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**The Impact of Harmful Customary Practices in Africa: case of Female
Genital Mutilation in Somalia as a Violation of Human Rights**



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**A mini-thesis submitted in partial fulfilment of the requirements for the LLM
degree Magister Legum in the Faculty of Law of the University of the Western
Cape.**

November 2012

PLAGIARISM DECLARATION

I declare that *The Impact of Harmful Customary Practices in Africa: case of Female Genital Mutilation in Somalia as a Violation of Human Rights* is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Signed.....

Date.....

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Signed.....

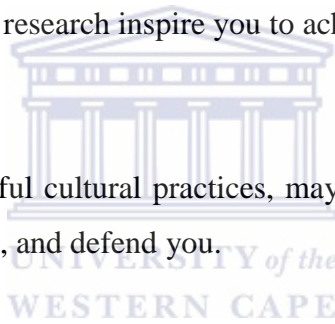
Date.....

DEDICATION

This mini-thesis is dedicated to my lovely family, especially to my parents Odon Tankama and Malvina Mabeya. May this achievement be a reflection of their pride in raising me and providing me with an education of the highest quality.

This study is also for my great and beloved brothers Pierre Sylvestre T., Erick Dominique T., Cyrin M., Alidor Babou M. & Patrick T.; my lovely sisters Madeleine T., Josephine T., Olga T., & Odette Solange T.; my angelic nephews Daniel T., Jean-Luc T., Nathan M. Tony M.; and nieces Serena M., Keren M. & Maria M. I am confident that you will bring a valuable contribution in the world. May this research inspire you to achieve greater things in future.

To all who suffer unfair and harmful cultural practices, may this study be an awakening of the human conscience to equip, protect, and defend you.



Mireille T.

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I am thankful to God for His blessings and guidance throughout my two years master's program. My desire is that my degree will be used for His glory and the betterment of people's lives.

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KEYWORDS

Africa

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Human Rights

Sexuality

Somalia

Women and girls



ABSTRACT

THE IMPACT OF HARMFUL CUSTOMARY PRACTICES IN AFRICA: CASE OF FEMALE GENITAL MUTILATION IN SOMALIA AS A VIOLATION OF HUMAN RIGHTS

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This thesis sets out to examine the practice of Female Genital Mutilation/Cutting (FGM/C) in Somalia and its impact on women. The political instability in Somalia provides an opportunity for the increase of all forms of violations of human rights. The prevalence of FGM/C in Somalia has been declared as the highest in the World, but the Somali Government has not taken any steps to address the problem. This study was motivated by the dire situation of women in Somalia.¹ Women suffer from gender inequality in the sense that societal practices – and norms dictate that women’s sexuality be controlled with a view to suppressing their sexual desires. In this way; their rights are violated. Infibulation and sunna performed on women come with immediate and late complications including death, infection, sexual dysfunction, and exposure to HIV infection. Somalia is one of the African countries where women’s rights are almost non-existent. As Dirie notes: ‘if genital mutilation were a problem affecting men, the matter would long be settled.’²

International human rights instruments help this study to investigate whether customary practices such as FGM/C are harmful to Somali women and children and whether they constitute violence against women. This practice prevents women from enjoying fundamental rights as recognized by international human rights standards. It is universally known that FGM/C constitutes a

¹ WHO ‘Female genital mutilation: prevalence and distribution’ *World Health Organization* August 2008, 2.

² Waris Dirie is a Somali model and actress who was forced to undergo FGM/C when she was 5 years old. At the age of 13, she fled her family in order to escape an arranged marriage to a much older man. She landed in London where she lived and worked for wealthy relatives. She is currently one of the most famous advocates against the practice of FGM/C. See Reader’s Digest ‘The Waris Dirie Story’ June 1999 available at <http://home.honolulu.hawaii.edu/~pine/Phil110/waris-dirie.html> (accessed on 04 October 2012).

violation against women and girls' rights because they are forced to embrace the practice. Consequently, several rights are violated such as the right to equality, the rights to freedom from all forms of torture and cruel, inhumane and degrading treatment, the right to freedom from harmful customary practices, the rights of the child, and the right to health. The persistent practice of FGM/C is mainly a result of the absence of specific legislation proscribing it as well as the political instability that creates an environment conducive to the wanton violation of the rights of citizens. A recent Somali provisional constitution has recognised FGM/C as a violation of children's rights but the law is not enforced.

Infibulation and sunna are part of Somali culture. That is why attempts to eradicate the practice create a dilemma for the authorities. This has invariably placed Universalists and cultural relativists on a collision course. Ensuing government inaction has resulted in numerous reservations being made to stall the adoption of certain instruments of human rights law such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). This is because cultural relativists do not consider FGM/C as a violation, but as an expression and fulfilment of Somalis' culture as provided for in the Universal Declaration of Human Rights (UDHR) of 1948.³

As argued by Packer, human dignity and life represent universal values for everyone; even if FGM/C is a part of culture, certain limitations must be implemented to preserve people's fundamental rights.⁴ This thesis agrees with the stance that FGM/C violates women's health. This is due to the absence of proper legislation in Somalia, inadequate literacy and the collapse of the political system. Recommendations include the proposal that legal strategies to eradicate FGM/C must be accompanied by broad policies and grassroots programmes such as educational activities to explain to people the risks of this practice and how communities can remedy it without affecting their cultural tenets.

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³ Article 27(1) of the Universal Declaration of Human Rights.

⁴ Packer C 'Circumcision and human rights discourse' in Nnaemeka O & Ezeilo J '*Engendering human rights: Cultural and socio-economic realities in Africa*' (2005) Palgrave Macmillan 231.

ACRONYMS AND ABBREVIATIONS

AIDOS	The Italian Association for women in Development
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CEOSS	Coptic Evangelical Organization for Social Services
Children's Charter	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of Child
CSPH's	Center for Population and Family Health States
DEVAW	United Nations Declaration on the Elimination of Violence Against Women
EAC	East African Community
FGM/C	Female Genital Mutilation/Cutting
FGS	Female Genital Surgery
FIGO	International Federation of Gynaecology and Obstetrics
GARWONET	Gardo Women Network
GECPD	Galkayo Education Center for Peace and Development
HIV/AIDS	Immuno Deficiency Virus/ Acquired Immune Deficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICPD	Cairo International Conference
IDPs	Internally Displaced Persons
IOM	International Organization of Migration
JFFMR	Joint Fact Finding Mission Report
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
MYWO	Maendeleo Ya Wanawake Organization
NGOs	Non-Governmental Organizations
REACH	Reproductive, Education and Community Health
SFHCA	Somali Family HealthCare Association
SSWC	Save Somali Women and Children
SWDO	Somali Women's Democratic Organization
TFC	Somali Transitional Federal Charter
TFG	Transitional Federal Government
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFPA	United Nations Population Fund
UNICEF	United Nations International Children's Emergency Fund
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
VCLT	Vienna Convention on the Law of Treaties

WAWA

We are Women Activists

WHO

World Health Organization



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CHAPTER ONE

INTRODUCTION

1. Introduction

This thesis sets out to examine the practice of FGM/C in Somalia and its impact on women's rights. The absence of a Constitution and the specific laws against FGM/C encourage violation of human rights in this country.⁵ As the Latin expression 'in dubio pro reo'⁶ provides, the perpetrators of FGM/C are protected by the absence of laws prohibiting the practice. Somalia is revealed to have the highest prevalence of FGM/C in Africa and the most severe type of FGM/C. women health are threatened without any protection. Somalia is one of a number of African countries where women are the most marginalized worldwide.

Harmful customary attitudes and practices reflect the discrimination and inequality of women in Africa. These are some of the practices: brides being burnt, female infanticide, rape, female genital mutilation/cutting (FGM/C), honour killing, early and forced marriage, polygamy and dowry payment. All these contribute to the discrimination of women in Africa.⁷

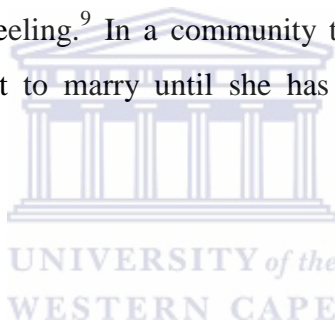
FGM/C brings to the fore a number of issues in various aspects, but the most important and perilous is its impact on health. Without anaesthesia and sterile equipment, the practice is carried out on women either just before marriage or just after the first pregnancy. Momoh wrote that in some communities, when a pregnant woman who has not experienced FGM/C goes into labour,

⁵ Ethnomed 'Somali cultural profile' available at <http://ethnomed.org/culture/somali/somali-cultural-profile> (accessed on 06 February 2012).

⁶ The Latin term 'in dubio pro reo' means that when in doubt, one must find in favour of the alleged culprit. This term express the judicial principle that in case of doubt the decision must be in favour of the accused (in that anyone is innocent until there is proof to the contrary). In the case of Somalia, the absence of any specific law against FGM/C constitutes the barrier of protection for actors even if their conduct is harmful to women and children. A defendant may not be prosecuted when a doubt about his/ her guilt exists. This is roughly equivalent to 'innocent until proven guilty'. See Juridica International 'Latin: the common legal language of Europe' 2005 available at <http://www.juridicainternational.eu/latin-the-common-legal-language-of-europe> (accessed on 07 March 2012). See also Whitman JQ 'The origins of "reasonable doubt" (2005) *Yale Law School Legal Scholarship Repository* 2.

⁷ Igwe L 'Traditional African practices and Islam' Council for Secular Humanism 1999 available at http://www.secularhumanism.org/library/aah/igwe_9_4.htm (accessed on 05 March 2012).

the procedure is performed before she gives birth; but the risks of haemorrhage and death are very high. Many issues also come during the sexual intercourse. The penetration of the bride's infibulation varies between 3 or 4 days to several months; and therefore asks for another operation. A great deal of marital anal intercourse takes place in cases where the wife cannot be penetrated. Consequently, these men who do manage to penetrate their wives do so often, or perhaps always, with the help of the little knife. This creates a tear which they gradually rip more and more just to allow the entrance of the penis. In some women, the scar tissue is so hardened and overgrown with time it may require very strong surgical scissors. Having said that, the practice of FGM/C demonstrates a high level of gender inequality and discrimination affecting women's life especially for the one who live into the communities that believe on this practice.⁸ Reasons for persistence use of FGM/C are principally to control of women's sexuality and reinforcement of polygamy. The removal of parts female genitalia reduces and/or prevents women from having any sexual feeling.⁹ In a community that practices FGM/C, a girl is not considered an adult and is permit to marry until she has undergone this rite of passage to womanhood.



1.1. Conceptual clarification

Worldwide, people use different terminologies to refer to the cutting of external female genital tissues. These terminologies may include female genital mutilation (FGM), female genital cutting (FGC) or FGM/C.¹⁰ Each term refers to how the community conceives the practice.

Practitioner's communities call this practice as FGM while non-practitioner's use the term FGC¹¹ because it refers to certain practices used in their culture.¹² The practice was referred to as female

⁸ The Convention on the Elimination of all form of Discrimination against Women: General Recommendation. See Momoh C '*Female genital mutilation*' (2005) 24-25. See also Lightfoot-Klein H. 'The sexual experience and marital adjustment of genitally circumcised and infibulated females in the Sudan' (1989) 26 *Journal of Sex Research* 3: 375-392.

⁹ Skaine R '*Female Genital Mutilation: legal, cultural and medical issues*' (2005) 16.

¹⁰ Boyle EH '*Female Genital Cutting: Cultural Conflict in the Global Community*' (2002) 60. See also WHO 'Eliminating female genital mutilation: An interagency statement' (2008).

¹¹ Boyle EH '*Female Genital Cutting: Cultural Conflict in the Global Community*' (2002) 60.

¹² Boyle EH '*female genital cutting: cultural conflict in the global community*' (2002) 60. Also see Shell-Duncan B & Hernlund Y '*female circumcision in Africa*' (2000) 6. See also Rahman A & Toubia N '*Female genital mutilation: A guide to Laws and Policies Worldwide*' (2000) 4.

circumcision until early the 1980s;¹³ when the third Conference on the Inter-African Committee on Traditional practices held in Addis Ababa, Ethiopia renamed it FGM. The World Health Organization (WHO) recommended to the United Nations (UN) in 1991 that it should adopt this term and push for its elimination.¹⁴ FGM has become the dominant term within the international community and in medical literature¹⁵ due to its impact on health.¹⁶ In a 2005 report, United Nations Children's Emergency Fund (UNICEF) notes that, the concept 'mutilation' distinguishes female circumcision from male circumcision and stresses its severity.¹⁷

However, the United Nations Population Fund (UNPFA) and the United States Agency for International Development (USAID) opted to combine both terms, FGM and FGC, referring to it as FGM/C.¹⁸ After considering the arguments within the discourse, this thesis uses the term FGM/C, and all subsequent reasons would seek to justify this position. FGM/C provides an accurate description of the cutting of women's sexual organs in Somalia and around sub-Saharan Africa. This thesis argues that this customary practice constitutes a violation of human rights principles, norms and standards. It violates the UDHR,¹⁹ the CEDAW,²⁰ the CRC,²¹ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,²² and the African Charter on the Rights and Welfare of the Child.²³

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¹³ Rahman A & Toubia N '*Female Genital Mutilation: A Guide to Laws and Policies Worldwide*' (2000) 6.

¹⁴ WHO 'Eliminating female genital mutilation' *World Health Organization* (2008) 4, 22–28.

¹⁵ Martha CN '*Judging other cultures: the case of Genital Mutilation*' *Sex and social justice* (1999) 119-120.

¹⁶ Chinnian-Kester K '*Female genital mutilation as a form of violence against women and girls: an analysis of effectiveness of international human rights law*' (Unpublished Mini-thesis, University of the Western Cape, 2005) 18.

¹⁷ Lewnes A 'changing a harmful social convention: female genital cutting/mutilation' (2005) *UNICEF Innocent Digest* 1-2.

¹⁸ USAID 'Policy on female genital mutilation/ cutting: explanation of terminology' (2000) *United States Agency for International Development*.

¹⁹ The Universal declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948.

²⁰ The convention on the Elimination of all forms of Discrimination against Women adopted by the United Nations General Assembly in 1979.

²¹ The Convention on the Rights of Child adopted by the General Assembly on 20 November 1959 and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989. Entry into force 2 September 1990.

²² The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted by African Union, in Maputo on 11 July 2003 and entry into force 25 November 2005.


²³ The African Charter on the Rights and Welfare of the Child is adopted by the Organisation of African Unity in 1991 and entered into force in 1991. See also African commission on human Charter on human and people's rights protocol to the African charter on human and people's rights on the rights of women in Africa available at http://www.achpr.org/english/info/women_en.html (accessed on 22 February 2012).

1.2. Objective of study

The analysis aims to demonstrate how FGM/C performed upon women constitutes a violation against human rights in Africa and especially in Somalia. The scope of my research is limited to analysis of medical issues, international human rights law and institutions involved in the protection of health and security of victims on the continent and specifically in Somalia. The important questions are firstly how this practice impacts on health and secondly; what role the establishment of legal norms for protection and defence for victims should play to combat FGM/C in Somalia.

In African countries, the sexual discrimination and the dominance of men stem result from the colonial system. Patriarchy has also reinforced this attitude with the domination of men upon women. In other words, FGM/C is one of the consequences of gender inequality in Africa.

1.3. Research questions

- 
- (a) What is the impact of FGM/C on women's rights in Somalia?
 - (b) What role can the law play in eradicating FGM/C in Somalia?

1.4. Methodology

For the purposes of this dissertation, the intended methodology recommends utilization of the following resources:

This study will consider Somalia legislation as well as judicial decisions that defend and protect women's rights. Furthermore, the thesis will review literature on customary law in Somalia such as books and articles published in the various law journals. The study will also draw on material online.

1.5. Overview of chapters

This study aims to demonstrate the tension that exists between the protection of women from the harmful practice and the rights adopted by the UDHR. This mini-thesis has adopted FGM/C²⁴ as a lens through which to identify the practice and demonstrate how it impacts on women. Chapter 1 introduces the topic by explaining various terminologies that refer to the practice; highlighting the objective of the study; showing the methodology used; and the overview of the following chapters. Chapter 2 contextualizes FGM/C by providing the procedure, decision-making and age of women who are exposed to the practice. It analyses the influence of customs and tradition on members of practitioner's societies. This chapter also explores the various reasons evoked by practitioners when defending the continued use of FGM/C in Africa as well as its debilitating lifelong effects.

Chapter 3 lists and analyses FGM/C as a violation of women and children's rights. These include the right to health care, the right to dignity, the right to life, the right to freedom from violence, the right to freedom from torture, the right to protection from all forms of discrimination and the rights of the child. A historical account traces the international community's response to gender-based violence and FGM/C.

FGM/C in Somalia as a violation of human rights is evaluated in Chapter 4. There are several obstacles that prevent the prohibition of FGM/C and reinforce violation of human rights in Somalia. These obstacles are mainly influenced by the absence of a Constitution since the civil war in 1991, the absence of a specific law that prohibits FGM/C as a violation of human rights, and deep-rooted traditions and customs. The glaring absence of these principal documents is evoked by perpetrators of this harmful practice to protect them. An entrenched cultural belief postulates that human rights are not universal but are only established norms founded on Western ideals which disregard alien customary practices.²⁵

²⁴ WHO 'Female genital mutilation' *World Health Organization* February 2010.

²⁵ Chinnian-Kester K 'Female genital mutilation as a form of violence Against Women and girls: An analysis of the effectiveness of International Human Rights Law' (Unpublished Mini-thesis, University of the Western Cape, 2005) 2.

1.6. Conclusion

The practice of FGM/C brings many issues to the fore, in various aspects in the society. Women suffer from the consequences of FGM/C that affect their life. In Africa and especially in Somalia, FGM/C results from the gender inequality and discrimination related to the historical subjugation and suppression on women.²⁶ FGM/C reinforces inequality of sex by reducing their sexual desire to the men's gain and it also promotes women's virginity and protecting marital fidelity, in the interest of male sexuality. This strategy only encourages polygamy.²⁷

FGM/C has a lifelong destructive effect on women and therefore, there is an urgent need to reflect on effective implementation of existing laws since, as argued above, these laws are not effectively implemented. Many countries in Africa are adopted laws that prohibit the practice of FGM/C. In certain others, it is established general provisions of criminal codes to prosecute FGM/C; however, in Somalia there is no specific law that prohibits FGM/C.²⁸ It is a scandal that there is no specific legislation prohibiting FGM/C in Somalia. This explains why there have been no prosecution of perpetrators in this country. The absence of specific law reinforces the practice and increases violence against women.

The practice of FGM/C constitutes a severe violation of human rights in Sub-Saharan Africa and perpetrators must be prosecuted and stopped. It is clear that there is a growing problem of FGM/C in Somalia which requires that the Somali' government prioritises and gives support to organisations which deal with health and education. The political instability in Somalia has generated refugee movements worldwide therefore Somalis women are now exposed to a different way of life, and begin to oppose these practices, and with time, the future generations will be even much firmer to these practices. Men, women and children fled their country to others. In exile, this population, especially women are faced to several issues of integration. Most of the time, many of them express feelings of identity loss due to the customary practices applied on their body. That case constitutes a principal dilemmas of Somali women because their

²⁶ The Convention on the Elimination of all form of Discrimination against Women: General Recommendation.

²⁷ Rahman A &Toubia N '*Female genital mutilation: A guide to Laws and Policies Worldwide*' (2000) 6.

²⁸ Forward '*Female genital mutilation: information pack*' (2002) 7. Available at http://www.who.int/topics/female_genital_mutilation/en/ (accessed on 28 February 2012).

genitally cut bodies is viewed as an anomaly.²⁹ These women suffer from strong emotions of disgust and rejection.³⁰



²⁹ Etmu 'Precarious identities: Somali women in exile' (2008) 3 *Finish journal of ethnicity and migration* 2: 64.

³⁰ Etmu 'Precarious identities: Somali women in exile' (2008) 3 *finish journal of ethnicity and migration* 2: 64.

CHAPTER TWO

EXPLANATION OF THE PRACTICE OF FEMALE GENITAL MUTILATION/CUTTING

2.1. Definition of Female Genital Mutilation/Cutting

FGM/C is an invasive and painful practice performed without anaesthetic before puberty and; before and after childbirth. In a 1997 report of the WHO describes FGM/C as a procedure that involves the partial or total removal or other injury to the female genital organs for cultural or other non-therapeutic reasons.³¹ Toubia defines FGM/C as ‘the physical marking of the marriageability for women’.³²

FGM/C violates reproductive health which is fundamental to individuals. Several communities in which FGM/C is internalised suffer from poverty and therefore insufficient health system. The poor sanitary method used is subjected to the increasing of many infections and maternal complications before and after pregnancy that seriously endanger reproductive health. Therefore, FGM/C constitutes a breach of the universal human rights because it does fall under the laws which advocate the protection of people from physical injury and death. Somalis often hide behind it to escape from the reality that directly affects life. The practice of FGM/C can be examined as a central pillar that reinforces inequality between men and women.

