africa-s-daughters-laws-unenforced-practices.html>>.

liberal Islamic clerics to see her and told her the practice was not condoned by the Quran.¹²⁴

Both these women have since stopped performing the procedures and become anti-FGM advocates. The strategies used by organizations like Womankind—like education targeted at circumcisers and other important community members, promotion of advocacy within the community, and persuading religious leaders and doctors to dispel erroneous beliefs—have shown to be very effective.¹²⁵ These are just a few of the many different HRE strategies NGOs and other organizations can use to start a dialogue in communities on FGM and help put an end to the practice from within. More of these various types of approaches will be explored in the following section.

Community-level Initiatives: Various Approaches

Various approaches to community-based initiatives have been used over time. The following section will introduce some of these specific approaches.

The “Health” Approach

The oldest, and most used, has been a “health” approach, where information sessions on the health complications of FGM—especially related to child birth—are presented to communities.¹²⁶ Doctors and other health professionals often take part in the information sessions. As has been made clear throughout this paper, this approach is far from ideal as it has been shown to often not reduce the practice of FGM, but simply medicalize it. This approach should be used with caution, ideally in conjuncture with other approaches.

The “economic and social development of women” approach

Some NGOs have used women’s empowerment as the centre of their HRE campaigns, using economic and social development as a method to persuade the community to abandon FGM. These programs build income-generation and decision-making skills, and often include the provision of health services

¹²⁴ *Supra* note 123.

¹²⁵ *Ibid.*

¹²⁶ Rahman & Toubia, *supra* note 25 at 76.

and literacy training.¹²⁷ This approach works especially well in areas where men must emigrate to other places for work, meaning that women become the heads of the household. It should be noted this is a long-term approach.

Ceremonies for Alternative Rites of Passage for Girls

Another approach which has been successful in reducing the number of women and girls who undergo FGM is one which replaces FGM with alternative rites of passage. Such approaches mean girls are still formally introduced to the community through the celebration associated with FGM, minus the procedure. As Nyangweso explains, “[r]ites of passage that often involve socialization in the societal values of one’s heritage and the celebration of these values through traditional dances, singing, feasting, and gift-giving hold a deeper meaning for the communities concerned than the act of genital cutting.”¹²⁸

Where introduced, such methods have been quite successful in reducing the prevalence of the practice. PATH’s “Circumcision Through Words” program is an example of an alternative rite of passage program which has been very successful. The program includes a week-long program of counseling, training, and education about womanhood which teaches girls about autonomy and physiology, sexual and reproductive health, hygiene, gender issues, respect for adults, and the importance of self-esteem. The program acknowledges the cultural value associated with FGM, while helping girls build crucial support groups and allowing them to take part in an informed dialogue that will “foster participation in the decision-making process.” The rest of the community is involved in the process so uncut women are valued, and to fight social coercion. In 6 years, the project has prevented over 1000 girls from being excised.¹²⁹

While this approach has been criticized for not addressing the underlying patriarchal social values associated with FGM and

¹²⁷ This approach, which is a long-term one, has been quite successful. All members of the community (including excisers) sign a declaration at the end of the training pledging to stop practicing FGM. This method has been very successful in the Egyptian village of Dir El Barsha. *Ibid* at 77.

¹²⁸ Nyangweso, *supra* note 120 at 158.

¹²⁹ *Ibid*.

human rights, and because of its limited impact on the promotion of social justice¹³⁰, the approach has been successful in reducing the number of girls who undergo FGM. After all, this is the primary issue which must be addressed within communities. Once girls' lives and quality of life are no longer affected by the procedure, then the next issue—that of patriarchal structures within communities—can be tackled. As Richter duly notes on the situation in Burkina Faso:

[...] activists and NGOs should be aware of their principle goal, which is first of all to reduce the mutilation of female organs and improve the health situation of women in general. Only in the second step can they try to contribute to a general shift in the recognition of the women in Burkina Faso.¹³¹

Targeted Initiatives

Targeted initiatives are another approach to HRE which can reduce the prevalence of FGM and start a dialogue within affected communities. For HRE initiatives to be effective, they must target the right group of people. Women and men must be a part of the conversation, and all levels—schools, families, religious congregations, and other community forums—must be incorporated. Specific and targeted messages may need to be created for different audiences.