2.1.1. Historical overview of the practice of FGM/C

The origin of FGM/C is not really known but the practice dates back at least 2000 years.³³ Several practitioners’ communities believe that the practice originated from Islam but research

³¹ Burson I ‘Social work and female genital cutting: an ethical dilemma’ (2007) 4 *Social Work Values Ethics* 1. See also UNICEF ‘Changing a harmful social convention: Female Genital Mutilation/Cutting’ 2005 *UNICEF Innocenti Digest* 1.

³² Toubia N ‘Female Circumcision as a Public Health Issue’ (1994) 331 *New England Journal of Medicine* 11: 712–6.

³³ Momoh C ‘Female genital mutilation’ (2005) 5.

reveals that the practice existed before the introduction of Islam to Africa. The writings of Herodotus show that women were mutilated in ancient Egypt in 5th century BC and argue that this culture came from Ethiopia or Egypt as it were adopted by Ethiopians as well as Phoenicians and Hittites. This harmful practice was used to prepare women for marriage. It was considered as the most valuable attribute and was used to raise a woman's value during dowry negotiations. A 163 BC Greek papyrus in the British Museum reveals the existence of this practice among girls when they received their dowries.³⁴ Hosken argues that at about 25 BC, the concept 'circumcised women' had already been described by Strabo, a Greek geographer.³⁵ Probably, FGM/C might have originated in the Egyptian emperor's palace about two thousand years ago, and over several centuries, it was diffused down social strata and to the edges of the empire.³⁶

The prevalence of FGM/C in the region stretching from Senegal in the west to Somalia in the east and from Egypt in the north to Tanzania in the south, intersecting in present-day Sudan, suggests that it may have developed under similar conditions.³⁷ Toubia considers FGM/C as an offshoot of tribal, ethnic and cultural allegiances.³⁸ The Romans and Arabs used it as women's ornament or as an indication of slavery to enhance the price of the slave. FGM/C has also been practiced by Christians, Muslims and Jews.³⁹ Sheehan declares that sunna has been performed in Europe and America since the 19th Century as a cure for mental illness.⁴⁰ The research of Widstrand demonstrates that infibulation has been practiced since the 18th century along the Nile, on slave girls.⁴¹

³⁴ Lightfoot-klein H 'Prisoners of ritual: Some contemporary developments in the history of female genital mutilation' 1989 available at <http://www.fgmnetwork.org/Lightfoot-klein/prisonersofritual.htm> (accessed on 15 November 2012).

³⁵ Hosken F *The Hosken Report: Genital and Sexual Mutilation of Females* 4ed (1993a) 73.

³⁶ Ko D *Cinderello sisters: A revisionist history of footbinding* (2005) 105- 144.

³⁷ Mackie G *Female genital cutting: the beginning of the End* (2000).

³⁸ Toubia N *Female Genital Mutilation, A call for Global Action* (1995a) 21.

³⁹ Mustafa & Zaki A 'Female Circumcision and Infibulation in the Sudan' (1966) 73 *BJOG: an International Journal of Obstetrics and Gynaecology* 2: 302. See also Kouba J & Muasher J 'Female Circumcision in Africa: An Overview' (1985) 28 *African Studies Review* 1: 95-110. See also Toubia N 'Female Circumcision as a Public Health Issue' (1994) 331 *New England Journal of Medicine* 11: 712-6.

⁴⁰ Sheehan E 'Victorian clitoridectomy: Isaac Baker Brown and his harmless operative procedure' (1981) 12 *Medical anthropology Newsletter* 4: 9-15. See also Momoh C *Female genital mutilation* (2005) 157.

⁴¹ Widstrand GC 'Female infibulation' (1965) 20 *Studia Ethnographica* 95-124.

2.1.2. Types of FGM/C

The WHO recognises four types of FGM/C. These are characterised by two common elements; namely: the absence of adequate surgical tools and the absence of anaesthesia. In Africa south of the Sahara, these factors increase risks of infections and death.⁴²

Type I or clitoridectomy is a traditional form of surgery that involves the removal of the clitoral hood with or without removal of part or the entire clitoris.⁴³ Clitoridectomy is commonly used in Somalia and called 'sunna'.

Type II or excision is the removal of the clitoris together with part or all of the labia minora. Without sanitary conditions, this procedure is practised on approximately 85% of women in Africa.⁴⁴ Clitoridectomy and excision are practiced on the West coast of Africa Chad, the Central African Republic, southern Egypt, Kenya and Tanzania. This type is also performed among Muslim groups in the Philippines, Malaysia, Pakistan and Indonesia.⁴⁵

Type III or infibulation involves narrowing of the vaginal orifice with creation of a covering seal. This is done by cutting and a repositioning the labia minora and/or the labia majora.⁴⁶ The inner and outter labia are removed; with or without excision of the clitoris and a small passage for urine and menstrual fluid is left.⁴⁷ Infibulation needs two harmful operations before and after birth to control women's sexuality and reproductive health. These surgical operations are de-infibulation and re-infibulation. A woman can be de-infibulated and re-infibulated several times during her lifetime.⁴⁸

⁴² W H O 'Female Genital Mutilation: report of a WHO technical working group' 1995 *World Health Organization* 9. See also Annexe A: Types of FGM/C in Africa.

⁴³ Rahman A & Toubia N '*Female Genital Mutilation: A Guide to Laws and Policies Worldwide*' (2000) 4.

⁴⁴ Hosken FP '*The Hosken Report: Genital and sexual mutilation of females*' 4ed (1994) 33.

⁴⁵ Momoh C 'Attitudes to female genital mutilation' (2004) 12 *British Journal of Midwifery* 10: 631-635.

⁴⁶ The labia minora and labia majora are the fold of tissues lying on either side of the vaginal opening and forming the borders of the vulva. The labia minora is a small and inside fold that protect the clitoris. Momoh C '*Female genital mutilation*' (2005) 158.

⁴⁷ Abdulcadir J et al 'Care of women with female genital mutilation/cutting' 2011 *Swiss Medical Weekly* 3: 3-8. See also Kelly E & Paula HAJ 'Female genital mutilation' (2005) 17 *Current Opinion in Obstetrics and Gynaecology* 5: 490-4.

⁴⁸ De-infibulation is the opening of the covering seal. This operation is often performed before childbirth; while re-infibulation consists in the recreation of infibulation, after childbirth. Toubia N '*Female Circumcision as a Public Health Issue*' (1994) 331 *New England Journal of Medicine* 11: 712-6. See also Shell-Ducan B & Hernlund Y '*female "circumcision" in Africa: culture, controversy and change*' (2000) 56-57

Type IV or the unclassified type includes all operations applied on the female genitalia such as pricking, piercing, stretching or incision of the clitoris⁴⁹ and/or labia. The introduction of corrosive substances or herbs into the vagina is also included in this type. This practice is mostly performed in Zambian culture. Statistics show that 86 per cent of sexually active women introduce drying agents into their vaginas to enhance the sexual pleasure of their partners. Sometimes, the practice is accompanied by others such as pulling of the labia to elongate them. This procedure is commonly applied in some southern African countries and in Uganda.⁵⁰

2.1.3. Terminology surrounding FGM/C

Various terminologies are used in discourse on FGM/C. The traditions of practicing communities and the value of this phenomenon among those who adhere to it and those who condemn it have caused scholars and researchers to classify the procedure in three categories. The practice is called Female Circumcision (FC) or Female Genital Mutilation (FGM); Female Genital Cutting (FGC) or traditional Female Genital Surgery (FGS); or Female Genital Mutilation/Cutting (FGM/C).⁵¹

The terminology chosen by the commentator of a study depends on the personal perspective of the types of arguments tabled during a debate. Sometimes there are complexities or controversies surrounding the understandings of issues because each community has its own reasons to justify implementation of the practice. Some perceive the practice as a human rights infringement; whilst others view it as an integral part of cultures that must be respected by the entire community, particularly women. Therefore, an explanation of the diversity of terms is preponderant to clarify understandings of the arguments developed in this thesis.

⁴⁹ The clitoris is a small, erect body of female genitalia, partially hidden by the labia. It is highly sensitive, and can be a source of sexual pleasure and female orgasm. It is homologous to the penis of the male.

⁵⁰ Banda F 'Women Law and Human Rights: an African perspective' (2005) 209. See Nagubere-Munaaba F 'Victims of protection' (Unpublished M. Phil Thesis, University of Zimbabwe, 2001) 162. See also WHO 'Female Genital Mutilation: Report of a Technical Working Group' (1996) *World Health Organization*.

⁵¹ Boyle EH 'Female Genital Cutting: Cultural Conflict in the Global Community' (2002) 60. WHO 'Eliminating female genital mutilation: An interagency statement' 2008 *World Health Organization*.

2.1.3.1. Female Circumcision or Female Genital Mutilation

This term was adopted by the third Conference on the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children. The concept was later recommended by the WHO to the UN in 1991.⁵² Therefore, FGM has become the dominant term within the international community and in medical literature.

Opinions vary among communities when it comes to mutilation, because for some it is viewed as a violation of human rights and call for its eradication, whilst for others it is regarded as part of cultural practice.⁵³ The term ‘cutting’ is traditionally used in local language to describe the practice, but modern parents prefer the term mutilation because it better expresses the violence associated with the practice and because of the age at which the practice is carried out on girls.⁵⁴ In 1999, the UN Special Rapporteur on Traditional Practices called for tact and patience concerning this issue rather than run the risk of ‘demonizing’ certain cultures, religions, and communities. The concept cutting is increasingly used to avoid alienating communities.⁵⁵

According to a 2005 UNICEF report, the concept mutilation distinguishes FC from male circumcision and stresses its severity.⁵⁶ FC describes the procedure that does not take into consideration the harm associated with it because it implicitly compares its procedure to Male circumcision, regardless of the fact that FC/FGM anatomically destroys female genitalia for non-medical purposes.⁵⁷

⁵² WHO ‘Female Genital Mutilation report of a WHO technical working group’ 1995 World Health Organisation available at www.who.int/frh-whd/FGM/technical.htm (accessed on 21 August 2012).

⁵³ Rahman A & Toubia N ‘*Female genital mutilation: A guide to Laws and Policies Worldwide*’ (2000) 3.

⁵⁴ Human Rights Watch ‘Q & A on Female Genital Mutilation’ June 2010 available at <http://www.hrw.org/news/2010/06/10/qa-female-genital-mutilation> (accessed on 01 November 2012).

⁵⁵ UN ‘The implementation of the Human Rights of Women: Traditional Practices affecting the health of women and the girl child’, E/ CN.4/SUB.2/1999/14, 9 July 1999, Available at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1999.14.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1999.14.En?Opendocument) (accessed on 21 May 2012).

⁵⁶ Rahman A & Toubia N ‘*Female Genital Mutilation: A Guide to Laws and Policies Worldwide*’ (2000) 6. See WHO, ‘Eliminating female genital mutilation’ 2008 *World Health Organization* 4 & 22-28. See Martha CN ‘*Judging other cultures: the case of Genital Mutilation*’ (1999) 119-120. See also Lewnes A ‘changing a harmful social convention: female genital cutting/mutilation’ 2005 *UNICEF Innocent Digest* 1-2.

⁵⁷ Toubia N ‘*Female genital mutilation in women’s rights human rights: international feminist perspectives*’ (1995) 226.

2.1.3.2. Female Genital Cutting or Traditional Female Genital Surgery

The term FGC/FGS is preferred by many writers because it is perceived as being neutral. This practice is not considered as a marginalized event but as a gender-identity ceremony for the purification.⁵⁸ Activists and health advocates use this term to demonstrate risks associated with the practice.⁵⁹

2.1.3.3. Female Genital Mutilation/Cutting

The WHO defines FGM/C as a traditional procedure.⁶⁰ It reflects deep-rooted inequalities between men and women that constitute an extreme form of discrimination against women. This violation impacts on the socio-politico-economical spheres of women in patriarchal societies.⁶¹ The situation in sub-Saharan African countries demonstrates a high level of gender inequality. All important decisions concerning women are taken by men such as the performing of FGM/C, early marriage, and forced marriage.

FGM/C aptly captures the full seriousness and extent of the consequences of this practice and highlights the violence and physical assault that impact women's health.⁶² Therefore, this term is used in this thesis.

2.2. Prevalence of FGM/C

The WHO estimates the prevalence of women who annually undergo FGM/C between 100 and 140 million.⁶³ At least three million girls are at risks of being cut each year and about 6,000 girls

⁵⁸ Shell-Duncan B & Hernlund Y 'Female "circumcision" in Africa: culture, controversy and change' (2000) 235-252.

⁵⁹ Ahmed MMA & Musa AS 'Sexual experiences and psychosexual effect on Sudanese women' (2002) 19 *Ahfad Journal* 1: 21- 30.

⁶⁰ WHO 'Female genital mutilation: A joint WHO/UNICEF statement' 1997 *World Health Organization*.

⁶¹ The patriarchal society is known as men having domination over women.

⁶² Warzazi E H 'Ninth Report and Final Report on the situation regarding the elimination of traditional practices affecting the health of women and girl child' 2005 *E/CN.4/SUB.2/2005/36*: 35.

⁶³ WHO 'Female Genital Mutilation' (June 2000) 241 Fact Sheet, Available at <http://www.who.int/mediacentre/factsheets/fs241/en/> (accessed on 13 may 2012).

in a day. An average for 4 girls per minute undergoes the ritual.⁶⁴ The highest number of FGM/C occurs in sub-Saharan Africa. The practice is prevalent in Egypt, in some countries of the Middle East, Asia and the Pacific. Statistics released by ChildInfo 2012 show that the highest prevalence of FGM/C in Africa is located in south of the Sahara where around 60 per cent of women undergo the practice whilst 40 per cent of women who undergo this operation live in the Middle East and North Africa.⁶⁵

FGM/C has also been reported in varying degrees in migrant communities in Europe, North America, New Zealand and Australia; although evidence on its prevalence is difficult to establish because the practice is often secretly performed.⁶⁶ IOM Reports show an increase in the number African immigrant communities in Europe, North America and Australia.⁶⁷ IOM has found that difficulties in integration have led to stricter application of cultural practices amongst migrant communities as a means of distinguishing themselves from the receiving society and preserving their ethnic identity. Addressing FGM/C in receiving countries has particular challenges, since initiatives that promote FGM/C abandonment can be perceived as judgmental or morally offensive and result in negative reactions in the migrant communities.⁶⁸ FGM/C is deeply rooted in 28 countries in sub-Saharan Africa.⁶⁹ The prevalence of FGM/C in Africa is rated from 5 per cent in DRC to 99-100 per cent in Somalia where the practice is most prevalent.⁷⁰

⁶⁴ Indymedia Ireland, 'Egypt formally bans female circumcision', Indymedia Ireland, 2007, June 28, Available at http://www.indymedia.ie/openwire?search_text=+female+circumcision&x=12&y=4 (accessed on 07 May 2012). See also UNHCR 'Eliminating Female Genital Mutilation: An interagency statement' February 2008 available at <http://www.unhcr.org/refworld/docid/47c6aa6e2.html> (accessed on 27 April 2012). See also Momoh C 'Female genital mutilation' (2005) 2.

⁶⁵ UNICEF Global databases 2011 available at http://www.childinfo.org/fqmc_progress.html (accessed on 20 May 2012).

⁶⁶ WHO 'Eliminating Female Genital Mutilation: An Interagency Statement' UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNHCR, UNICEF, UNIFEM, WHO, 2008 *World Health Organization* Geneva 11.

⁶⁷ Sala R & Manara D 'Nurses and requests for female genital mutilation: Cultural versus human rights' (2001) 8 *Nursing Ethics* 247–258.

⁶⁸ International Organization for Migration (IOM) 'Supporting the Abandonment of Female Genital Mutilation in the context of Migration' IOM. Available at <http://www.iom.int/jahia/about-iom/organizational-structure/iom-gender/activities-best-practices/fqm/> (accessed on 15 May 2012).

⁶⁹ WHO 'FGM: a joint WHO/UNICEF/ UNFPA statement' 1997 *World Health Organization* Geneva. See also Annexure B: Table of prevalence rates in Africa.

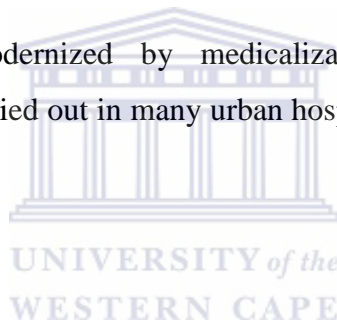
⁷⁰ UNDP 'The human development Report on Somalia' 2001 *United Nations Development Programme* 80. See also Ras-Work B 'The impact of harmful traditional practices on the girl child' *UNICEF September 2006 Innocenti Research Centre EGM/DVGC/2006/EP.4* Florence, Italy 4.

2.3. Description of practitioners

FGM/C is performed by village women or traditional midwives. They are usually selected among the elderly in the community and are qualified to perform this traditional practice. In the north of Nigeria and in Egypt, the practice is performed by village barbers assisted by midwives or the child's mother.⁷¹ The history of Mali, Kenya and Senegal shows that this practice was performed by a woman from the family of the girl who is spiritually chosen by the gods. Sometimes, certain men are allowed to be present at the ceremony.⁷²

In Sudan and in Egypt, the practice of excision and infibulation is performed by a small number of qualified nurses and doctors. Each community nominates its practitioners from its own tribe. In Somalia for example, the practitioners are called Gedda while in Sudan and Egypt they are called Daya.

Actually, FGM/C becomes modernized by medicalization often adopted by migrant communities. The operation is carried out in many urban hospitals and with adequate health care precautions.⁷³



2.4. Procedure of FGM/C

There are visible differentiations between indigenous practices and those adopted by immigrant countries. In the traditional method, FGM/C is performed by four women. Two of them hold the girl's legs apart; one holds her head and hands while the midwife cuts. The operation lasts approximately 20 to 30 minutes depending on the age of the woman and the skills of the circumciser. In all countries in which FGM/C is performed, circumcisers are often feared and considered powerful. Members of these communities believe that they possess supernatural powers.⁷⁴ Women are cut without anaesthesia and unsterile cutting devices such as knives,

⁷¹ Sanderson-Passmore L 'Against the Mutilation of Women: Struggle against Unnecessary suffering' (1981) 19.

⁷² Lightfoot-Klein H 'Prisoners of ritual: an Odyssey into female genital circumcision in Africa' (1989) 36.

⁷³ Eyega Z. & Connelly E 'Facts and fiction regarding female circumcision/female genital mutilation: A pilot study in New York City' (1997) 52 *Journal of the American Medical Women's Association* 4: 174-187.

⁷⁴ Wright J 'Female Genital Mutilation: An overview' 1996 *Journal of Advanced Nursing*.

razors, scissors, cut glass, sharpened rocks and fingernails are used.⁷⁵ In urban areas, FGM/C is performed in the hospital environment, with sanitary precautions to prevent infections.⁷⁶

2.4.1. Indigenous practice

FGM/C carried out by traditional practitioners severely affects health due to inappropriate instruments used.⁷⁷ During the operation, practitioners put certain herbs on the tongues of the girls to stop or reduce the pain. These agents can be acacia and mixtures of cloves traditionally recognised as active medication against pain. The indigenous method does not provide for any medication to ensure treatment of wounds. This could account for the increase in infections and other complications such as serious infections, HIV, abscesses, small benign tumours, haemorrhages, shock and clitoral cysts.⁷⁸

The long term effects of these complications may also include kidney stones, sterility, sexual dysfunction, depression, various urinary tract infections and various gynaecological and obstetric problems.⁷⁹ The testimony of UNICEF concerning a young girl of 12 years illustrates high level of carelessness during such operations:

At the age of 12, she became a daya, an Egyptian midwife. That was also the first time she held a razor blade in her hand and performed FGM on a small girl. To stop the bleeding she pressed the juice out of a lemon over the open sore and packed onions and ashes over it.

⁷⁵ Abdulcadir J et al 'Care of women with female genital mutilation/cutting' 2011 *Swiss Medical Weekly*. See also Kelly E & Paula HAJ 'Female genital mutilation' (2005) 17 *Current Opinion in Obstetrics and Gynaecology* 5: 490–4. See also Annexure C: Traditional tools used during the operation.

⁷⁶ UNFPA, 'Strategic Response to FGM/C', available at http://www.unfpa.org/gender/practices3_2.htm#medicalization_FGM (accessed on 12 November 2012).

⁷⁷ Toubia N 'Female genital mutilation: A call for global action' (1995) 9. See also Reifman J 'United in support for Zero Tolerance to FGM/C' available at http://eritrea.usembassy.gov/fqm_day.html (accessed on 31 March 2012). See also Abdulcadir J et al 'Care of women with female genital mutilation/cutting' 2011 *Swiss Medical Weekly* 3. See also Kelly E & Paula HAJ 'Female genital mutilation' (2005) 17 *Current Opinion in Obstetrics and Gynecology* 5: 490–4. See also Reifman J 'United in support for Zero Tolerance to FGM/C' available at http://eritrea.usembassy.gov/fqm_day.html (accessed on 31 March 2012).

⁷⁸ Smith J 'Visions and discussions on genital mutilation of girls: an international survey' (1995) 11. See also Banks E et al 'Female genital mutilation and obstetric outcome: WHO collaborative prospective study in six African countries' (2006) 367.

⁷⁹ Abdulcadir J et al 'Care of women with female genital mutilation/cutting' 2001 *Swiss Medical Weekly* 3. See Kelly E & Hillard PJA 'Female genital mutilation' (2005) 17 *Current Opinion in Obstetrics and Genecology* 5: 490–4. See also Dave AJ et al 'Female Genital Mutilation: What Every American Dermatologist Needs to Know' (2011) 29 *Dermatologic Clinics* 1: 103–9.

Rasheeda Sharawbin performed numerous circumcisions in this fashion throughout many decades. About 97% of all Egyptian women are circumcised in similar ways.⁸⁰

The same instruments are used for all women operated on the same day without any sterilization.⁸¹

2.4.2. Migration, medicalization and FGM/C

Among migrant communities in the West, FGM/C may not be considered as a health hazard or issue. It remains an intensely private and sensitive subject where public discussion is discouraged and is considered disrespectful and potentially embarrassing to the whole community. Although some women express varying degrees of discomfort about having been subjected to circumcision, they have not indicated that their experience has resulted in psychological or mental problems.⁸²

The medicalization of FGM/C refers to situations in which the practice is performed by any category of health-care provider, whether in a public or private clinic. The concept of medicalization also includes the conditions in which the operation is carried out.⁸³ However, the medicalization of FGM/C does not change the consideration of the practice. But, it contributes to the violation of women's rights and at the same time, it violates the World Medical Association Declaration of Helsinki that stipulates that the physician's mission is the protection of health.⁸⁴ In other words, medical doctors who perform FGM/C for other reasons other than safeguarding health, violate the right to life, right to physical integrity and right to health as stipulated in the

⁸⁰ Facts and myths on Female Genital Mutilation available at *Facts and myths on Female Genital Mutilation* (accessed on 10 April 2012).

⁸¹ UNYANZ National Model United Nation/ WHO 'Question of eradication of female genital mutilation' 2004 UNYANZ.

⁸² Eyega Z & Connelly E 'Facts and fiction regarding female circumcision/female genital mutilation: A pilot study in New York City' (1997) 52 *Journal of the American Medical Women's Association* 4: 174-187.

⁸³ WHO 'Global strategy to stop health-care providers from performing Female Genital Mutilation' 2010 *World Health Organization* 2.

⁸⁴ The World Medical Association Declaration of Helsinki adopted by the 18th WMA General Assembly Helsinki Finland June 1964. See Handbook of WMA Policies 'WMA declaration of Helsinki: Ethical principles for medical research involving human subjects' 2011 *The World Medical Association* 18.

UDHR and also violate the fundamental ethical principle ‘do not harm’.⁸⁵ This was condemned in 1979 by the first international conference of WHO conference in Khartoum and also in 1993 by the World Medical Association, by several other medical professional associations including the International Federation of Gynaecology and Obstetrics (FIGO), as well as by international agencies, non-government organizations (NGOs) and Governments.⁸⁶

The issue of medicalization brought intensive debate in Egypt where the customs have almost been legitimized. In 1996, a Ministry of Health decree was adopted by Egypt’s highest administrative court to prohibit all medical and non-medical practitioners from practicing FGM/C in public or private; the practice is only allowed for medical reasons certified by the head of a hospital’s obstetric department. In 1997, this ban was adopted by the Court of Cession.⁸⁷ Many medical doctors justify the practice of FGM/C as the prevention against the indigenous method. Sometimes, parents or family members threaten to take their children to the midwives if medical doctors refuse to circumcise them in hospitals. This pressure often obliges medical doctors to align with the FGM/C practices in hospitals arguing that it reduces the risk of infections and death.⁸⁸ This modern method of FGM/C is frequently performed before childbirth or re-infibulation and after childbirth or de-infibulation.⁸⁹

The medicalization of FGM/C does not guarantee women’s health, but it reinforces all aspects of discrimination and violence against women. Consequently the CEDAW has called on countries where FGM/C continues to be practised to stop medicalization.⁹⁰ According to Shell-Duncan,

⁸⁵ WHO/RHR/10.9 ‘Global strategy to stop health-care providers from performing Female Genital Mutilation’ 2010 *WHO document product service* 9.

⁸⁶ WHO ‘Female Genital Mutilation: integrating the prevention and the management of the complication into the curricula of nursing and midwife. A teacher’s guide’ 2011 *The World Health Organization* 47.

⁸⁷ US Department of States ‘Female Genital Mutilation/Cutting Egypt country Report’ 1 June 2001.

⁸⁸ UNICEF ‘The dynamics of social change towards the abandonment of Female Genital Mutilation/Cutting in Five African Countries’ UNICEF Innocenti Research Centre October 2010 available at <http://www-prod.unicef-irc.org> (accessed on 04 March 2012).

⁸⁹ WHO ‘Female Genital Mutilation: a joint WHO/UNICEF/ UNFPA/ Statement’ 1997 *World Health Organization*. See WHO ‘Eliminating Female genital mutilation: an interagency statement UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNICEF, WHO, *World Health Organisation* 2008.

⁹⁰ UN ‘Report of the World Conference on Human Rights Report of the Secretary General Section II: adoption of the Vienna Declaration and Report of the Conference para 38 October 1993 *General Assembly document A, CONF.157.24* (Part I).

medicalization is conceptualized as a violation of women's basic right to health despite claims of safety. The medicalization of FGM/C is also not tolerable because of health risks.⁹¹

2.5. Decision-making and age at which FGM/C is performed

In Africa, the decision-making for FGM/C is taken by close family members or the parents without any consent of the women. Women are forced to undergo FGM/C as a ritual obligation. The patriarchal system in Africa gives all the decisions concerning women to men.

The age at which women undergo FGM/C varies on the ethnic group and geographical locations. In certain countries such as Ethiopia, babies undergo FGM/C a couple of days after birth. The practice is also performed on girls between the ages of 4 and 12. In Egypt and in many central African countries, children undergo this practice in about their 7th year. In Somalia, girls undergo FGM/C between 4 and 10 years old. FGM/C is also performed as late as just prior to marriage. Sometimes, it is practised on women who are pregnant with their first child.⁹² The timing is often flexible even within communities. Mutilation is often performed when the girls are young and uninformed. They are generally conscious when the painful operation is undertaken as no anaesthetic is used and have to be physically restrained to stop them from struggling. Sometimes, they are forced to watch the mutilation of other girls, increasing the probabilities of psychosocial problems as a consequence.⁹³

2.6. Reasons of the existence and persistence of FGM/C

A variety of justifications are provided for the continuation of FGM/C, including preservation of virginity before marriage, faithfulness during marriage, enhancement of the husband's sexual pleasure, enhancement of fertility, prevention of infant and child mortality, cleanliness and

⁹¹ Shell-Duncan B 'The medicalization of female circumcision: harm reduction or promotion of dangerous practice?' (2001) 52 *Journal of Social Science & Medicine* 1013-1028.

⁹² USAID 'Female Genital mutilation/Cutting: Data and Trends' update 2010 *United States Agency for International Development* 1. See Smith J 'Visions and discussions on genital mutilation of girls: an international survey' (1995) 11. See Rahman A & Toubia N 'Female Genital Mutilation: A guide to laws and policies worldwide' (2000) 3. See also Verzin A 'Sequelae of Female Circumcision' (1975) 5 *Tropical Doctor* 163-169.

⁹³ Momoh C 'Female genital mutilation' (2005) 2.

religious requirements, but tradition remain to be by far the most commonly mentioned reasons. Women believe that the practice is performed everywhere and there is no alternative reasons to escape this rule.⁹⁴ FGM/C reflects the ideological and historical background of the communities in which the procedure is developed, including certain spheres such as socio-cultural reasons, spiritual and religious reasons, psycho-sexual reasons and, economic reasons.⁹⁵ According to Packer, the justifications of FGM/C practices in Africa are grouped into four categories:⁹⁶

2.6.1. Socio-cultural reasons

FGM/C is considered as an initiation ritual which is the passage from childhood to adulthood particularly among people in North Sudan, Kenya, Cote d'Ivoire and Mali.⁹⁷ This phase is accompanied by ceremonies with special songs, symbolism, dance and a special dress to specify the girl's entrance into womanhood. The ceremony is used as an occasion for women to educate girls about specific duties of women and mothers. Women are exposed to possibility of rejection by the community or family if they refuse to follow this practice.⁹⁸

The notion of FGM/C varies according to the culture of the practicing communities. FGM/C is often performed as a ritual for the integration into womanhood and motherhood and it also has a significant impact on dowry that must be paid before marriage. The payment of dowry symbolizes for the new wife, her entry into the husband's family. In Somalia, for example, a potential husband's family may have the right to inspect the future wife's body prior to marriage, and mothers regularly check their infibulated daughter to ensure that they are still closed.⁹⁹

The testimony of Hodan Abdi Mohammed, a Somali young woman illustrates the level of discrimination against uncircumcised women. At 20 years-old she is still single and without

⁹⁴ Mackie G 'Ending Foot binding and Infibulation: A Convention Account' (1996) 61 *American Sociological Review* 999-1017. See also UNICEF 'Changing a Harmful Social Convention: Female Genital Mutilation/Cutting' 2005 *Innocenti Digest* 11-13.

⁹⁵ Yoder SP et al 'Female Genital Cutting in the Demographic Health Surveys: A Critical and Comparative Analysis' 2004 *DHS Comparative Reports* 42.

⁹⁶ Packer C 'Using Human Rights to change Tradition: Traditional practices harmful to women's reproductive health in sub-saharan Africa' (2000) 20-22.

⁹⁷ Koso-Thomas O 'The circumcision of women: A strategy for eradication' (1987) 23-24.

⁹⁸ Lightfoot-Klein H 'Prisoners of ritual: an Odyssey into female genital circumcision in Africa' (1989) 36.

⁹⁹ Barnes L V & Boddy J 'Aman: The Story of Somali Girl' (1994)

children: ‘All the girls my age are married but I remain single because people say that I am open. I was not cut when I was little. If I had been married when I was 16 by now I would have four children’.¹⁰⁰

Infibulation is encouraged by communities as a proof of women virginity before marriage and justification for paying the bridal price. Women who resist FGM/C are cut by force.¹⁰¹ For example, an uncircumcised woman in Kenya is considered to be unclean, immoral and immature. Sometimes girls are circumcised between 14 and 15 years before being married off at an early marriage.¹⁰²

2.6.2. Spiritual and religious reasons

Some communities believe that cutting the external genitalia is necessary to make a girl spiritually clean and is therefore required by religion. In some Muslim societies where FGM/C is performed, people believe that it is required by the Qur’an or sunna, even though the practice is not mentioned in the Holy Book.¹⁰³ Some practicing societies consider FGM/C as a deeply religious obligation.¹⁰⁴ It is important to highlight that neither the Bible nor the Qur’an subscribe to the practice of FGM/C.¹⁰⁵

¹⁰⁰ UNICEF ‘Fighting Female Genital Mutilation/Cutting in Ethiopia’s Somali region’ available at http://www.unicef.org/ethiopia/ET_real_2006_FGM.pdf (accessed on 07/06/2012).

¹⁰¹ Dugger CW ‘Africa Ritual Pain: Genital Cutting’ (1996) A1 & A6 *New York Times*.

¹⁰² McKinley JC ‘At a ceremony in Kenya, a brother and sister painfully enter adulthood’ (1996) A6.

¹⁰³ Mustafa & Zaki A ‘Female Circumcision and Infibulation in the Sudan’ (1966) 73 *BJOG: an International Journal of Obstetrics and Gynaecology* 302. See also Asmani LI & Abdi SM ‘De-linking female genital mutilation from Islam’ 2008 *United States Agency for International Development* 10.

¹⁰⁴ Islam Online.net & News Agencies ‘First anniversary of the International Day of Zero Tolerance of Female Genital Mutilation/Cutting (Female Circumcision)’ February 2004 *Islam Online.net & News Agencies*.

¹⁰⁵ Kouba LJ & Muasher J ‘Female Circumcision in Africa: An Overview’ (1985) 28 *African Studies Review*, 1: 95–110.

2.6.3. Psycho-sexual reasons

The psychological aspect of this issue constitutes the most important factor that affects African behaviours. Everything starts with what communities think about it. FGM/C is often adopted by people without evaluating the risks.¹⁰⁶

The testimony of a young woman from Ethiopia's Somali region states the following:

After they forced us down and cut us we asked them why they were doing this to us. They just told us that we would get better and that we should lie down. We would be given food and drink and they made us sleep. We are tied up and our parents have not allowed us to move about. We don't wash. We just lie down all day. We only turn in bed. We have suffered a lot and it hurts.¹⁰⁷

Several misconceptions surround FGM/C such as, that without cutting, women cannot have children because the secretions produced by their glands can kill the spermatozoa. The status of African and Middle Eastern women depends on the number of children they produce, especially sons. Lack of fertility is a cause for divorce. Furthermore, uncircumcised women are excluded from marriage. As marriage is the only career for many women in Africa and the Middle East, they agree to be mutilated so they can get a husband notwithstanding the fact that they are risking their health because infibulation is the only proof of virginity.¹⁰⁸ FGM/C is frequently practised in rural areas where the majority of women are uneducated and indigenous; and do not understand the risks of the operations carried out on their bodies.¹⁰⁹ Several misconceptions are inculcated into them such as the presence of clitoris prevents them from becoming mature and a member of the human race.¹¹⁰

Some communities believe that the clitoris has the power to blind children at birth. Others believe that it causes the death of the child and creates physical deformity or madness. In several

¹⁰⁶ Kunnskapssenteret 'Psychological, social and sexual consequences of female genital mutilation/cutting(FGM/C): a systematic review of quantitative studies' (2010) 13 *Report from Kunnskapssenteret Norwegian Knowledge Centre for the Health Services* 6.

¹⁰⁷ UNICEF 'Fighting Female Genital Mutilation/Cutting in Ethiopia's Somali region' available at http://www.unicef.org/ethiopia/ET_real_2006_FGM.pdf (accessed on 07 June 2012).

¹⁰⁸ Daley A 'Female Genital Mutilation: consequences for midwifery' (2004) 12 *British Journal of Midwifery* Issue 5: 2004, 292-298.

¹⁰⁹ Rahman A & Toubia N 'Female genital mutilation: A guide to Laws and Policies Worldwide' (2000) 6.

¹¹⁰ Lightfoot-Klein H 'Prisoners of ritual: an Odyssey into female genital circumcision in Africa' (1989) 52- 80.

societies, uncircumcised women are viewed as bad luck to men because they can cause the death of the husband or harm his penis. This conception is mainly held in Mali, Kenya, Sudan and Nigeria. Ethiopians believe that the uncircumcised clitoris will continue to grow and will hang between the legs like a man's sexual organs.¹¹¹ In Cote D'Ivoire, the Tagouana believe that if a woman does not undergo FGM/C she will be sterile whilst the Yocouba conceive this practice as a form of contraception. Gambians believe that eating food prepared by uncircumcised girls is taboo.¹¹²

Educated people's understanding differs from that of unsophisticated rural dwellers. They understand that FGM/C not only transmits culture but is also a strategy used by men to dominate women and to justify their attitude towards them.¹¹³ Many traditions choose to have their clitoris cut because they know its preponderant function in women's sexual activity. It is anatomically proven that the masculine soul of women is located in this part. Therefore, the removal of that part reduces and/or prevents women from having any sexual feeling.¹¹⁴

2.6.4. Hygienic and aesthetic reasons

In eastern African countries such in Somalia, Egypt, Ethiopia and Sudan, the clitoris is viewed as a dirty and ugly organ that must be cut off. Egyptian women who have not undergone FGM/C are called 'nigsa' which means 'unclean'.¹¹⁵ In Somalia and in Sudan, women are forced to undergo infibulation to rid them of the ugly and unhygienic clitoris.¹¹⁶ Different terms are used to define this practice of purification or cleansing among indigenous people. Egyptians call it Tahara, while Sudanese call it Tahur and in Mali it is called as Bolokoli.¹¹⁷

¹¹¹ Lightfoot-Klein H 'Prisoners of ritual: an Odyssey into female genital circumcision in Africa' (1989) 29.

¹¹² Skaine R 'Female Genital Mutilation: legal, cultural and medical issues' (2005) 16. See Hosken F 'The Hoskenreport: genital and sexual mutilation of female' (1993).

¹¹³ Smith J 'Visions and discussions on genital mutilation of girls' (1995) 14.

¹¹⁴ Toubia N 'Female genital mutilation: A call for Global Action' (1995) 31.

¹¹⁵ Glazov J 'Islam's Hatred of the clitoris' Frontpagemag.com October 2001 available at <http://archive.frontpagemag.com/readArticle.aspx?ARTID=25201> (accessed on 21 May 2012).

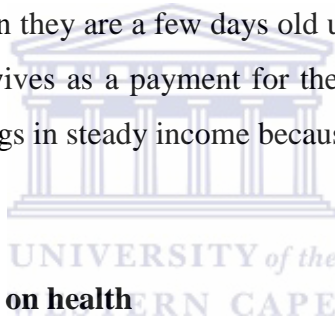
¹¹⁶ Hosken FP 'Female genital mutilation: Strategies for eradication' The First International Symposium on Circumcision Anaheim California 1989 available at <http://www.nocirc.org/symposia/first/hosken.html> (accessed on 20 May 2012).

¹¹⁷ Rahman A & Toubia N 'Female Genital Mutilation: A guide to Laws and Policies Worldwide' (2000) 3.

2.6.5. Economic reasons

The situation of women in Africa is linked to widespread poverty and the patriarchal system. In many communities, women are considered as second-class citizens, used and handled like personal property by men. Consequently, they are exploited, oppressed, sold and degraded.¹¹⁸ FGM/C constitutes the principal criteria for a woman to get married and for her family to receive a better dowry because she is traditionally viewed as a virgin.¹¹⁹ In a patriarchal society, women are exchanged with gifts in forms of cows, goats, sheep, or money. This explains why families and parents prepare them in fashion to increase market value.

A higher dowry is paid for circumcised women; while uncircumcised women stand very little chance of getting married. Thus, they are considered as a financial burden.¹²⁰ The maintenance of FGM/C also guarantees the financial health of the traditional midwives. As explained above, women can be mutilated from when they are a few days old until their old age. A certain amount is charged by the customary midwives as a payment for the surgery. FGM/C is viewed by the practitioners as a business that brings in steady income because of the constant supply of clients.



2.7. The consequences of FGM/C on health

FGM/C brings about immediate and late complications on women's health. These two distinctions depend on how the practice is performed, the expertise of the circumciser, the hygienic precautions during the operation and the health resistance of the girl concerned.¹²¹

¹¹⁸ Ndege OP 'The colonial State, capital, patriarchy and subordination of women traders in western Kenya' (unpublished Research Paper, West Virginia University, 1992) 13.

¹¹⁹ Smith J '*Vision and discussions on genital mutilation of girls: an International survey*' (1995) 14.

¹²⁰ Smith J '*Vision and discussions on genital mutilation of girls: an International survey*' (1995) 14.

¹²¹ Rahman A & Toubia N '*Female Genital Mutilation: A Guide to Laws and Policies Worldwide*' (2000) 8. See also Lewnes A 'Changing a harmful social convention: female genital cutting/mutilation' 2005 *UNICEF Innocenti Digest* 16.