As shown by the earlier examples of the former excisers Miriam Bagayoko and Isnino Shuriye, certain educational programs target excisers specifically, and find other sources of income for them to rely on, while also making sure they are not ostracized by the community. The idea behind such initiatives is that if the supply of excisers is cut, girls will no longer cutting themselves.

Initiatives can also specifically target men, as they are often the ones who request their wives have undergone FGM. Youth is another crucial demographic: society depends on youth to pass on cultural values, and therefore they have the power to change tradition. Leaders in the community can also encourage public decree of FGM, and their opinions are respected by

¹³⁰ Nyangweso, *supra* note 120 at 158.

¹³¹ Richter, *supra* note 108 at 368.

community members¹³². Finally, as seen by the example of Isnino Shuriye, religious leaders can also be targeted and play an important role in changing perceptions. As FGM is a cultural practice often justified with religious reasoning, it also makes sense that religion be used to take away this legitimacy, and end the practice.¹³³

Participatory educational programs centred on women's empowerment

Another approach which has proved to be fruitful is one based on participatory educational programs for women's empowerment. This approach includes literacy training, analytical skills, problem solving, health information, and human rights principles, taught to women over an extended period of time.¹³⁴ While it is important that health risks be addressed, as Nyangweso writes, "in raising public awareness, overemphasis on these risks outside the social context ignores the underlying motivations for the persistence of the practice."¹³⁵ Empowering educational strategies should address empowerment related to social justice issues like human dignity and freedom of choice. Such an approach allows women and girls to be able to make informed decisions on FGM,¹³⁶ and hopefully to abandon the practice. Tostan's work in Senegal, which we will study below, is an example of such an approach.

Community-Level Initiatives: The Tostan Example

The Tostan Community Empowerment Program (CEP) began in Senegal and has since been implemented in many African countries. Tostan uses a non-formal education, problem-solving approach, and applies it to issues in communities such as the practice of FGM. Programs like these are designed to "empower individuals and communities through knowledge acquisition and critical awareness, leading to community decision-making and action, particularly around issues related to women's health and human rights."¹³⁷

¹³² Rahman & Toubia, *supra* note 25 at 76-79.

¹³³ Nyangweso, *supra* note 120 at 167.

¹³⁴ Rahman & Toubia, *supra* note 25 at 77.

¹³⁵ Nyangweso, *supra* note 120 at 161.

¹³⁶ *Ibid.*

¹³⁷ Karen Monkman & Rebecca Miles, "The transformatory potential of a village empowerment program: The Tostan replication in Mali" (2007) 30 : 6

Participants are encouraged to identify local issues of concern, and together to plan and implement initiatives to fix these concerns, both during and after the program. This bottom-up approach allows community members, especially women, to take charge of change. The program lasts three years, during which a trained facilitator is assigned to a village. The facilitator speaks the local language and is of the same ethnic group as the community members. Two human rights education classes with 25-30 student (one class for adults and one for adolescents) meet three times per week to study various modules. Both modern non-formal education techniques and traditional African oral traditions like theater, storytelling, dance, artwork, song and debate are used. As stated on Tostan's website, "by presenting information in ways that are relevant and engaging, we ensure the lessons resonate and new ideas take hold quickly."¹³⁸ Once the program is completed, a Community Management Committee (CMC) is established, giving community-members the necessary management skills to implement development projects.¹³⁹

Thanks to the CEP, whole villages abandoned the practice of FGM as a result of the program. To date, over 8,000 communities from Djibouti, Guinea, Guinea-Bissau, Mali, Mauritania, Senegal, Somalia, and The Gambia have publicly declared their decision to abandon FGM. Another 104 communities across 8 countries have held ceremonies publicly declaring the abandonment of FGM.¹⁴⁰ The CEP has been recognized as the preferred approach for promoting the abandonment of FGC by both Government of Senegal and the

Women's Stud. Int. Forum 451 at 451 (OCLC).