2.7.1. Immediate physical complications

The absence of adequate sanitary precautions constitutes the principal causes of infections. In rural areas, the operation is often performed in poor conditions with poor lighting and the same tools are used on several women. These traditional instruments are unsterilized which leads to severe infections.¹²²

2.7.2. Long-term physical complications

The extended complications are often results of infections that have not been treated for a long-time with adequate medications. Many cases of infibulation cause scars and keloids that lead to strictures, obstruction or fistula formation of the urinary and genital tracts. Urinary tract sequelae include damages to the urethra and bladder resulting in infection and incontinence.¹²³ Genital tract sequelae includes vaginal and pelvic infections, dysmenorrhea,¹²⁴ dyspareunia¹²⁵ and infertility. Complete obstruction of the vagina results in hematocolpos¹²⁶ and hematometra;¹²⁷ and often in epidermoid cysts¹²⁸ that often infect neuroma formation.¹²⁹

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¹²² Abdulkadir J et al 'Care of women with female genital mutilation/cutting' 2011 *Swiss Medical Weekly* 3. See also Toubia N 'Female genital mutilation: A call for global action' (1995)

¹²³ Vlachova M 'Women in an insecure world' 2005 *Centre for the Democratic Control of Armed Forces DCAF* 119.

¹²⁴ Dysmenorrhea is the occurrence of painful cramps during menstruation. See Free dictionary, 'Dysmenorrhea' available at <http://medical-dictionary.thefreedictionary.com/dysmenorrhea> (accessed on 12 November 2012).

¹²⁵ Dyspareunia is a medical term that describes pain intercourse that often occurs upon penetration, during intercourse and / or follows intercourse. This pain can exist anywhere in the genital area such as in the clitoris, labia, vagina, etc. See Vaginismus.com 'What is dyspareunia? What is the connection between dyspareunia and vaginismus?' available at <http://www.vaginismus.com/faqs/vaginismus-questions/dyspareunia-diagnosis-treatment?qclid=CMjYtbefyrMCFaTKtAod3x8AHA> (accessed on 12 November 2012).

¹²⁶ Hematocolpos also known as cryptomenorrhea is the accumulation of menstrual blood in the vagina. This medical condition is often caused by the combination of menstruation with an imperforate hymen. See Memidex 'Definition of hematocolpos' available at <http://www.memidex.com/hematocolpos> (accessed on 12 November 2012).

¹²⁷ Hematometra is retention of blood in the uterine cavity caused by obstruction to menstrual flow at the level of the uterus, cervix, or vagina. In older women, the obstruction is usually acquired and occurs at the level of the cervix. In young women, hematometra may be due to congenital anomalies such as an imperforate hymen. See Sherer DM et al 'Transvaginal sonography of hematotrachelos and hematometra causing acute urinary retention after previous repair of intrapartum cervical lacerations' (February 2006) *25 Journal Ultrasound Medical* 2: 269-271.

¹²⁸ An epidermoid cyst is a benign cyst usually found on the skin. The cyst develops out of ectodermal tissue. Epidermoid cysts commonly results from implantation of epidermis into the dermis, as in trauma or surgery. They are also caused by a blocked pore adjacent to a body piercing. It is very common for women on the major

Infibulation leads to complications during pregnancy that can have debilitating effects on the child and mother such as pre-eclampsia,¹³⁰ neo-natal mortality and high risks of obstetrical issues for women. During the birth of the baby, each infibulated woman must be de-infibulated. This means that their vaginal passage must be opened by a surgical procedure to allow the passage of the baby. After delivery, the same passage has to be reduced again. This practice is called re-infibulation.

2.7.3. Psychosocial complications

There is no extensive research made into psychosocial or psychological complications of FGM/C. However, it has a significant impact on the lives of these women. FGM/C often leaves traumatic symptoms such as loss of confidence and trust in family and friends who have encouraged this violation. FGM/C impacts on the relationships between circumcised women and their parents and thus, this frustration affects the development of an intimate relationship between these women and others in their future.¹³¹

Many similarities bring FGM/C consequences closer to those suffered by rape victims.¹³² Both cause mental and psychosomatic disorders such as sleeplessness, nightmares, loss of appetite, weight loss, as well as panic attacks, difficulties in concentration and learning, and symptoms of post-traumatic stress and rejection.¹³³ Sometimes, women develop feelings of incompleteness,

or minor labia; and usually present on parts of the body with relatively little hair. See Jehle KS et al 'Squamous cell carcinoma arising in an epidermoid cysts' (2007) 68 *British Journal of hospital medicine* 8: 446.

¹²⁹ Kelly E & Paula HJA 'Female genital mutilation' (2005) 17 *Current Opinion in Obstetrics and Gynecology* 5: 490–4. See also Dave AJ et al 'Female Genital Mutilation: What Every American Dermatologist Needs to Know' (2011) 29 *Dermatologic Clinics* 1: 103–9.

¹³⁰ Preeclampsia is a complication of pregnancy that dangerously exposes woman to high blood pressure, swelling, and protein in the urine. See Free dictionary 'Preeclampsia and Eclampsia' available at <http://medical-dictionary.thefreedictionary.com/Preeclampsia+and+Eclampsia> (accessed on 12 November 2012).

¹³¹ Han Erin L 'Legal and non-legal responses to concerns for women's rights in countries practicing female genital circumcision' (2002) 22 *B.C Third World Law Journal* 208.

¹³² Jenny C et al 'Sexual transmitted diseases in victims of rape' (1990) 322 *New England Journal of Medicine* 1: 713–716.

¹³³ Wellersein JK 'In the name of tradition: eradicating the harmful practice of female mutilation' (1999) 22 *Loyola International and Comparative Law Review* 108.

loss of self-esteem, depression, chronic anxiety, phobias, or even psychotic disorders and suffer in silence because of the taboos imposed by their communities.¹³⁴

2.7.4. Sexual complications

FGM/C causes several issues in women's sexual intercourses and leads many marital relationships to divorce. These complications occur during the first sexual intercourse and traumatize both partners in the marriage because the amputation of the sexual organ reduces sexual enjoyment. Circumcised women frequently endure painful sexual intercourse or dyspareunia.¹³⁵

The sexual complications suffered by Bedria better explain the situation:

I experienced many problems when giving birth. Even before birth – when it penetrates the first time - it is cut in so many places. You don't look forward to your wedding day, instead you cry. On your wedding day they cut you with a razor. And then when you are going to give birth, it is the same. The razor cuts you in so many places. When it is time for your period – it doesn't flow. Your stomach gets sick. That means the blood doesn't move. It becomes dirty and you get sick for three days. Your back – all your body parts ache. From our own experience we know that [infibulation] causes problems. However because it is the tradition we continue to do it.¹³⁶

Vaginal penetration in circumcised women becomes complicated or even impossible and entails tearing or re-cutting the scar. It causes sexual dysfunction in circumcised women and makes them inferior in the marriage. Men also express psychological dissatisfaction and sexual frustration. These sexual issues destroy the marital relationship and constitute one of the causes

¹³⁴ Smith J 'Visions and discussions on Genital Mutilation: an international (1995) 18-20.

¹³⁵ Rigmor BC 'Does female genital mutilation affect women sexual functioning? Result from a systematic review and meta-analysis' March 2006 *Kunnskapsenteret* 10.

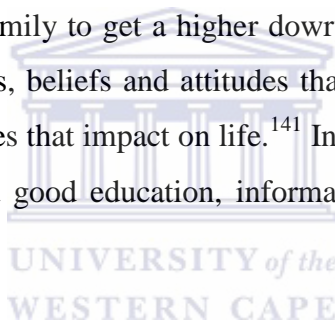
¹³⁶ UNICEF 'Fighting Female Genital Mutilation/Cutting in Ethiopia's Somali region' available at http://www.unicef.org/ethiopia/ET_real_2006_FGM.pdf (accessed on 07/06/2012).

of divorce.¹³⁷ However, lack of sexual pleasure leads the husband to have extramarital relations with other uncircumcised women.¹³⁸

2.8. Conclusion

In many communities, FGM/C is often based on strong cultural beliefs, including beliefs on economic and social security. People believe that FGM/C safeguards marriages and therefore, a good future. As a rite of passage from childhood to adulthood; the practice prepares the young woman for marriage.¹³⁹

Sudanese, Somalis and Egyptians consider FGM/C as one through which virginity can be maintained before marriage. Therefore, FGM/C is a sine qua non condition¹⁴⁰ for a woman to protect her virginity and for her family to get a higher dowry. It symbolised a vital security for the new couple and family. Values, beliefs and attitudes that characterize a community always come with strengths and weaknesses that impact on life.¹⁴¹ In general cases, women are forced to perform FGM/C.¹⁴² The lack of a good education, information and knowledge about FGM/C affects women adversely.



¹³⁷ Berggren V et al 'Being victims or beneficiaries? Perspectives on female genital cutting and reinfibulation in Sudan' (2006) 10 *African Journal of Reproductive health* 2: 31.

¹³⁸ Toubia N 'Caring for Women with Circumcision: a Technical Manual for Health Care Providers' (1999). See also WHO 'A systematic Review of the Health Complications of Female Genital Mutilation' 2000 *World Health Organization Geneva*.

¹³⁹ Mackie G & LeJeune J 'Social Dynamics of Abandonment of Harmful Practices: A New Look at the Theory' UNICEF Innocenti Research Centre May 2009 available at <http://www.unicef-irc.org> (accessed on 04 March 2012). See also Amnesty international 'Female genital mutilation: A human rights information pack' 1997 *Amnesty International*.

¹⁴⁰ A sine qua non condition refers to an indispensable and essential action, condition, or ingredient. It was originally a Latin legal term for 'a condition' without which it could not be, or without which there is nothing.

¹⁴¹ Values are constituted by the moral principles and beliefs of person or community that can influences the decision that must be taken. Sometimes, the decisions are influenced by the family but it can also result from certain environmental aspects such as religion, culture, education, friend, life's style. Beliefs are a conviction, principles of life agree by a person or a community as true or wrong without proof or justification. Attitudes are the personal conception of people that can be influenced by their point of view according to a situation.

¹⁴² Amnesty International 'What is female genital mutilation?' AI index: ACT 77/06/97,

CHAPTER THREE

INTERNATIONAL HUMAN RIGHTS LAW, THEORIES AND DEBATE ON FEMALE GENITAL MUTILATION/CUTTING

3.1. History of FGM/C in Africa

The process of development and observing rituals such as FGM/C have marked the history of Africa and more precisely sub-Saharan Africa. As noted by the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW), the historical background of human activity in public and in the private sphere has been viewed differently. In several African countries, women are marginalised and considered as inferior to men.¹⁴³ Women are exposed to several forms of customary rituals such as FGM/C and their identity and dignity are often violated. Being a discriminatory and extremely violent practice, FGM/C destroys women's health and integrity.¹⁴⁴

The abolition of torture has been enshrined in international law since the end of the Second World War.¹⁴⁵ But FGM/C has only recently been recognized as violating the human rights of women and girls. Efforts to eliminate this practice have often been unsuccessful because opponents of the practice ignore its social and economic context.¹⁴⁶

The practice illustrates the sexual oppression and the maintenance of male dominance and continued exploitation of women.¹⁴⁷ Many countries with varying degrees of social acceptance of FGM/C, both high and low prevalence communities, have adopted criminal law provisions against the practice. However, the absence of specific legislation against FGM/C in certain

¹⁴³ Stark B 'The women's convention, reproductive rights and reproduction of gender' (2011) 18 *Duke Journal of Gender Law and Policy* 261: 264 available at scholarship.law.duke.edu/cqj/viewcontent.cgi?article=1189 (accessed on 16 August 2012)

¹⁴⁴ Ras-Work B 'The impact of harmful traditional practices on the girl child' September 2006 *UNICEF Innocenti Research Centre EGM/DVGC/2006/EP 4*.

¹⁴⁵ The Convention on the Elimination of All Forms of Discrimination Against Women adopted in 1979; The Vienna Declaration and programme of Action adopted in 1993; The Beijing Declaration on Women's Rights adopted in 1995 and the United Nations Convention on the Rights of Child adopted in 1989.

¹⁴⁶ Smith J '*Visions and discussions on Genital Mutilation of girls: an international* (1995) 14-15.

¹⁴⁷ SADC 'Conference note: Prevention of Violence Against Women: Summary Report' SADC, 5 – 8 March 1998.

countries such as in Somalia reinforces the violation of girls' and women's rights.¹⁴⁸ Without any legal protection, every day a female Somali's health is endangered by the practice.

3.1.1. Perception of FGM/C as involving a question of women's and child's rights violation

The consequences of FGM/C brought the universal recognition of the practice as a violation against women's and child's rights. Several aspects that result from FGM/C have demonstrated it as a human rights issue. First, people who are often involved in the practice are private actors rather than State officials. Second, women and girls are forced to undergo FGM/C by parents and family members who believe in it. Third, the practice is viewed as cultural imperialism.¹⁴⁹

The question surrounding FGM/C which first appeared on the agenda of the United Nations in 1948 within the context of the UDHR; started to be analysed as a harmful customary practice in the 1970's and 1980's during the United Nation's Decades for Women.¹⁵⁰ The international community started to address FGM/C as a violation of women's rights and call for its abandonment and prohibition at the international as well as the national level; even if the action for eradication appears as contradiction or interference with other rights such as cultural, minority and religious rights.

3.1.2. The reject of the cultural relativist theory

The conflict between the ideas of universalism of human rights and cultural relativism results from the reservations made about women's human rights. Somalia and other Muslim countries

¹⁴⁸ FORWARD 'Female Genital Mutilation: Information Pack' 2002 *FORWARD* 10.

¹⁴⁹ The cultural imperialism is a form of cultural influence distinguished from other forms by the use of force. Its consequences impact on the emancipation of women, especially in Africa. Cultural imperialism brought various transformations that following the introduction of a capitalist economy and imposition of a new system of government. These changes created a gender ideology of power, demarcating public space and power as Male to the exclusion of women. See Mama A 'Sheroes and villains: conceptualizing colonial and contemporary violence against women in Africa' available at <https://www.uzh.ch/cmsssl/genderstudies/lehre/unterlagen/archivlv/dhawan/Mama.pdf> (accessed on 04 November 2012). See also Hosken FP 'The Hosken Report: Genital and Sexual Mutilation of Females' (1993) 17.

¹⁵⁰ USAID 'Strategy for ending Female Genital Cutting' Bureau for global health July 2004 available at http://transition.usaid.gov/our_work/global_health/pop/techareas/fac/fac_strategy.pdf (accessed on 12 August 2012).

did not ratify CEDAW; they made reservations under Article 28 of the convention according to Islamic Sharia laws.¹⁵¹ CEDAW is viewed as culturally biased towards the western nations and consequently, it is in fundamental contradiction with the place given to women in Sharia laws.¹⁵²

This study supports recommendations made by CEDAW for the protection of women, especially in Islamic communities where women's rights are severely marginalised.¹⁵³ This international human rights treaty focuses exclusively on women's rights and gender equality. It sets a global definition for discrimination against women and outlines a plan to end that discrimination. Therefore States Party that ratifies the convention is required to take, 'all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights as well as fundamental freedoms on a basis of equality with men.'¹⁵⁴

FGM/C is one manifestation of the inequality of the status of girls and women around the world. This feeds into the complications of talking about FGM/C on an international stage. Not only does it involve girls and women making it less likely the issue will be addressed, but it also carries the sexuality taboo and the concern that FGM/C is a cultural practice and outsiders should not impose their cultural values on another culture. All of these issues have made it difficult to form an international movement to address the issue. Still, world leaders have condemned the practice in international treaties and consensus documents such as CEDAW, the Beijing Declaration and Platform of Action of the Fourth World Conference on Women, and the Programme of Action of the International Conference on Population and Development.

Even if controversial arguments exist between cultural relativists and universalists about the recognition of FGM/C as a violation of human rights; there are sufficient and visible facts that demonstrate the level of violence.

¹⁵¹ Sharia Law or Islamic law is the moral code and religious law of Islam.

¹⁵² Mayer E A 'Islamic reservations to human rights convention: A critical assessment' available at http://www.verenigingrimo.nl/wp/wp-content/uploads/recht15_mayer.pdf (accessed on 09 February 2013).

¹⁵³ Subotic M '*Cultural Relativism for Universality of Human Rights: The case of Reservations to Human Rights Treaties*' (2005) 1.

¹⁵⁴ Article 5 of CEDAW.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (The Maputo Protocol)¹⁵⁵ has adopted special measures for the elimination of discrimination against women, the right to dignity, the right to life, the integrity and the security of persons, the rights to education and training, economic and social welfare rights, and health and reproductive health that are spoiled by the practice of harmful customary practices, specially FGM/C. The African Charter on the Rights and Welfare of the Child (Children's Charter) also implemented the protection of children by the Children's Rights Convention to raise the issues of children.¹⁵⁶

Until recently, the cultural relativists' theory has been consistently opposed by the United States of America (USA) while embracing universalism in international human rights law.¹⁵⁷ In contrast, cultural relativists consider the theory of human rights as wrong because it is imported from Western culture and has only been implemented for Europeans' benefits. Thus, relativists consider human rights as a kind of perpetuation of Western states' dominance upon non-Western States because of opposition to some African customary practices such as FGM/C.¹⁵⁸ This group thus links the universalism theory to the colonisation process.¹⁵⁹

Relativists accept numerous cultures and visions of human rights but reject the recognition of FGM/C as a violation of women's rights because they consider it as a process of cultural

¹⁵⁵ The Protocol to the African Charter on Human and People's rights on the Rights of Women in Africa or the Maputo Protocol has been adopted in July 11th 2003 by the African Union as safeguard for women against the harmful customary practices.

¹⁵⁶ The African Charter on the Rights and Welfare of the Child (also called the ACRWC or Children's Charter) was adopted by the Organisation of African Unity in 1990 and was entered into force in 1999. The Children Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. Consequently, in the case of FGM/C, this Charter is applied as a protection for young girls against the practice. Such as young girls are often pressured to undergo FGM/C or to give their consent but they are not enough matures to take a good decision to their life. Therefore, the best interest standard mentioned in the Child's Convention is the safeguard of children, especially young girls against FGM/C. See UNICEF 'Legislative reform to support the abandonment of female genital mutilation/cutting' 2010. Available at http://www.unicef.ie/downloads/UNICEF_Legislative_Reform_to_support_the_Abandonment_of_FGMC_August_2010.pdf (accessed on 28 August 2012)

¹⁵⁷ Henri SJ & Alston P 'International human rights in Context: Law, Politics, Morals' (1996) 166-225.

¹⁵⁸ Steiner HJ et al 'International Human Rights in context: Law, Politics, Morals' (1996) 166-225.

¹⁵⁹ Klein R 'Cultural Relativism: Economic Development and International Human Rights in the Asian context' (2001) 19 *Touro International Law Review* 3.

sanctity.¹⁶⁰ Islamic states invoke the Koran to defend the practice.¹⁶¹ American criticism has also been usually elicited by certain assertions of cultural relativism. For example, former United States Secretary of State Warren Christopher, proclaimed at the 1993 World Conference on Human Rights that: ‘We cannot let cultural relativism become the last refuge of repression.’¹⁶²

Those words have impacted significantly in US diplomatic relations and treaty negotiations. Therefore, several human rights instruments such the UDHR,¹⁶³ the International Covenant on Civil and Political Rights (ICCPR),¹⁶⁴ CEDAW, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁶⁵ have been reinforced by universalism championed by American lobbying.¹⁶⁶

However, it is positive to consider that even if the origins of human rights are western and characterized by individualism;¹⁶⁷ the UDHR provides for the recognition of rights to everyone without discrimination and obliges States to respect their citizens’ rights. CEDAW stipulates that women have the right to the enjoyment of their physical and mental integrity; and dignity.¹⁶⁸

Several Muslim countries, such as Egypt, Bangladesh, Iraq and Saudi Arabia have refused to sign certain CEDAW articles that they consider to be discordant with Islamic Sharia, the Koran-based code of law as a domestic family law. This conflict is linked not only to women’s human

¹⁶⁰ Chinnian-Kester K ‘Female genital mutilation as a form of violence against women and girls: an analysis of effectiveness of international human rights law’ (unpublished Mini-Thesis, University of the Western Cape, 2005) 26. See also Steiner HJ et al ‘*International Human Rights in context: Law, Politics, Morals*’ (1996) 240-254.

¹⁶¹ Mayer EA ‘Universal versus Islamic Human Rights: A Clash of cultures or a Clash with a construct?’ (1994) 10 *Michigan Journal of International Law* 307-404.

¹⁶² Sciolino E ‘U.S. Rejects Notion that Human Rights vary with culture’ June 1993 *New York Times* A1.

¹⁶³ Universal Declaration of Human Rights was adopted on December 10, 1948. G.A. Res. 217A (III), U.N. Doc. A/810/1948.

¹⁶⁴ International Covenant on Civil and Political Rights adopted December 16, 1966, 999 U.N.T.S. 171, entry into force March 23, 1976.

¹⁶⁵ International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, 999 U.N.T.S. 3, entry into force January 3, 1976.

¹⁶⁶ Heinze E ‘*Sexual orientation: A human Rights*’ (1995) 153-286.

¹⁶⁷ Coomaraswamy R ‘*Reinventing International Law: Women’s Rights as Human Rights in the International Community*’ (1997) 4.

¹⁶⁸ Articles 2(f) and 5(a) of CEDAW recommend States to modify the customary practices that discriminate women in their integrity UN General Assembly Res. N 34/180, UN Doc A/RES/34/180, 1979.

rights, but also and especially to the international human rights law theory and practices; therefore, it opposes the idea of universalism of human rights to cultural relativism.¹⁶⁹

Those reservations to the CEDAW have been criticized by many states as invalid because according to Article 19(c) of Vienna Convention (VCLT) that states that: ‘A state may make a reservation to a treaty unless the reservation is “incompatible” with the object and purpose of the treaty’.¹⁷⁰ In other words, reservations may not avoid the main resolution of the treaty.¹⁷¹ Furthermore, *opinio juris*¹⁷² invoked by CEDAW on customary international law was established to protect and defend women from violence that happened from the customary application of culture such as in the case of FGM/C.¹⁷³ However, even though such reservations are not allowed under VCLT, a strong instrument for spreading and promoting the recognition of the universality of human rights must be established.¹⁷⁴ The recognition of FGM/C as a violation of the fundamental human rights is not a Western conclusion because the practice has been claimed not only by western communities but also by African and other continents as an injurious

¹⁶⁹ Reservations available at <http://www.untreaty.un.org/ENGLISH/bible/englishinternetbible/partIV/treaty10.asp> (accessed on 10 July 2012).

¹⁷⁰ The Vienna Convention on the Law of Treaties adopted in May 1969 and entered into force on January 1980.

¹⁷¹ The concept ‘reservation’ means a unilateral statement however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. See Article 2(1d) of the Vienna Convention on the Law of Treaties 1969. Upon ratification of a treaty, a State may formulate a reservation; however, reservations that are incompatible with the object and purpose of the treaty are prohibited. See Article 19 of the Vienna Convention on the Law of Treaties 1969. Austria, Denmark, Finland, France, Germany, Ireland and Netherlands refused to accept the decision taken by Saudi Arabia’s reservation. See Southard LJ ‘Protection of Women’s Human Rights under the Convention on the Elimination of All Forms of Discrimination against Women’ (1996) 18 *Pace International Law Review* 21.

¹⁷² *Opinio juris* is described as psychological component of customary international law because it refers to an attitude that states have toward a behavioural regularity. The idea of *opinio juris* is mysterious because the legal obligation is created by a state’s belief in the existence of the legal obligation. *Opinio juris* is really a conclusion about a practice’s status as international law; it does not explain how a widespread and inform practice becomes law. See *Opinio Juris Definition* available at <http://www.duhaime.org/legalDictionary/O/OpinioJuris.aspx> (accessed on 12 July 2012).

¹⁷³ CEDAW, Article 28. See also Article 1 of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights adopted on 25 June 1993.

¹⁷⁴ As stipulated by article 23 of VCLT, a reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

practice. In all patriarchal societies in which FGM/C is internalised, the intention is to maintain male domination of women and the control of women's sexuality.¹⁷⁵

Many academic debates have been held about the universality of human rights which underpin two notable international declarations: The Cairo Declaration on Human Rights¹⁷⁶ and the Bangkok Declaration on Human Rights.¹⁷⁷ These two Declarations respectively refer to Islamic and Asian States.¹⁷⁸ The USA regards the position of cultural relativism as the last refuge of oppression because of the preservation of harmful customary practices, so-called as an inalienable culture.¹⁷⁹ The incorporation of certain harmful customary practices into cultural life of communities significantly affects the efforts of eradication. Undoubtedly, the reservations made by Islamic countries about the core obligation to the CEDAW significantly contribute to the issues of violation of women's human rights in Africa and especially in Somalia.



¹⁷⁵ Paul RJ 'Cultural Resistance to Global Governance' 2000 22 *Michigan Journal of International Law* 16.

¹⁷⁶ The Organization of the Islamic Conference has adopted the Cairo Declaration on human rights in Islam to contribute to the efforts made by human rights in the protection of Man from exploitation and persecution in accordance with the Islamic Shari'ah. Member States of this Organization declare 'their belief that fundamental rights and universal freedom in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible – and the Ummah collectively responsible – for their safeguard'. See Ramcharan G 'How Universal are human rights? A debate about power rather than rights' available at <http://library.fes.de/pdf-files/ipg/ipg-1998-4/debate.pdf> (accessed on 04 November 2012).

¹⁷⁷ The Bangkok Declaration adopted by Ministers of Asian states meeting in 1993 in the lead up to the World Conference on Human Rights held in the same year, Asian governments reaffirmed their commitment to the principles of the United Nations Charter and the Universal Declaration of Human Rights. They stated their view of the interdependence and indivisibility of human rights and stressed the need for universality, objectivity and non-selectivity of human rights. At the same time, however, they emphasized the principles of sovereignty and non-interference, calling for greater emphasis on economic, social, and cultural rights, particularly the right to economic development, over civil and political rights. The Bangkok Declaration is considered to be a landmark expression of the Asian Values perspective, which offers an extended critique of human rights universalism. See Petersen CJ 'Bridging the gap?: the role of regional and national human rights institutions in the Asia Pacific' available at http://blog.hawaii.edu/aplpj/files/2011/12/APLPJ_13.1_Petersen.pdf (accessed on 04 November 2012).

¹⁷⁸ Davis MC 'Human Rights in Asia: China and the Bangkok Declaration' 1995-1996 2 *Buff Journal International Law* 215-216.

¹⁷⁹ Sciolino 'U.S. Rejects Notion that Human Rights vary with Culture' June 1993 *New York Times* A1.

3.1.3. Theories, debates and contestations on FGM/C

The issue of FGM/C has not only brought controversial arguments between Westerners and people from developing countries; but also between the feminists' literatures. Three major negative stereotypes have been found in feminists literatures from 1970s to 1980s.¹⁸⁰ According to these stereotypes, the entire Africa is uncivilised. This view held is particularly directed at communities where the type of FGM/C performed is infibulation and consequently, Africa is viewed as a sadistic continent in which women are exposed to harmful customary practice without legal protection.¹⁸¹

Tamale argues that several African feminists interpret customary practices such as FGM/C within a post-colonial context that makes opposing them a complex issue. While critical of FGM/C, they object to what Tamale calls the imperialist infantilization¹⁸² of African women, arguing this is inherent in the idea that FGM/C is simply a barbaric rejection of enlightenment and modernity.¹⁸³

Robertson, a Western feminist and cultural anthropologist states that:

We should not be surprised that these feminist representations of FGC share common assumptions with the dominant Western discourses regarding Africa. Feminists are no more immune from culture and ethnocentrism than anyone else.¹⁸⁴

Between feminist and anthropologist analyses, there are also levels of ethnocentrism. The analysis of gender inequality and academics in the political science field show biased power structures. Okin claims that: 'Critical distance, after all, does not have to bring with it detachment: committed outsiders can often be better analysts and critics of social injustice than

¹⁸⁰ Tamale S 'African sexualities: A reader' (2011) 19.

¹⁸¹ Kaler A 'African perspectives on female circumcision' (2009) 43 *Canadian Journal studies* 1: 178-179.

¹⁸² The concept 'imperialist infantilization' is used by Universalist to qualify attitude of African women regarding to the practice of FGM/C. The persistence of the practice of FGM/C in Africa is viewed as a barbaric rejection of modernity.

¹⁸³ Tamale S 'Africa sexualities: A Reader' (2011) 19-20, 78.

¹⁸⁴ Robertson Claire C 'Getting Beyond the Ew! Factor: Rethinking U.S. Approaches to African Female Genital Cutting' in James Stanlie M. & Robertson Claire C 'Genital Cutting and Transnational Sisterhood: Disputing U.S. Polemics' (2002) 60.

those who live within the relevant cultural.’¹⁸⁵ For Okin, a certain level of ethnocentrism must be maintained in order to highlight social injustice that those who are undergoing the practice of FGM/C may consider as faulty argument. Therefore, ethnocentrism can be advantageous for the community only if viewers understand how the ideology developed by ethnocentrism will skew according to the community’s culture.

Gruenbaum argues that: ‘Cultural relativism not as an ultimate ethnical stance but as a mental technique to assist people to avoid negative judgements...Although a useful mental exercise to free one from unreflective ethnocentrism, cultural relativism usually requires a degree of suspension of one’s ethnical values.’¹⁸⁶ Gruenbaum maintains that cultural relativism also has some limitations regarding cultural differentiations between communities. Consequently, she provides that:

Critical opposition is potentially experienced as hostile ethnocentrism. Ethnocentrism assessments that view the practices of others through the perspective of one’s own culture are often innocuous misunderstandings...But frequently ethnocentric views lead not only to misconceptions but also to strongly negative judgements or differences...Insofar as it is unreflective, such ethnocentrism contributes to prejudices, particularly when the cultural differences concern strongly held values.¹⁸⁷

Gruenbaum’s critique of ethnocentrism demonstrates the risks that can be created by ethnocentric analyses of communities. Flax’s views are in direct contrast to Okin’s ethnocentric argument regarding the issue of gender inequality. She argues that:

Constructing Third World women as an unresisting and homogenous category positions them exclusively as objects of the discourses and practices of others. Furthermore, such positioning denies the possibility that women in the First World have much to learn about themselves and others by seeing through their eyes.¹⁸⁸

¹⁸⁵ Okin Moller S ‘Gender Inequality and Cultural Differences’ (1994) 22 *Political Theory* 1: 62.

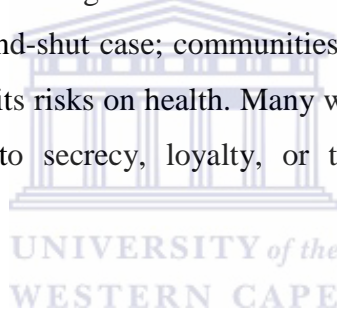
¹⁸⁶ Gruenbaum E ‘*The Female Circumcision Controversy: An Anthropological Perspective*’ (2001) 26.

¹⁸⁷ Gruenbaum E ‘*The Female Circumcision Controversy: An Anthropological Perspective*’ (2001) 25.

¹⁸⁸ Flax j ‘Race/Gender and the Ethnics of Difference: A reply to Okin’s Gender Inequality and Cultural Differences’ (1995) 23 *Political Theory* 3: 71.

Ethnocentrism implies the refusal to view reality from the perspective of the other, thereby causing one to reject the other's contribution as valid, simply because it differs from one's own.¹⁸⁹ This thesis is predicated on the lessons learnt from the experiences of circumcision in Africa and especially in Somalia. African women suffer discrimination and dangerous gender inequality that severely affect their personality and create some frustration. This thesis supports the position of feminist scholars and activists who argue against FGM/C. The case of FGM/C in Somalia clearly demonstrates how rights of women are violated. Studies on the topic show that FGM/C is one of the consequences of patriarchy, gender inequality and stringent control of women's sexuality. West qualifies this as the means to reduce women's desires and to increase their dependence on men by facilitating establishment of polygamy.¹⁹⁰

Educational programs are crucial to ending FGM/C in Africa because ignorance and low literacy levels surrounding this scourge have a negative influence on communities. The controversy over FGM/C in Africa is not an open-and-shut case; communities should be taught about operational procedures involving FGM/C and its risks on health. Many women, particularly in Africa, are in danger of being mutilated due to secrecy, loyalty, or the well-founded fear of political persecution.



3.1.4. International human rights norms addressing FGM/C

The continuation of FGM/C in Africa and around the world is a direct consequence of parents and family members' beliefs in the practice. In other words, parents and family members often lead daughters towards FGM/C because they consider it as a guarantee for marriage and condition for integration into community life. Consequently, obliged to do that, women lose their independence to make decisions. FGM/C constitutes a violation of women and girls in the home and community.¹⁹¹ As a common standard for the protection and respect of rights and freedoms of all human beings, the UDHR is strengthened by two covenants, the ICCPR and ICESCR that

¹⁸⁹ AllExperts 'Sociology/ethnocentrism vs. cultural relativism' available at <http://en.allexperts.com/q/Sociology-1644/2009/2/ethnocentrism-vs-cultural-relativism.htm> (accessed on 14 November 2012).

¹⁹⁰ Tamale S 'Africa sexualities: A Reader' (2011) 30.

¹⁹¹ UNICEF 'changing a harmful social convention: Female genital mutilation/cutting' *UNICEF Innocent Digest* Florence 2005 available at <http://www.unicef-irc.org/publications/396> (accessed on 11 July 2012).

contain important articles relevant to FGM/C.¹⁹² The recent international standards and ratified treaties have incorporated explicit provisions against FGM/C. The CEDAW¹⁹³ and the Convention on the Rights of the Child (CRC)¹⁹⁴ were adopted as the main supports for women and girls in the drive to abolish the practice of FGM/C.

CEDAW is specified as a bill of rights for women victimized by traditional practices which are based on the idea of discrimination between the sexes.¹⁹⁵ Therefore, States Parties have to adopt appropriate measures to modify the social and cultural patterns of conduct of men and women, with the objective to achieve the elimination of prejudices of customary practices such as FGM/C that are based on the idea of inferiority or superiority of either sex or on stereotyped roles for men and women, as reiterated in the Beijing Declaration and the Platform for Action.¹⁹⁶

In 2006, CEDAW and CRC underlined the issues of FGM/C as a violation of human rights.¹⁹⁷ Several General Recommendations have been issued by CEDAW which is the monitoring body of the convention. Therefore, States are called upon to establish effective measures for prohibition of FGM/C, including adequate health care and educational strategies to eradicate this practice;¹⁹⁸ General Recommendation 19 on violence against women, adopted in 1992 comments

¹⁹² The important articles of ICCPR relevant to the issues of FGM/C are Article 7 on cruel, inhuman and degrading treatment, article 17 on privacy and article 27 on the protection of minor groups. Article 10 of ICESCR protects children and young persons and in Article 12, the healthy development of the child.

¹⁹³ Convention on the Elimination of all Forms of Discrimination against Women, adopted December 18, 1979, 1249 U.N.T.S. 14, entry into force September 3, 1981. Article 5(b) of the CEDAW constitutes the special instrument that defends the right to security of person and evokes the protection by state against violence or bodily harm inflicted by an individual group or institution.

¹⁹⁴ Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th session, Supp. No. 49, U.N. Doc. A/44/49 reprinted in 30 I.L.M. 1448, entry into force September 2, 1990.

¹⁹⁵ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the UN General Assembly. It defines the concept of discrimination against women and sets up an agenda for national action to end such discrimination.

¹⁹⁶ Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, Resolution 34/180, adopted by the Un General Assembly on 18 December 1979 and entered into force on 3 September 1981.

¹⁹⁷ The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) adopted in 1982 is an expert body composed by 23 experts specialized on women's issues worldwide. See UN General Assembly, 'Intensification of efforts to eliminate all forms of violence against women', 61st session, 2006, A/RES/61/143; UN General Assembly, 'Intensification of efforts to eliminate all forms of violence against women', 62nd session, 2007, A/RES/62/133 and UN General Assembly, 'Intensification of efforts to eliminate all forms of violence against women', 63rd session, 2008, A/RES/63/155.

¹⁹⁸ The Committee on the Elimination of Discrimination against Women General Recommendation N 14 available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom14> (accessed on 25 June 2012).

against the violation of women based on sexuality. In Africa, there is a significant link between customary domination of men upon women and harmful customary practices such as early or forced marriage, dowry, FGM/C and domestic violence.¹⁹⁹

States Parties are also enjoined to address gender roles and stereotypes in order to eradicate FGM/C and other harmful customary practices.²⁰⁰ The issues of discrimination against children are highlighted by the 2005 General Comment on Implementing Child Rights in Early Childhood and the committee of CRC.²⁰¹ The 1993 UN Conference on Human Rights in Vienna added its support to the elimination of the practice of FGM/C. The Vienna Declaration and Programme of Action are historically recognized for their efforts to have all forms of violence against women, especially FGM/C as stipulated by international human rights law prohibited.²⁰² In 1994, the Programme of Action of the International Conference on Population and Development recommended governments and communities urgently adopt effective measures for the prohibition of FGM/C and protect women and girls from similar dangerous practices.²⁰³

The UN Declaration on the Elimination of Violence against Women (DEVAW) was adopted by the General Assembly as a safeguard of women against gender-based violence both in public and in private life. This principle was the first UN instrument that defined the concept of violence against women and specified FGM/C and other harmful customary practices against women as a violation of human rights. DEVAW is a legal framework for prevention, prosecution and prohibition of violence and obliges States to internationalise actions aimed at eradicating FGM/C.²⁰⁴ In 1995, the Programme of Action of the Cairo Conference and the Beijing Declaration and Platform for Action also actively contributed to attempts to eradicate FGM/C.

¹⁹⁹ The Committee on the Elimination of Discrimination against Women, General Recommendation N 19, Available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (accessed on 25 June 2012).

²⁰⁰ General Comment 3 on Adolescent Health and Development, CRC/GC/2003/4. UNICEF 'General Comments of the Committee on the Rights of Child' 2006 *UNICEF Innocenti Research Centre* 23.

²⁰¹ The reports of the Committee's days of general discussion on "Violence against children" held in 2000 and 2001 and the Recommendations adopted in this regard (see CRC/C/100, chap. V and CRC/C/111, chap. V).

²⁰² Vienna Declaration and Program of Action World Conference on Human Rights adopted in 1993. Article 38 available at <http://www.document.un.org/> (accessed on 10 July 2012).

²⁰³ UN 'Report of the International Conference on Population and Development', N E.95 XIII. 18Cairo 4-15 September 1994, Available at <http://www.un.org/popin/icpd/conference/offeng/poa.html> (accessed on 18 July 2012).

²⁰⁴ The Declaration on Violence against Women (DEVAW) was adopted in 1993 by the General Assembly; See Article 4 DEVAW, available at <http://www.un.org/documents/qa/res/48/a48r104.htm> (accessed on 24 June 2012).

The Beijing Declaration was adopted at the fourth UN World Conference on Women held in Beijing.²⁰⁵ It recommends to Member States, the elaboration of penal, civil, labour and administrative sanctions in domestic legislation to prosecute all forms of harmful practices perpetrated against women and girls and also provides to such victims an access to judicial processes.²⁰⁶

The 1998 Resolution of the General Assembly has included in the rubric of harmful traditional and customary practices, all practices that violate dignity and integrity of women and girls such as FGM/C because those are constituted obstacles to the full enjoyment by women and girls of their fundamental freedoms.²⁰⁷ These international treaties are supplemented by regional treaties, including the African Charter on Human and Peoples' Rights or the Banjul Charter²⁰⁸ and the European Convention for the Protection of Human Rights and Fundamental Freedoms.²⁰⁹ Most of human rights protected in international and regional instruments can also be enshrined in national-level legal instruments. Therefore, human rights advocates can rely on these national level instruments without invoking international norms to protect vulnerable communities.

3.2. International human rights infringed by FGM/C

FGM/C violates a number of rights that are protected by international and regional instruments. These rights include the right to be free from all forms of gender discrimination, the rights to life and to physical integrity, the right to health, and children's right to special protection.

²⁰⁵ UN 'Report of the Fourth World Conference on Women' Beijing, 4-15 September 1995. Available at <http://www.un.org/esa/gopher-data/conf/fwcw/off/a-20.en> (accessed on 17 July 2012)].

²⁰⁶ Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, September 4-15 1995, U.N. Doc. A/CONF.177/20,1995.

²⁰⁷ UN General Assembly on traditional or customary practices affecting the health of women and girls A/RES/52/99 adopted 9 February 1998. Available at <http://www.undemocracy.com/A-RES-52-99.pdf> (accessed on 18 July 2012).

²⁰⁸ African Charter on Human and Peoples' Rights adopted June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev. 5, 1981, reprinted in 21 I.L.M. 59, 1982, entry into force October 21, 1986.

²⁰⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted November 4, 1950, 213 U.N.T.S. 222, entry into force Sept. 3, 1953.

3.2.1. The Right to be free from all forms of gender discrimination

Several international human rights instruments have elaborated articles relative to the right to be free from all forms of gender discrimination. Article 1 of CEDAW defines the concept discrimination against women as:

Any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

The above article properly demonstrates the link between FGM/C and violence. FGM/C is a discriminatory procedure that controls women's sexuality and reproductive power by the partial or total removal of their sexual organs. It also prevents their equal enjoyment to rights.²¹⁰ Consequently, women's subordination to men is increased in various aspects of their life such as economic, social, political and cultural.²¹¹

Article 2 of CEDAW obliges States Parties to establish express measures for the abolition of all forms of gender based discrimination and to ensure effective measures to secure equal rights between sexes thus: '...take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women'.²¹²

The African Charter also recommends States Parties to prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards.²¹³

To reinforce this argument, the former President of Burkina Faso, Thomas Sankara has mentioned that:

Female Genital Mutilation is rooted in discrimination against women. It is an instrument for socializing girls into prescribed roles within the family and community ... which intimately

²¹⁰ CEDAW General Recommendation N 14 on Female Circumcision 9th Session A/45/38, 1990.