¹³⁸ Tostan, "Community Empowerment Program: Program Structure", online: <<http://www.tostan.org/programs/community-empowerment-program/program-structure/>>.

¹³⁹ CMCs are made up of 17 democratically-selected members, at least nine of whom must be women. Participation in the CMC helps women improve their confidence, leadership, and social standing by assuming prominent roles in their community. The CMCs take forward the community's vision for sustainable development and as community-based organizations, work with partners and others to meet community needs. See Tostan, "Community Empowerment Program: Ensuring Sustainability", online: <<http://www.tostan.org/programs/community-empowerment-program/ensuring-sustainability/>>.

¹⁴⁰ Tostan, *supra* note 140.

Government of The Gambia.¹⁴¹ As Monkman, Miles and Easton write:

What we learn here about FGC is that when it is characterized as a cultural (and not evil) practice, when it is framed in relation to health and human rights, and when people are left to choose their issues of concern, this practice comes to the fore. When issues are approached this way, changing cultural practices can potentially lead to lasting, deep social change that is gender equitable. As early and later discussions of FGC occurred, participants built a critical awareness of this issue as a cultural process in relation to human rights and health concerns; when FGC is seen in this context, decisions about it are complex, but are squarely in the hands of the community. While it is too soon to know the long- lasting influence of this process, transformatory potential is clear.¹⁴²

Lessons from former IHRTIP participants

There are many different approaches to launching HRE initiatives at a community-level. Of course, Africa is a diverse continent, and therefore a one-size-fits-all approach for communities will likely not be effective. In fact, in communities where FGM is a practically universal rite of passage for women and girls, using a rights-based approach may not be appropriate, as explained by Mr. Wakilou during a recent interview. He explained that, when speaking to community-members in Burkina Faso about reasons FGM should no longer be practiced, it would often be counter-productive to use a rights-based approach at all, as community-members would simply dismiss this information as Western ideas being forced on them. In such situations, a health-approach can still be most effective.¹⁴³

Mr. Mamadou, meanwhile, used a different approach completely during the HRE campaign he worked on in Niamey, Maradi, Tillabery, in Niger, and in Bamako, Mali in 2015—one

¹⁴¹ Tostan, *supra* note 140.

¹⁴² Monkman & Miles, *supra* note 139 at 462.

¹⁴³ Mr. Wakilou explained that when he holds information sessions targeted at other human rights defenders and interveners, the presentations are centred on human rights. Interview of Wakilou Senou by Nathalie Laflamme (22 Nov. 2017).

centred on a human rights approach. During these training session, which were targeted at women, village chiefs, and religious leaders, among others, Mr. Mamadou also spoke of the universality of rights, and of many international and regional conventions and covenants. The information, he said, was very well-received.¹⁴⁴

These two examples show the same HRE approach can lead to vastly different results when applied in different areas, or when presented to different demographics. While these two interviews are simply two samples of the many human rights defenders who have taken part in HRE anti-FGM campaigns, they do illustrate the importance of using HRE approaches which consider the communities they are targeting.¹⁴⁵

Conclusion

It is clear that the practice of FGM on women and girls constitutes a violation of many human rights. Yet, to many individuals and communities, the practice is considered a tradition central to their culture, and a necessary rite of passage for women and girls.

While changing perceptions surrounding FGM poses many challenges—mainly the need to convince individuals abandoning FGM does not amount to adopting “Western” ideas—doing so is not impossible. Human rights instruments—especially when not ratified by countries—and regional laws often have little impact on their own, and, as seen with the historic example of Meru, Kenya, can lead to rash behavior on the part of communities.¹⁴⁶ States and NGOs must collaborate to ratify international human rights conventions, implement laws at a local level, and, most importantly, implement long-term community-based, participative HRE initiatives similar to those launched by

¹⁴⁴ The questions Mr. Mamadou most often received were: « Comment mettre en œuvre efficacement les droits humains ? Quels sont les mécanismes de protection des droits au niveau national, régional et international ? » Interview of Justice Mamane Lawal Barry Mamadou by Nathalie Laflamme (30 Nov. 2017).