²¹¹ Rahman A & Toubia N '*Female genital Mutilation: a guide to laws and policies worldwide*' (2000) 21.

²¹² Article 2 Para.f of CEDAW.

²¹³ Article 5 of the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa.

link to the unequal position of women in the political, social and economic structures of societies where it is practised.²¹⁴

This argument also supports the views of Toubia who regards FGM/C as a tool for the social control of women's sexuality, pleasure and reproductive health. A woman who undergoes FGM/C becomes a victim of discrimination based on sex that prevents her from enjoying fundamental rights and liberties.²¹⁵ The case of polygamy better demonstrates this violation. As argued by Western feminists, a polygamous husband will be unable to sexually satisfy all wives, thus the practice of cutting clitoris could solve the problem because the organ that generates sexual desire is removed. Therefore, women are prevented from achieving orgasms.²¹⁶ The fact that FGM/C is imposed on women and girls without their consent, as a necessity and natural part of life, violates the prescript of the UDHR which states that: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, and sex'.²¹⁷

FGM/C is respectively recognized by the Maputo Protocol and African Charter as a violation of women's and girls' rights. These instruments enjoin all State parties to introduce effective measures for prohibition and prosecution of FGM/C.²¹⁸ The CRC recommends that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view without discrimination based on sex, religion, ethnic or social origin, birth or other status.²¹⁹

²¹⁴ Idowu AA 'Effects of Female genital Mutilation on Human Rights of Women and Female children: The Nigerin Situation' 2008 *Research Journal of International Studies* 8: 23. Available at www.eurojournals.com/rjis_8_02.pdf (accessed on 17 July 2012).

²¹⁵ Article 2 of the UDHR.

²¹⁶ Gifford AE 'The Courage to Blaspheme: Confronting Barriers to Resisting Female Genital Mutilation' (1994) 329 *UCLA WOMEN'S L.J.* 345. See also Obiora AL 'Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision' 1997 47 *CASE W. RES. L. REV.* 275: 301.

²¹⁷ Article 2 of the UDHR.

²¹⁸ Art 5 of the Maputo Protocol.

²¹⁹ General Comment N7 on implementing Child Rights in early childhood, CRC/C/GC/2005. See UNICEF 'General Comments of the Committee on the Rights of Child' 2006 *UNICEF Innocenti Research Centre*. See also Article 2 Paragraph 1 of CRC enables the Committee's General Comment 4 on adolescent health and development and the General Comment 7 on implementing child rights in early childhood to look at discrimination from many perspectives.

Many African nations have adopted laws prohibiting all forms of discrimination against individual members of their societies; but still in other communities such as Somalia, Mali, Ethiopia, DRC, there is no specific law to prohibit FGM/C and other violations against women's rights.²²⁰

3.2.2. The Rights to life and to physical integrity

The rights to life and to physical integrity constitute the principal human rights to which everyone is entitled. Numerous international instruments ensure its protection, including the ICCPR. The preservation of life constitutes the most important measure recommended to governments by the Human Rights Committee, the body that guides implementation of the ICCPR.²²¹

In all practitioner communities, FGM/C is internalised as an obligatory practice for each woman. Article 1 of the DEVAW states that:

The term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.²²²

Article 2(a) of DEVAW is more specific and identifies 'violence against women' as an unlimited concept that includes various types of violence: 'Violence against women shall be understood to encompass, but not limited to ... female genital mutilation and other traditional practices harmful to women.'

Article 1 and 3 of UDHR, preamble of the ICESCR; Preamble and Article 9 of ICCPR; and Article 19 of CRC also provide for the protection of those rights.

²²⁰ FORWARD 'Female Genital Mutilation: Information Pack' 2002 *FORWARD* 9.

²²¹ Human Rights Committee, General Comment No. 6: The right to life, para. 5, 1982, Article 6.

²²² Article 1 of the Declaration on the Elimination of Violence against Women, UN Resolution 48/104 of 20 December 1993.

3.2.3. The right to health

The right of women to sound health and physical integrity are now universal and basically fundamental to the extent that a cultural claim for FGM/C may not be easily invoked to justify their violation. Any act capable of inflicting violence on women and female children like FGM/C deprives them of their right to sound health and physical well-being. This also reduces their level of skills; education, work opportunities and participation in the development of their nations and constitute a violation of the right to health.²²³

According to the Cairo Programme, the effects of FGM/C on women's physical and emotional health are enough to demonstrate that this practice violates the right to health. The Programme of Action in its paragraph 7(2) was the first international consensus document that defined the reproductive health as:

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of birth control which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.²²⁴

Article 12 of ICESCR stipulates that: 'everyone must enjoy the highest attainable standard of physical and mental health.'²²⁵ In cases where cutting genital organs causes severe physical and mental harmful to women, the act constitutes a violation. As FGM/C is a prerequisite a woman,

²²³ Asher J 'The right to health: A resource Manual for NGOs' 2004 *the Commonwealth Medical Trust* 7.

²²⁴ International Conference on Population and Development (ICPD), September 5–13, 1994, Report of the ICPD Ch. I, Res. 1, Annex, Paragraph 7.2, U.N. Doc. A/CONF.171/13/Rev.1, October 18, 1994. The ICPD Report contains both the resolutions adopted at the ICPD, including the Programme of Action, and the reservations made by Member States to the resolutions. Chapter I includes the Programme of Action and Chapter V the reservations.

²²⁵ Article 12 of the ICCPR.

an uncircumcised girl is exposed to social, emotional and physical pressure.²²⁶ The practice is a physical and emotional damage to victims.²²⁷ Even if there is no presence of health complications after performing FGM/C, the practice is a violation of the right to health because it removes the sexual organ for unjustified reason; it reduces and prevents women from any sexual feeling and exposes them to infections and death.²²⁸ Women are often affected by obstetrical and gynaecological infections such as bacterial vaginosis, herpes virus, pelvic inflammation, HIV/AIDS, genital ulcers, urinary incontinence; and other pre-natal issues such as preeclampsia and neonatal mortality.²²⁹

3.2.4. The right of the child

International human rights law (IHRL) has afforded children special protections because sometimes children are unable to protect themselves or/ and to make informed decisions about matters that may affect them for the rest of their lives. The CRC has been adopted as safeguard of Children's rights. A child is a person below the age of 18 unless maturity is attained earlier under the law applicable to the child.²³⁰ FGM/C is universally considered as a violation of the child because it is usually performed upon girls between the ages of 4 and 12; and sometimes, in certain cultures, upon babies. The CRC explicitly calls for the support of governments to abolish FGM/C.²³¹

States Parties to the CRC believed that this institution missed significant socio-cultural and economic realities of children, particularly in Africa; hence the creation of the Children's Charter. This Charter is a comprehensive instrument that sets out rights and defines universal norms and principles for the status of children.²³²

²²⁶ Article 1 of CEDAW.

²²⁷ Article 16 of the Maputo Protocol.

²²⁸ UDHR G.A Res. 217 A (III), UN. GAOR, 3rd Session (Resolution, Part 1), UN. Doc. A/810, adopted December 10, 1948, Article 25.

²²⁹ Kelly E & Paula HJA 'Female genital mutilation' (2005) 17 *Current Opinion in Obstetrics and Gynecology* 5: 490–4. See also Dave A & al 'Female Genital Mutilation: What Every American Dermatologist Needs to Know' (2011) 29 *Dermatologic Clinics* 1: 103–9.

²³⁰ Article 1 of the CRC.

²³¹ Article 4 (3) of the CRC.

²³² Article 21.1 of the Children's Charter.

The CRC requires the support of the legislative, administrative and judicial institutions to for the implementation of legal dispositions.²³³ Children should be given the opportunity to enjoy life in a healthy way, and receive adequate medical assistance²³⁴ and should be protected against all forms of violence, injury or abuse, and especially customary practices that affect them.²³⁵

3.3. The weaknesses affecting the effectiveness of human rights instruments

Various contentious arguments invoked by practitioners, prevent the implementation of human rights' norms to control and prosecute perpetrators of FGM/C. Cultural rights, the rights of minorities and the right to religious freedom are often arguments used by cultural relativists to justify their opposition to the eradication of FGM/C.²³⁶

3.3.1. The right to culture

Several human rights instruments provide for the rights to culture. The right to enjoy and participate in one's own culture has been arrogated to everyone by the UDHR. It stipulates that: 'Everyone has the right to freely participate in the culture of the community'.²³⁷ Later, the ICESCR also adopted the provision that: 'The State Parties to the present Covenant recognize the right of everyone to take part in cultural life'.²³⁸ Also, the Declaration on Race and Racial Prejudice reinforces this Article and makes it clear that:

Culture, as a product of all human beings and a common heritage of mankind, and education in its broadest sense, offer men and women increasingly effective means of adaptation, enabling them not only to affirm that they are born equal in dignity and rights, but also to recognize that they should respect the rights of all groups to their own cultural identity and

²³³ General Comment N 5, UN Doc. CRC/ GC/ 2003/5, Para 12.

²³⁴ Article 3 of the UDHR.

²³⁵ Article 24 of the Committee on the Rights of the Child.

²³⁶ The right to culture is a human right that is recognized in the Universal Declaration of Human Rights of 1948 and reiterated in the International Covenant on Economic Social and Cultural Rights in 1966. This right recognizes people the right to enjoy or to take part in their cultural life. See CEDAW General Recommendation on Female Circumcision, N 14, 9th Session, 1990, 30. A/45/38.

²³⁷ Article 27 of the UDHR.

²³⁸ Article 15(1)(a) of the ICESCR.

the development of their distinctive cultural life within the national and international contexts.²³⁹

The African Charter provides individuals with the duty to: ‘...Preserve and strengthen positive African cultural values in his relation with other members of the society’.²⁴⁰ The Declaration of the Principles of International Co-operation stipulates the following: ‘Each culture has a dignity and value which must be respected and preserved...Every people has the right and the duty to develop its culture’.²⁴¹ Even if the Articles above enunciate the recognition of the cultural life of individuals and communities, there are some limitations especially to customary practices such as FGM/C to prevent violations. The UDHR stipulates that: ‘Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein’.²⁴² FGM/C is not a culture as defined by the articles cited above because it is discriminatory and, degrading to women. Governments are obliged to ensure the protection of the fundamental rights that are contravened by FGM/C.

The UDHR and ICESCR state that none of the rights recognized by them can interfere or destroy any other right.²⁴³ But analysis made on FGM/C shows that this practice interferes and prevents women from enjoying several rights. These international instruments are supported by regional charters such as the Banjul Charter that works for the preservation and the positive interests of African cultural values. The Declaration of the Principles of International Cultural Cooperation forestalls certain limitations to the right to culture to prevent violations.²⁴⁴

To make a decision about which customary practice should be preserved and which one rejected is very complex because customary rituals represents the community’s life. In the case of

²³⁹ Article 5 of the Declaration on Race and Racial Prejudice.

²⁴⁰ Article 29(7) of the African Charter.

²⁴¹ Article 1(1) of the Declaration of the Principles of international Co-operation adopted in 1966 at Paris, Available at http://portal.unesco.org/en/ev.php-URL_ID=13147&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on 02 October 2012).

²⁴² Article 30 of the UDHR.

²⁴³ Article 5 of the ICESCR and Article 30 of the UNHCR.

²⁴⁴ Declaration of the Principles of International Cultural Cooperation adopted by the General Conference of UNESCO 14th Session November 1966, available at http://www.unhcr.ch/html/menu3/b/n_decl.htm (accessed on 28 June 2012).

FGM/C, universally known as a violation of the rights of women, the enjoyment of the right to culture cannot be allowed because this culture infringes the right to health. CEDAW requires State Parties to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.²⁴⁵

3.3.2. The right of Minorities²⁴⁶

The IHRL gives specific protection to members of minority groups. This special protection helps for the maintenance of their culture and protects them against interference and discrimination.²⁴⁷ However, the enjoyment of minorities' rights should respect other rights recognized by UDHL. FGM/C encroaches on other rights hence the reason why human rights precepts have elaborated measures for its eradication to protect victims.

3.3.3. The right to Religious Freedom²⁴⁸

As explained above, there is no discernible link between FGM/C and religion. Some African countries in which FGM/C is performed got the practice as a generational inheritance and consider it as a religious requirement.²⁴⁹ The UDHR, the ICCPR and the Declaration on the

²⁴⁵ Article 5 of the Committee on the Elimination of All Forms of Discrimination of Violence against Women, available at <http://www.un.org/womenwatch/daw/cedawtext/econvention.htm> (accessed on 27 June 2012).

²⁴⁶ International human rights law recognizes to members of minority (racial, ethnic, religious or linguistic groups) the right to a specific protection that enable them to maintain their own culture, free from interference and discrimination. See The International Covenant on Civil and Political Rights adopted in 1966 and the UN Declaration on the Rights of Minority adopted in 1992.

²⁴⁷ International Covenant on Civil and Political Rights adopted in 1966 and the UN Declaration on the Rights of Minorities adopted in 1992.

²⁴⁸ The right to religious freedom is recognized in the Universal Declaration of Human Rights adopted in 1948, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief adopted in 1981 and the International Covenant on Cultural and Political Rights adopted in 1966. These instruments have elaborated certain limitations to the right to religion according to the protection of public safety, health, and more generally to the fundamental rights and freedoms of the persons.

²⁴⁹ Ko D 'Cinderello sisters: A revisionist history of footbinding' (2005) 105- 144.

Elimination of All Forms of Intolerance and of Discrimination Based on religion or Belief²⁵⁰ grant everyone the right to religious freedom. For communities which argue that FGM/C is a religious right, action aimed at eradicating the practice are wrongly viewed as interference and violation upon religious rights.²⁵¹

3.4. International and Regional initiatives to end the practice of FGM/C

3.4.1. International initiatives to eradicate FGM/C

The UN has created numerous international mechanisms as safeguards against FGM/C. CEDAW and CRC constitute the international legal instruments and the foundation of several Bills of Rights adopted in constitutions and laws of several nations and Non-Government Organisations (NGOs) to the issues of women's and children's protection. Of 28 countries in which FGM/C is performed, 26 are parties to CEDAW while Somalia and Sudan are not.²⁵² Somalia is the only country in Africa that has not ratified CRC.²⁵³

Ratification of treaties is the first step in the process of change. Subsequently, national-level action is made to ensure that pre-existing domestic legislations links to ratified treaties. Governments are often obliged to elaborate adequate laws and policies that can better address customary practices such as FGM/C, that infringe norms of human rights law.²⁵⁴ Human rights treaties are ratified in other to reinforce and specify the practices that constitute violations of human rights and for which the law must take adequate measures to end it.²⁵⁵

Education is the best way for the eradication and prohibition of FGM/C because it informs people about risks that can happen; there must be an inextricable link between education and

²⁵⁰ The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was adopted in November 25, 1981 by the United Nations.

²⁵¹ CEDAW, General Recommendation N 14 on Female Circumcision, 9th Session, A/45/38, 1990, 38.

²⁵² CEDAW by the numbers 2012, available at <http://www.cedaw2010.org/index.php/about-cedaw-by-the-numbers> (accessed on 17 July 2012).

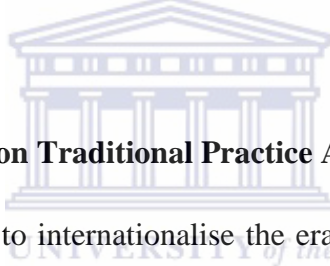
²⁵³ CRIN 'CRC: Somalia plans to ratify convention' available at <http://www.crin.org/resources/infodetail.asp?id=21323> (accessed on 17 July 2012). See also Annexure D: Table of Treaty Ratification.

²⁵⁴ UN 'Chapter four: Becoming a Party to the Convention and the Optional Protocol' available at <http://www.un.org/disabilities/default.asp?id=231> (accessed on 22 July 2012).

²⁵⁵ Article 2(d) of the Vienna Convention on the Law of Treaties, adopted May 22, 1969, U.N. Doc. A/Conf.39/27 (1969), reprinted in 8 I.L.M. 679.

culture for it to influence the attitudes and the beliefs of people.²⁵⁶ Several researchers have argued that, culture can modify the law, but the law cannot change culture because it constitutes a fundamental identity of the community.²⁵⁷ In addition to these international legal instruments, there are also certain legal mechanisms that have been adopted by African governments and, employed as supports to the action for the protection of women and the prosecution of perpetrators; for example, the UDHR, the ICCPR, the ICESCR, the Banjul Charter and the Children's Charter.

The Hosken Report was criticized for its alleged ethnocentrism²⁵⁸; its negative statements about African society, and its insistence on Western intervention. Consequently, Hosken recommends education as a significant step for the achievement of the eradication of FGM/C because she considers African women to be inarticulate and primitive. For Hosken, FGM/C is a consequence of male domination that represents women as sexual tools for men.²⁵⁹



3.4.1.1. The UN Working Group on Traditional Practice Affecting Health

The WHO is leading the attempts to internationalise the eradication of FGM/C by establishing anti-FGM/C legislation and organising public education.²⁶⁰ African leaders and women's organizations have also demanded particular attention be given to the issue of FGM/C. In 1984, it established the UN Working group on Traditional Practices Affecting the Health of Women

²⁵⁶ Trangsrud K 'Female genital Mutilation: Recommendations for Education and Policy' *The Universal Centre for International Studies (UCIS) Resources* 1995 available at <http://www.ucis.edu/resources/pubs/carolina/FGM/FGM.html> (accessed on 15 June 2012).

²⁵⁷ Shaaban LM & Harbison S 'Reaching the tipping point against Female genital Mutilation' *The Lancet* 2005 available at http://www.popcouncil.org/pdfs/frontiers/journal/lancet_fqc2005.pdf. (Accessed on 19 June 2012).

²⁵⁸ Ethnocentrism is the concept of viewing another culture solely by the value and standards of one's own culture. There are three kind of ethnocentrism: a positive, a negative and an extreme negative one. Positive ethnocentrism considers that one's own of life is to be preferred to all others. There is nothing wrong with such feelings, for it characterizes the way most individuals feel about their own cultures, whether or not they are verbalize their feeling. This ethnocentrism gives people their sense of peoplehood, group identity, and place in history. Ethnocentrism becomes negative when one's own group is viewed as the centre of everything, and others are scaled and rated with reference to it. In an extreme negative ethnocentrism a more powerful group not only impose its rule on another, but actively depreciates the things they hold to be of value. See Herskovits MJ 'Cultural relativism: Perspectives in cultural pluralism' (1973) 21-103. See also Sumner GW 'Folkways and mores' (1979) 13.

²⁵⁹ Rogaia MA 'Revisiting Feminist Discourses on Infibulation: The Hosken Report' in Shell-Duncan B & Hemplund Y 'Female Circumcision in Africa: Culture, Controversy and Change' (2000) 160.

²⁶⁰ Toubia N 'Female circumcision as a public health issues', (1994) 331 *New England Journal Medical* 712-716.

and Children. To evaluate the impact of FGM/C, the UN organized two regional seminars, first in 1991 in Burkina Faso and thereafter in 1994 in Sri Lanka. These seminars resulted in the establishment of the 1994 Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children.²⁶¹ At international level, this Plan of Action requires the integration of NGOs to reinforce activities of the UN into communities.

Through the 1994 Cairo International Conference (ICPD), the Plan of Action showed the link between women's health and women's rights; and through the ICPD, it adopted the decision to prohibit and eradicate FGM/C. In 1995, the Beijing Conference on Women placed customary indifference regarding violence against women on the international agenda. In Consequence, governments were obliged to intervene, especially in the case of FGM/C. Thus, the Plan of Action is a key international instrument for the eradication of FGM/C.²⁶²

3.4.1.2. The WHO, UNICEF, UNFPA and the eradication of FGM/C

In 1997, the WHO, UNICEF and UNFPA joined the Plan of Action with the principal mission focused on public education and lawmakers on the prohibition of the practice of FGM/C whether performed by indigenous midwives or by medical doctors. These UN systems also encourage African countries to adopt specific plans for elimination of FGM/C. In 2010, UNICEF also joined the action for the elimination of FGM/C.²⁶³

²⁶¹ Plan of Action of the UN Working Group for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children, adopted by the UN in 1994. This Plan of Action considers FGM/C as a human rights violation and not only a moral issue that express the societal gender subordination exercised upon women. This Plan of Action is constituted by 62 measures for governments that must be applied at the national level in which 4 deal with the issues of FGM/C such as the eradication and the ratification of FGM/C, the implementation of adequate international instruments and the creation of mechanisms of the implementation of policies that can ensure the good protection.

²⁶² African Studies Quarterly 'Women movements, customary law, and land rights in Africa: The case of Uganda' *The online journal for African studies* available at <http://www.africa.ufl.edu/asq/v7/v7i4a1.htm> (accessed on 03 October 2012).

²⁶³ Ben-Ari N 'Changing Tradition to Safeguard Women – Villagers Join Campaigns Against Female Genital Mutilation' 17 Africa Recovery 1 May 2003 available at <http://www.un.org/ecosocdev/geninfo/afrec/vol17no1/171wml.htm> (accessed on 15 June 2012).

In February 2010, the international day of Zero Tolerance,²⁶⁴ the East African Community (EAC) and its organs, including the East African Legislative Assembly, adopted a resolution urging the East African Community to take action against FGM/C. The EAC enjoins States parties to recognize and adopt effective policies geared towards ending FGM/C in the EAC region as a whole.²⁶⁵

3.4.2. Regional initiatives: The Maputo Protocol

The Maputo Protocol focuses on the protection of women, including the elimination of discrimination against women, the right to dignity, the right to life, the integrity and the security of the person, the protection of women in armed conflict, the right to education and training, economic and social welfare rights and health and reproduction.²⁶⁶

The Maputo Protocol states that: ‘States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of inferiority or superiority of either of the sexes, or on stereotyped roles for women and men.’²⁶⁷

Article 5 of the Protocol requires that all forms of FGM/C must be condemned and prohibited. Four principal duties are required of States Parties. First, they were required to map out public education programs; secondly, implement legislative measures for the prohibition of the practice, medicalization, and Para-medicalization of FGM/C and all other practices in order to eradicate them; thirdly, render support to victims of FGM/C through basic services such as healthcare, and fourthly, give judicial assistance, emotional and psychological counselling to affected women and girls.

²⁶⁴ The international day of Zero Tolerance is a UN-sponsored awareness day that takes place February 6 each year to promote eradication and make the world aware of FGM/C. See UNFPA ‘Statement of the international day of against female genital mutilation’ Message of Thoraya Ahmed Obaid, Executive Director, *UNFPA*, 06 February 2007 available at <http://www.unfpa.org/news/news.cfm?ID=927> (accessed on 09 October 2012).

²⁶⁵ US Embassy Blog Nairobi ‘International Day of Zero Tolerance for Female Genital Mutilation/ Cutting’ available at <http://blogs.usembassy.gov/nairobi/2012/02/06/international-day-of-zero-tolerance-for-female-genital-mutilationcutting/> (accessed on 22 July 2012).

²⁶⁶ Article 1 of the Maputo Protocol available at <http://www.npwj.org> (accessed on 22 June 2012).

²⁶⁷ Article 2(2) of the Maputo Protocol.

The Maputo Protocol is a comprehensive legal instrument that helps African governments in their fight against FGM/C. Unfortunately; the Protocol has not been ratified by all countries in which the practice is performed. Of the 28 African countries known to practice FGM/C, 23 have signed the Protocol; 13 of those countries have ratified it, and only five countries have not yet signed the Protocol.²⁶⁸ Signature of that protocol is an act by which a State provides a preliminary endorsement of the instrument. Signing does not create a binding legal obligation but does demonstrate the State's intent to examine the treaty domestically and consider ratifying it. While signing does not commit a State to ratification, it does oblige the State to refrain from acts that would contravene the content of the treaty. The obligation of state in term of the protocol that has been signed is reflected in Article 18(a) of the Vienna Convention that 'obliges state to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.'

3.5. The responsibility of States in the process of ending the practice of FGM/C under international human rights law

Governments of the states in which FGM/C is performed should obligatorily adopt effective measures to ensure the protection of women and prohibit this harmful practice.

3.5.1. The role and importance of international covenants in action for prohibition FGM/C

ICCPR provides legal instruments that help States act against FGM/C by encouraging them to cooperate and collaborate in the fight for the protection of women globally. The international community thus uses constitutions and international covenants which may be binding on

²⁶⁸ The countries that have signed the Maputo Protocol are: Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Central Africa, Chad, DRC, Djibouti, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Mali, Nigeria, Sierra-Leone, Somalia and Somalia. The Protocol has been ratified by Benin, Burkina-Faso, DRC, Djibouti, Gambia, Ghana, Liberia, Mali, Mauritania, Nigeria, Senegal and Tanzania. Egypt, Eritrea and Mauritania have not yet signed this Protocol. See African Union, 'List of countries which have signed, ratified/ accepted to the Protocol to the African Charter on Human and People's Rights on the rights of women in Africa', Addis Ababa, Ethiopia, 2010. See also IRIN 'Female Genital Mutilation, A Review of Legislation' United Nations Office for the Coordination of Humanitarian Affairs *IRIN* May 2006.

signatories and may be used to exert moral pressure on non-signatories to end FGM/C. This consensus helps policy makers in establishing effective norms with which to address FGM/C within their countries. Therefore, it is viewed as a support for African activists in the process of ending FGM/C.²⁶⁹

3.5.2. The responsibility of States to stop FGM/C under Human Rights Law

IHRL instruments supervise governments in their roles and attempts to eradicate FGM/C. This is achieved by reinforcing efforts to bar communities from forcing women and girls to undergo FGM/C and holding governments accountable for failing to eradicate FGM/C in private communities. The role of governments is not only to prohibit the performance of FGM/C but also, to ensure the respect of gender rights.²⁷⁰ In order to give the standard in the Declaration legal force; two major covenants have been developed to deal with civil and political rights (ICCPR) and; also with economic, social and cultural rights (ICESCR). These covenants and the Declarations are referred to as the International Bill of Rights that address matters of concern to particular groups such as women and children.²⁷¹

Specific duties are recommended to governments such as the duty to modify customs which discriminate against women; the duty to abolish the practice of FGM/C performed upon children; the duty to ensure health care and access to health information, and the duty to ensure a social order in which rights can be applied.²⁷²

3.5.3. The role and limits of national laws prohibiting FGM/C

The issue of rights and security of women against FGM/C arouses many questions surrounding the impact of the law in the process of its eradication. The law is an instrument of regulation of

²⁶⁹ Erin HL 'Legal and non-legal responses to FGM' Comment in Ute Gerhard's Book 'debating Women's equality' (2001)

²⁷⁰ Article 2(e) of CEDAW available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed on 30 June 2012)

²⁷¹ Gardbaum S 'Human rights as international constitutional rights' (2008) 19 *The European Journal of International Law* 4: 750-753.

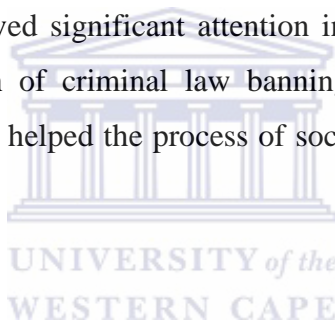
²⁷² Article 5(a) of CEDAW.

violations that implements applicable sanctions. Therefore, it represents a key tool for the protection of individuals' rights, especially in dictatorial communities. Democracy considers the law as an endorsement of public opinion. In several communities such as in Somalia and other patriarchal countries, women would not accept to be circumcised and; parents and guardians would not force their daughters to undergo FGM/C if the law was effectively enforced.²⁷³

However, the intervention of the law in traditional culture should not be misconstrued as interference but as a tool with which to protect the voiceless. The law should only come in to maintain fair and universal enjoyment of rights.

3.6. FGM/C and Criminalization in Africa

The practice of FGM/C has received significant attention in recent years at both national and international levels. The adoption of criminal law banning this harmful practice in several African and Western countries has helped the process of social change and the abandonment of FGM/C in certain communities.



3.6.1. A recent movement towards the criminalization of FGM/C

The 1997 Symposium for Legislators was organized by African countries in Addis Ababa, Ethiopia with the aim of adopting clear policies and concrete measures to eliminate or to reduce FGM/C. Many governments have adopted specific provisions against this practice. For example, Guinea was one of the first countries to do this in 1965.²⁷⁴ In a 2008 Report, the Centre for Reproductive Rights shows that 18 out of the 28 African countries where FGM/C is actively practiced have adopted specific laws against FGM/C.²⁷⁵ FGM/C is also prohibited under certain national constitutions such as in Ethiopia. The 1994 constitution of this country has explicitly

²⁷³ Smith J 'Visions and discussions on Genital Mutilation of Girls: an international survey' (1995) 25.

²⁷⁴ African online news (AFROL NEWS) available at http://www.afrol.com/categories/Women/index_fgm.htm (accessed on 05 July 2012).

²⁷⁵ Center for reproductive rights 'Female Genital Mutilation (FGM): Legal Prohibition in the world' November 2008, available at <http://reproductiverights.org/en/document/female-genital-mutilation-fgm-legal-prohibitions-worldwide> (accessed on 09/10/2012). See also Annexure E: Criminalization against FGM/C in Africa.

forbidden FGM/C, including oppression and physical or mental practices that cause harm to women.²⁷⁶ Similar prohibitions are enshrined in the constitutions of Ghana and Guinea; Ugandan constitution does not expressly prohibit FGM/C; under Article 33 referring to rights of women, the practice of FGM/C is indirectly prohibited.²⁷⁷ Also, Chad, Mali and Niger consider FGM/C as an injury, which should be sanctioned under the criminal law.²⁷⁸

Unfortunately, in countries where FGM/C is widely performed, there is no specific legislation against it; such as in Somalia, Gambia, Mali and Sierra Leone.²⁷⁹ For some African and Arabic countries where specific laws have not been adopted yet, the 2003 Cairo Declaration calls upon respective governments to support action taken to end the practice of FGM/C by modifying domestic laws.²⁸⁰

3.6.2. Legal measures prohibiting FGM/C

Constitutions, criminal laws, decrees and regulations, Child law protection and health professionals' activity regulations constitute the main legal instruments used by countries to eradicate FGM/C in Africa. The most important and efficient legal instrument is the constitution because it represents the highest authority of each country. The constitution is composed of provisions that safeguard individual rights against violence from governments' and private sources. The constitutional laws have only been adopted by two African countries: Ethiopia, Ghana.²⁸¹

²⁷⁶ FORWARD 'Female Genital Mutilation: Information Pack' 2002 *Foundation for Women's Health, Research & Development* NW10 5NY 7-9.

²⁷⁷ The Constitution of the Republic of Uganda, chapter 4, Human Rights and Freedom available at <http://dredf.org/international/UgaConst.html> (accessed on 10 February 2013).

²⁷⁸ UNICEF 'Changing a Harmful Social Convention: Female Genital Mutilation/Cutting' UNICEF, 2005, ISBN: 88-89129-24-7, available at <http://www2.hu-berlin.de/sexology/BIB/fqm2005.htm#bookmark29> (accessed on 22 July 2012).

²⁷⁹ FORWARD 'Female Genital Mutilation: Information Pack' 2002 *Foundation for Women's Health Research & Development* NW10 5NY 7-9.

²⁸⁰ Cairo Declaration for the Elimination of FGM on African Arab countries conference, available at http://portal.unesco.org/shs/en/ev.phpURL_ID=4687&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed on 30 June 2012).

²⁸¹ CEDAW, General Recommendation 14, 9th Session on Female Circumcision 1990, 101.

FGM/C is not specifically illegal in Ethiopia. However, the 1995 Constitution and the 1960 Penal Code provide a legal basis for prohibiting harmful traditional practices. Article 35, Section 4 of Ethiopian Constitution stipulates that: ‘Women have the right to protection by the state from harmful customs. Laws, customs and practices that oppress women or cause bodily or mental harm to them are prohibited.’ While Article 39 of Ghana’s constitution provides in part that traditional practices such as FGM/C that are injurious to a person’s health and well-being are prohibited. In 1994, the Parliament of Ghana amended the criminal code of 1960 to include the offense of FGM/C. The section 69A of the criminal code stipulated that: ‘(1) Whoever excises, infibulates or otherwise mutilates the whole or any part of the labia minora, labia majora and the clitoris of another person commits an offense and shall be guilty of a second degree felony and liable on conviction to imprisonment of not less than three years.’²⁸²

The criminal law is the most common legal instrument for fighting FGM/C because it demonstrates how this practice violates women’s rights and, it prescribes penalties such fines and imprisonment as reparation for damages. Certain African countries have adopted criminal laws against FGM/C.²⁸³ Decrees and regulations adopted by the executive branch of governments also constitute legal instruments against FGM/C but these cannot be used without the approval of the legislature. For example decrees and regulations against FGM/C are adopted by ministries of health and of women’s affairs but are subject to review by the legislature. Egypt and Kenya best encapsulate this.²⁸⁴

Child protection laws are usually applied in cases of child abuse perpetrated by parents or guardians. This legal instrument is also used by immigrant countries such as Canada, Australia, France, New Zealand, United Kingdom and United States to address FGM/C performed against girls.²⁸⁵ Today, three of the ten largest communities applying for asylum in the European Union

²⁸² Section 69A of Ghana’s criminal code. Available at <http://www.hsph.harvard.edu/population/fgm/ghana.fgm.htm> (accessed on 10 february 2013).

²⁸³ African country in which criminal law have been adopted: Benin (2003), Burkina Faso (1966), Central Africa Republic (1966), Cote d’Ivoire (1998), Djibouti (1995), Egypt (1997), Ghana (1994), Guinea (1965, updated in 2002), Kenya (2001), Niger (2003), Senegal (1999), Tanzania (1998) and Togo (1998). See Amnesty International ‘Female Genital Mutilation: A human rights Information pack’ 1997 AI Index: ACT 77/05/97: 29.

²⁸⁴ CEDAW, General Recommendation 14, 9th Session on Female Circumcision, 1990, 98.

²⁸⁵ Center for Reproductive Health ‘Female Genital Mutilation: A Matter of Human Rights’ An Advocate’s Guide to Action 2006 *Center for Reproductive Health* 44. See also Annexure F: Criminal legislation/ decree against FGM/C in country of migration.

come for African countries such as Nigeria, Somalia and DRC-Congo. Consequently, European states should use the legislative measures to prohibit and prosecute the perpetrators of FGM/C.²⁸⁶

3.6.3. Effects of law banning FGM/C upon African communities

The social change of attitudes to FGM/C is a great dilemma in Africa because the practice is internalized in communities as part of culture. Thus, law is rarely enforced by local populations. This situation inhibits NGOs in their efforts to have the scourge eradicated.

3.6.3.1. Lack of enforceability of laws

At least three principal purposes prevent the enforcement of legislation against FGM/C. To make explicit a State's disapproval of FGM/C; that state must send clear and unambiguous support to communities which have renounced it. This State action can act as a deterrent to like-minded communities.²⁸⁷ The absence of sufficient laws against FGM/C frustrates plans to act against practicing communities and its subsequent eradication.²⁸⁸ The prohibition of FGM/C constitutes an efficient measure for its eradication; but the social attitudes to the practice must change first. According to Ahmadu:

Women of my mother's generation and now own must outweigh the benefits of such traditions against increased international concern about its physical, psychological, and sexual consequences for women. Ultimately, it is up to each generation of women to decide whether to continue or to reject this tradition without fear and coercion from outside as well as inside.²⁸⁹

²⁸⁶ UNICEF, 'Changing a Harmful Social Convention: Female Genital Mutilation/Cutting', Alexia Lewnes, UNICEF, 2005, ISBN: 88-89129-24-7, Available at http://www2.hu-berlin.de/sexology/BIB/fqm2005.htm#6_6U (accessed on 22 July 2012).

²⁸⁷ Amnesty International 'Female genital mutilation: A human rights information pack' 1997 AI Index: ACT 77/05/97, 29.

²⁸⁸ Wheeler P 'Eliminating FGM: the role of the Law' 2004 *International Journal of Children's*. See also IRIN 'Female Genital Mutilation, A review of Legislation' May 19th 2006 *United Nations Office for the Coordination of Humanitarian Affairs*.

²⁸⁹ Ahmadu F 'Rites and Wrongs: An Insider/Outsider Reflects on Power and Excision' in Shell-Duncan B & Hernlund Y '*Female Circumcision in Africa: Culture, Controversy and Change*' (2000) 294.

The persistence of FGM/C often results from social attitudes and beliefs in the practice. Women's decisions that must be taken on board when dealing with the question of acceptance and/or rejection of the practice of FGM/C in Africa are often ignored in deference to those made by community members. Women often fear the consequences if they reject this as its impacts on social relationships.

3.6.4. Local community and laws banning the practice of FGM/C in Africa

The reactions to efforts to ban FGM/C are often negative. To reflect their disapproval, certain communities organize massive circumcision ceremonies to protest against the banning of FGM/C. The Senegalese situation shows that the number of circumcised girls has increased by 120 girls per day after the adoption of the 1999 law against FGM/C.²⁹⁰

Several initiatives for the eradication of FGM/C have been supported by NGOs at community level despite great national programs. The history of FGM/C in Africa is marked by four successful projects for the eradication of FGM/C. The strategies used by these projects were focused on community empowerment, consensus building and collective decision-making.²⁹¹ These projects were: Tostan in Senegal; Coptic Evangelical Organization for Social Services (CEOSS) in Egypt; Maendeleo ya Wanawake Organization (MYWO) in Kenya; and the REACH project in Uganda.

3.6.4.1. Tostan in Senegal²⁹²

With its objective on education and literacy in rural Senegal, Tostan fights for proper sanitation and against disease transmission, child and women's health, human rights, project planning and implementation, and bookkeeping; and aims to arm women with issue-solving skills, self-

²⁹⁰ Tostan 'Is it crime? Banning the practice may not be the best way of ending it' 1999 available at <http://www.tostan.org> (accessed on 25 June 2012).

²⁹¹ WHO 'FGM programmes to date: What works and what doesn't' 1999 *World Health Organization* 105-119.

²⁹² Tostan that means breakthrough in Wolof, Senegalese language. This NGO created in 1991 has mission the contribution to the human dignity of African people through the implementation of a human rights based, non-formal, participatory education program in national language. See UNFPA 'Eradication of FGM/FGC' available at <http://www.friendsofunfpa.org/netcommunity/page.aspx?pid=978> (accessed on 02 September 2012).

awareness and assertiveness through debates. Realizing that, in several communities, uncircumcised girls are likely to be ostracized and considered unmarriageable, Tostan tries to spark communities to ban the practice altogether.²⁹³ Mackie commented thus: ‘One part of bringing about a change like this is to get everyone to change at once, what we call coordinated abandonment. Everyone has to see that everyone else sees that everyone is changing’.²⁹⁴

A successful goal from Tostan’s activities is the mobilization of villagers against FGM/C. Now, however, statistics made by a February 2012 Daily Champion article, show that Senegal is coming closer to becoming the first African country to fully abandon FGM/C. Up to 800,000 girls have avoided this practice due to the public declarations against it and the change of attitudes learned from Tostan. In Senegal, FGM/C has been abandoned in more than 5,300 villages.²⁹⁵ Tostan’s strategy of changing minds and behaviour gradually through human rights education programs is considered to be a model of change which should be replicated throughout Senegal. The goal of the joint program is to eradicate FGM by 2015.²⁹⁶

3.6.4.2. Coptic Evangelical Organization for Social Services (CEOSS) in Egypt²⁹⁷

CEOSS organizes seminars and meetings with religious leaders and communities with particular attention on young girls who are mostly at risk of FGM/C. This program has been successful in six to eight Christian villages where it has been implemented although it has not done well in

²⁹³ Ward M ‘Movement against female genital mutilation sweeping Senegal’ *International Federation of Gynaecology and Obstetrics*, 19 October 2011 available at <http://www.figo.org/news/movement-against-female-qenital-mutilation-sweeping-senegal-004988> (accessed on 01 September 2012).

²⁹⁴ De Sam LF ‘In Senegal, a Movement to Reject Female Circumcision’ *PBS Religion & Ethics Newsweekly* 12 August 2011 available at <http://www.pbs.org/newshour/rundown/2011/08/senegalese-movement-advocates-rejecting-female-circumcision.html> (accessed on 01 September 2012).

²⁹⁵ Moses R ‘Nigeria: Celebrating Zero Tolerance to Female Genital Cutting’ *Daily Champion All Africa* 20 February 2012 available at <http://allafrica.com/stories/201202210314.html> (accessed on 01 September 2012). See also Conley M ‘Secretary of State Hillary Clinton Highlights Need to End Female Genital Cutting’ *ABC News* 16 February 2012 available at <http://abcnews.go.com/Health/international-day-tolerance-female-qenital-mutilation-hosted-hillary/story?id=15683580> (accessed on 01 September 2012).