¹⁴⁵ This is a point supported by Johanna Richter throughout her book. She explains that in Burkina Faso, where Ciné-Débat is already a very popular medium, such an approach can prove to transform perceptions surrounding FGM. Richter, *supra* note 108.

¹⁴⁶ Thomas, *supra* note 75.

Tostan in order to put an end to a practice most agree should no longer be practiced.¹⁴⁷ Ideally, such campaigns should use a human-rights approach to address the immediate health consequences of FGM, while also addressing the discriminatory roots of the practice, and empowering women.¹⁴⁸

It is crucial to acknowledge that human rights instruments, regional laws, and human rights education form an interconnected web. All three must be used in unison to have any impact whatsoever, and each must draw on the other. As Mr. Mamadou said during his interview:

[...] l'EDH s'appuie aussi sur les conventions internationales ou régionales des droits humains. Dans cette optique, il y a forte complémentarité voire une interdépendance entre l'EDH et la ratification de conventions internationales ou régionales pour mettre fin à l'excision féminine.¹⁴⁹

It is also important to note that, in some African countries, human rights instruments have not been ratified, and, in many, FGM has not been rendered illegal or unconstitutional. In Somalia, Waris Dirie's home country, no laws prohibit the practice¹⁵⁰. In these countries, a bottom-up approach must be used, starting within the communities. In such areas, HRE can be used in order to have a transformative impact not only on individuals, but on States as well.¹⁵¹

¹⁴⁷ As Mr. Mamadou explained : « D'après moi la meilleure approche pour mettre fin à cette pratique est l'EDH à travers une approche participative et inclusive à tous les niveaux, aussi sociale que politique. Elle doit se faire par la formation, la sensibilisation, le plaidoyer, le monitoring, le forum ouvert... » Laflamme, *supra* note 146.

¹⁴⁸ It is important to note that such an approach may not be well-suited to all communities. In certain cases, approaches like alternative rites of passage ceremonies, which do not address the underlying patriarchal social values associated with FGM, may be more effective at ending FGM, the primary goal of such campaigns.

¹⁴⁹ Laflamme, *supra* note 146.

¹⁵⁰ Sandhu, *supra* note 5.

¹⁵¹ It is important to acknowledge that political strife is a big problem in many of these countries, and that an indirect human rights violation like FGM is often not a priority to the international community and to NGOs. Unfortunately, because of the length requirement of this paper, it is not possible to delve into this issue.

Finally, it goes without saying that, to be successful, HRE initiatives should not be a one-off presentation to the community. Long-term projects like Tostan's can undoubtedly have the most transformative impact on communities. For similar projects to be implemented, States, private citizens, and organizations must support organizations like Tostan. Without proper funding, efficient HRE mechanisms cannot be implemented. Of course, education is often required for States to become accountable and therefore invest time and money into NGOs—HRE is crucial at every step of this process.

As Martha Nussbaum writes, “[w]e should keep FGM on the list of unacceptable practices that violate women’s human rights, and we should be ashamed of ourselves if we do not use whatever privilege and power that has come our way to make it disappear forever.”¹⁵² It has become clear that this privilege is, at its heart, the power to educate communities about human rights and why FGM should be a thing of the past. While the history of anti-FGM campaign has been tumultuous, it is now clear where HRE initiatives need to start: within communities. Only when communities are properly informed about all the issues surrounding FGM will individual and communal perceptions about the practice finally change, allowing women and girls to no longer have their human rights violated—their right to no rite.

¹⁵² Martha Craven Nussbaum, *Sex & Social Justice* (New York: Oxford University Press, 1999) at 129.

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