²⁹⁶ Crowe S & Molly M ‘Ending female genital mutilation and cutting in Senegal’ UNICEF, 6 December 2005. Available at http://www.unicef.org/infobycountry/senegal_30046.html (accessed on 01 September 2012).

²⁹⁷ Coptic Evangelical Organization for Social Service ‘Combating Female Genital Mutilation’ CEOSS, 2005, Available at <http://www.ceoss.org.eg/desktopmodules/enhancedarticles/templates/view/ArticlesHome.aspx?tabID=323&itmid=323&mid=3226> (accessed on 01 September 2012).

Muslim communities. But more importantly, people now understand that FGM/C is a dangerous practice that must be prohibited to preserve life.

Since 2000, a significant realization of CEOSS has been registered; over 1,600 families in Dair Al Barsha, a village in Upper Egypt has committed to combatting FGM/C.²⁹⁸

3.6.4.3. Maendeleo ya Wanawake Organization (MYWO) in Kenya²⁹⁹

This alternative rite of passage helps girls avoid FGM/C by organizing the ceremonial initiative to teach women about FGM/C by developing songs and dances referring to it.³⁰⁰

Various strategies have been created by MYWO such as the Program for Appropriate Health Technology (PATH) to educate women about FGM/C, the opposite sex, courtship, and sex education. Also, educational seminars have been organized to inform women about unwanted pregnancies, HIV/AIDS, sexually transmitted infections, contraception, human rights, gender, building skills, self-esteem, decision making, resistance to peer, and communal pressure. Therefore, MYWO developed some strategies to discourage parents and guardians who believe in FGM/C by the initiation of the biggest communication for change intervention in the community.³⁰¹

²⁹⁸ Coptic Evangelical Organization for Social Service 'Combating Female Genital Mutilation' CEOSS 2005. Available at <http://www.ceoss.org/desktopmodules/enhancedarticles/templates/view/ArticlesHome.aspx?tabID=323&itmid=323&mid=3226> (accessed on 01 September 2012). See also CEOSS newsletter 'Communication involvement in Education' CEOSS Newsletter Cairo Egypt 2003. Available at <http://www.c4c.org/projects/egypt.html> (accessed on 02 September 2012).

²⁹⁹ Maendeleo ya Wanawake Organization (MYWO) Created in 1952, MYWO is one of Pathfinder's oldest implementing partners in Kenya. It has a membership of approximately two million women and has worked over the years on a wide range of initiatives, including health, girls' education, the environment, and income generation. See Pathfinder International 'Community-based: family planning in Kenya, meeting new challenges' Pathfinder International 2005, 5. Available at http://www2.pathfinder.org/site/DocServer/72_PDF_Kenya_FP.pdf?docID=3541 (accessed on 02 September 2012). See also Chege NJ 'An assessment of the alternative rite of passage approach for encouraging abandonment of FGM in Kenya' 2001 *FRONTIERS in Reproductive Health* 3.

³⁰⁰ Chege NJ 'An assessment of the alternative rite of passage approach for encouraging abandonment of FGM in Kenya', 2001 *FRONTIERS in Reproductive Health* 3.

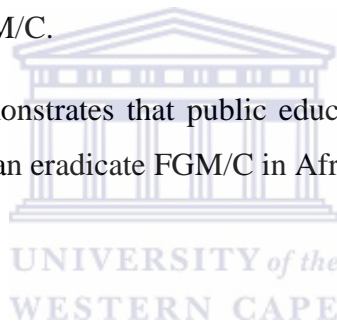
³⁰¹ Chege NJ 'An assessment of the alternative rite of passage approach for encouraging abandonment of FGM in Kenya' 2001 *FRONTIERS in Reproductive Health* 17.

3.6.4.4. The REACH project in Uganda³⁰²

The REACH objective is focused on reproductive, education and community health in Uganda. The project provides accessible and affordable reproductive health services and encourages the abandonment of FGM/C in Ugandan communities. The efforts of REACH are demonstrably significant in reducing FGM/C.³⁰³

The experiences of these four projects against FGM/C in Africa have significantly marked the history of eradication of this practice. The REACH and MYWO projects have enunciated strategies on how to approach families in which girls are at risk. These projects aim at fostering families' decision-making about the consequences of FGM/C and building self-esteem. The CEOSS' and REACH' educational seminars better empower and build self-esteem among family members and girls. Consequently, people become aware of the legal and human rights problems that result from the practice of FGM/C.

An analysis of these projects demonstrates that public education and empowerment of leaders constitute essential elements that can eradicate FGM/C in Africa and around the world.



3.7. Conclusion

Although FGM/C is not a religious' practice as popularly invoked, minority groups view the fight against FGM/C as an infringement of their autonomy. This is the origin of conflict between cultural relativists and Universalists. The mission for eradication enjoins governments to take action against FGM/C and in consequence underpin action needed to deepen and accelerate the implementation of international human rights treaties such as ICCPR.³⁰⁴

The eradication of FGM/C in Africa is a long-term process because the culture has a significant influence in the community. It is viewed as part of culture and eradication means a loss of their

³⁰² The Reproductive, Educative and Community Health Project (REACH) have been created in 1996 to discourage FGM/C by reinforcing the cultural dignity of the ugandese community. See UNFPA 'Culturally sensitive approaches. Uganda: Winning support from the custodians of cultural' available at http://www.unfpa.org/culture/case_studies/uganda_study.htm (accessed on 02 September 2012).

³⁰³ UNFPA 'Culturally sensitive approaches. Uganda: Winning support from the custodians of cultural' available at http://www.unfpa.org/culture/case_studies/uganda_study.htm (accessed on 02 September 2012).

³⁰⁴ Article 2(1) of the ICCPR adopted December 16, 1966, 999 U.N.T.S. 171, entry into force March 23, 1976.

identity, culture and national integrity. FGM/C is transmitted through the generations due to the social dynamism of African societies. The provision of education programmes remains the only element that can lead to the abolition of the practice.³⁰⁵ A successful implementation of laws against FGM/C must be accompanied by a process of non-directive education to explain the risks involved in performing this practice.



³⁰⁵ Mackie G. 'Ending foot binding and infibulation: A convention Account' (1996) 61 *American Sociological Review* 999-1017.

CHAPTER FOUR

FEMALE GENITAL MUTILATION IN SOMALIA

4.1. History of Somalia

Since 1991, Somalia has been without a functional national government. The constitutional power is shared by three entities: the Puntland, South-Central Somalia and Somaliland. Each region claims to be independent.³⁰⁶ There has been a total breakdown of all basic legal systems which led to civil war.³⁰⁷ Consequently, in several parts of Somalia, people have turned to customary and religious law³⁰⁸ to fill the void created by lack of a central authority. This has entrenched certain traditional beliefs such as the practice of FGM/C.

4.1.1. Country profile

Somalia, with Mogadishu as its capital, is one of the poorest countries in the world. It is located in East Africa, with the longest coastline on the continent, bordering the Gulf of Aden and the Indian Ocean. With a total land area of 637 657 square kilometres, Somalia shares borders with Ethiopia, Djibouti and Kenya, and its terrain consists mainly of plateaux, plains and highlands.³⁰⁹ Somalia's 10 million Cushitic communities make up one of the most culturally, linguistically and religiously homogeneous group of people in the world.³¹⁰ This community is however divided

³⁰⁶ Forum Syd 'Somalia: Country Analysis' available at http://www.forumsyd.org/upload/Delade_dokument/Omvarldsanalyser/somalia_landanalys_080206.pdf (accessed on 17 July 2012).

³⁰⁷ International Crisis Group 'Somalia to Move Beyond the failed State' (23 December 2008) 147 *Africa Report* 2.

³⁰⁸ Heinlein PE 'African Nations Back Kenyan offensive in Somalia' Voice of America October 22, 2011. Available at <http://www.voanews.com/content/east-african-nations-back-kenyan-offensive-in-somalia-132374053/147039.html> (accessed on 02/10/2012).

³⁰⁹ Infoplease 'Somalia' available at <http://www.infoplease.com/ipa/A0107979.html> (accessed on 25 August 2012). See also Annexe G: Map of Somalia.

³¹⁰ Morison L et al 'How experiences and attitudes relating to female circumcision vary according to age on arrival in Britain: A study among young Somalis in London' (2004) 9 *Ethnicity and health* 1:75-100. See Article 2(1)(2) of the Declaration of the Federal Republic of Somalia, Draft Constitution Technical Review Committee, adopted 12th June 2012 in Mogadishu. See also Maps of World 'Somalia Religion' available at <http://www.mapsofworld.com/somalia/culture/religion.html> (accessed on 14 August 2012).

along clan lines that are patrilineal.³¹¹ Somalis represent approximately 85 per cent of the nation's inhabitants,³¹² while 15 per cent of the population are constituted by Bantu and other non-Somalis.³¹³ The dire situation in Somalia is leaving no alternative for the population, forcing them to take desperate decision to cross the border. The number of Somali refugees displaced to the neighbour countries increases every day. Statistics in July 2011 shows that there were around 1 46 million cross the border to overseas.³¹⁴ The Convention Governing the Specific Aspects of Refugee Problems in Africa states that:

Every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.³¹⁵

The federal court and the Board of Immigration Appeals (BIA)³¹⁶ in Falls Church, Virginia classify the issue of FGM/C as a basis for a successful asylum claim. However, in order to be eligible for refugee status, the applicant must be a female from ethnic groups in which FGM/C is practised.³¹⁷

According to the commentary made on Article 1 of Refugee Convention cited above Somalis contribute the highest number of Africans in the diaspora because of intractable instability.³¹⁸ This situation distorts statistics of the population still inside the country and impacts on attempts

³¹¹ Central Intelligence Agency 'The world factbook: Somalia' July 2012, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html> (accessed on 10 August 2012).

³¹² Central Intelligence Agency 'The World Factbook: Somalia', *Central Intelligence Agency*, May 2009.

³¹³ Appiah A & Gates LH 'Encyclopaedia of Africa' (2010) 1: 402.

³¹⁴ UNHCR 'Somalia: 2012 UNHCR country operations profile', available at <http://www.unhcr.org/4dba949d9.html> (accessed on 09/02/2013).

³¹⁵ Article 1(2) of the Convention Governing the Specific Aspects of Refugee Problems in Africa adopted on 10 September 1969 by the Assembly of Heads of State and Government at Addis Ababa, Ethiopia. It entered into force on 20 June 1974.

³¹⁶ The Board of Immigration Appeals (BIA) is the highest administrative body for interpreting and applying immigration laws. BIA is located at EOIR headquarters in Falls Church, Virginia. See The United States Department of Justice. Available at <http://www.justice.gov/eoir/biainfo.htm> (accessed on 13 November 2012).

³¹⁷ Yule K 'Asylum Law and Female Genital Mutilation: Recent Development' February 15, 2008 *CRS Report for Congress 2*.

³¹⁸ UNICEF 'Women and Children in Somalia: A situation analysis' 1987 *United Nations Children's Fund*.

to evaluate the prevalence rates of FGM/C. The persistent civil war in Somalia systematically destabilizes the major spheres of Somalis' life and public institutions such as educational institutions and hospitals.

4.1.2. Health trends

The public healthcare system is largely destroyed. Somali's life expectancy has been estimated at 47 years.³¹⁹ The medical practice was suspended by the socialist government of former president of Somalia, Siad Barre³²⁰ to finance military expenditure. The 1989 report of the Somali Ministry of Health demonstrates the insignificant budgetary contribution of the Somali government to the department. The Ministry of Health has allocated only 2 per cent of its budget to health, with more than 95 per cent coming from donors.³²¹ In recognition of the paucity of the government's contribution to the health budget and the latent danger women face, the Upper Tribunal in *NM and others (Lone women- Ashraf) v. United Kingdom*,³²² granted asylum to lone females. Its reasoning was predicated on risks and degree of severity of ill-treatment the women faced in their country of birth.

This situation increases the data on mortality and morbidity in the country, especially in the case of infections caused by traditional operations such as FGM/C.³²³ The 2011 estimates of the country birth rate is 42.12 births/1000 and the crude death rate estimated in 2011 was 14.55

³¹⁹ UNDP 'Human Development Report: Somalia', 2001 *United Nations Development Programme*.

³²⁰ Mohamed Siad Barre was the military dictator and president of the Somalia Democratic Republic from 1969 to 1991. This period was characterized by oppressive dictatorial rule, including allegations of persecution, jailing and torture of political opponents and dissidents. According the United Nations Development Programme, the regime of Siad Barre was the one of the worst human rights records in Africa. See UNDP 'Human Development Report - Somalia' 2001 *United Nations Development Programme* 42.

³²¹ Barre MS 'My country and my people: the collected speeches of Major-General Mohamed Siad Barre, president' (1970) 3 *the Supreme Revolutionary Council Ministry of information and National Guidance*, 141.

³²² *NM and others (Lone Women – Ashraf)* CG [2005] UKAIT 00076.

³²³ Somali Medical Forum 'Health problems of Somalia'SMF 2006-2009. Available at <http://somalidoc.com/smf/index.php?PHPSSESSID=f8eaefc3dc1cb910999559c3e15803bd&topic=118.msg196#msg196> (accessed on 14 September 2012).

deaths/ 1000 population. The country has a girl infant mortality rate of 94.55 deaths/1000 per live births. Average life expectancy for females at birth is estimated at 52.8 years.³²⁴

Vaccination rates are dismally low, with only 10.6 per cent of all children less than 1 year; and 27 per cent of children less than 5 years old fully immunised against childhood diseases, with considerable variables between urban, rural settled and nomadic population groups.³²⁵

4.1.3. Educational trends

War in Somalia has seriously affected literacy and reinforced Koranic schools and private institutions such as community-based Organizations, local educational networks and NGOs. The closing of the national education system in the country and the growth of private education institutions, reduce access to accurate information on education standards.³²⁶

Consequently, traditional beliefs replace educational institutions and inculcate norms into the community. These norms highly marginalise women. Women are denied educational opportunities increase the level of illiteracy in this group. Additionally, women are denied access to healthcare in the case of FGM/C.³²⁷ Somalia is one of the very traditional communities in Africa. People access to information through a strong oral tradition system which includes debates and poetry. Customary norms are considered as true and indisputable.

4.2. Female Genital Mutilation/Cutting in the context of Somalia

According to the WHO, FGM/C in Somalia is caused by several factors. These rationales include social pressure, promotion of proper sexual behaviour, ideals of beauty and cleanliness, religion,

³²⁴ IndexMundi 'Somali Geography Profile 2012' available at http://www.indexmundi.com/somalia/geography_profile.html (accessed on 14 August 2012).

³²⁵ UNICEF 'End-Decade Multiple Indicator Custer Survey Full Technical Report 2001' 2000 UNICEF.

³²⁶ UNICEF Somalia Newsletter 'Education a beacon of hope for Somalia's future' Special issue on Education February 2009. Available at http://www.unicef.org/somalia/SOM_NewsletterCarruurteenna-Feb272009fnlc.pdf (accessed on 18 October 2012).

³²⁷ Prendiville N 'The role and effectiveness of traditional birth attendants in Somalia' 2008 In Evaluation and Program Planning 21 *Elsevier Science* 353-361.

and preservation of tradition and cultural unity.³²⁸ The two major reasons which incite performance of FGM/C in this country are: the preservation of virginity before marriage and the guarantee of fidelity in marriage.³²⁹ Somalis traditionalists who live in Ethiopian region believe in infibulation as the complete excision that guarantees virginity.³³⁰

All experts write that FGM/C is not an Islamic procedure, but for Somalis who believe in it, the practice is a religious recommendation.³³¹ They are obstinate that Prophet Muhammad recommends to a circumciser that: 'Do not cut too severely as that is better for a woman and more desirable for a husband'.³³²

In Somalia, FGM/C is viewed as an act of honour, perpetuation of family and customary ritual that leads to marriage and exposes uncircumcised women to insults from community members. They are considered as ugly, opened, and flapped.³³³ Thus, to remedy this consideration, parents force their daughters to undergo FGM/C as prevention against the emotional harm caused by denigration and mockery. In certain cases, uncircumcised daughters themselves request to undergo the ritual in order to escape societal shame.

The 2008 UNICEF Innocenti Research Centre cites and endorses Mackie's hypothesis about infibulations; and explains it as a safeguard for female fidelity:

Men...are more or less uncertain that a child is their own...Suppose...an ancient empire...with extreme resource inequality between families...When resource inequality reaches a certain extreme, a woman is more likely to raise her children successfully as the second wife of a high-

³²⁸ WHO 'Female Genital Mutilation and other Harmful Practices: FGM Factual overview and classification' World Health Organization, 2008, Available at <http://www.who.int/reproductivehealth/topics/fgm/overview/en/> (accessed on 15/09/2012).

³²⁹ Shell-Duncan B & Hernlund Y 'Female Circumcision in Africa: Culture, controversy, and change' (2000) 6.

³³⁰ UNICEF 'Fighting Female Genital Mutilation/Cutting in Ethiopia's Somali region' available at http://www.unicef.org/ethiopia/ET_real_2006_FGM.pdf (accessed on 07/06/2012).

³³¹ Landinfo 'Report: Female genital mutilation in Sudan and Somalia' 10 December 2008, 12. Available at http://www.landinfo.no/asset/764/1/764_1.pdf (accessed 30 September 2012). See also World Bank 'Female Genital Mutilation/Cutting in Somalia' November 2004, *World Bank* 22-25, available at http://siteresources.worldbank.org/INTSOMALIA/Data%20and%20Reference/20316684/FGM_Final_Report.pdf (accessed 30 September 2012).

³³² CMJE 'Partial Translation of Sunan Abu-Dawud' Book 41 General Behavior Kitab Al-Adab, University of Southern California's Centre for Muslim-Jewish Engagement Religious Texts. Available at <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslims/hadith/abudawud/041.sat.html> (accessed on 10/09/2012). See also Gruenbaum E 'The Female circumcision controversy: An anthropological perspective' (2001).

³³³ Uppvall MK & Dodge P 'Perspectives of Somali Bantu refugee women living with circumcision in the United States: A focus group approach' (2009) 46 *International Journal of Nursing Studies* 360-368.

ranking man than as the first wife of a low-ranking man (polygyny, or the practice of having plural female consorts)... The higher the male's rank, the greater the resource support he offers, the greater the number of consorts he attracts, the greater his costs of controlling the fidelity of his consorts, and thus the greater the competition among families to guarantee the fidelity of their daughters.³³⁴

Somalis who favour FGM/C argue that infibulation is a better way to ensure a women's fidelity. African communities in which the practice of FGM/C is imposed as criteria for beauty compare this tradition to certain surgical operations performed on western women such as waxing, breast enhancement to the growing trend of labiasplasty.³³⁵ Cultural relativists invoke this kind of Western procedures to justify the persistence of FGM/C.

Migration has brought a change of attitudes and beliefs towards FGM/C.³³⁶ This view is also shared by Linda Morison who argues that social integration brought modifications in beliefs about sexuality, marriage, and religion, which in turn decreases the cultural importance of FGM/C.³³⁷ In London for example, Somalis are obliged to abandon FGM/C for fear of breaching the criminal law enacted 1985. It is positive to see how implementation of the law changes attitudes of people and contribute to the eradication of FGM/C.³³⁸

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4.2.1. Impacts of FGM/C on women health in Somalia

Infibulation causes several complications in women, especially the case of obstetric and gynaecological questions. Some people advocate that FGM/C must be totally eradicated, while

³³⁴ Lejeune J & Mackie G 'Social dynamic of abandonment of harmful practices: new look at the theory', 2008 *UNICEF Innocenti Research Centre N XXX*, 10.

³³⁵ Labiasplasty is a plastic surgery procedure for altering the labia minora and the labia majora, the paired tissue structures bounding the vestibule of the vulva. The operation is also known as labia reduction. See labiaplastysurgeon.com, available at <http://labiaplastysurgeon.com/female-cosmetic-genital-surgery-definitions.html> (accessed on 13 November 2012). See also Bell K 'Genital cutting and western discourses on sexuality' (2005) 19 *Medical Anthropology Quarterly* 125- 148.

³³⁶ WHO, 'Female genital mutilation', February 2010 *World health Organization*. See also Dorkendo E & Elworthy S 'Female genital mutilation: proposals for change' 1992 *Minority Rights group* 11.

³³⁷ Morison L et al 'How experiences and attitudes relating to female circumcision vary according to age on arrival in Britain: A study among Somalis in London', (2004) 9 *Ethnicity and health* 75-100.

³³⁸ Abdulcadir J et al 'Care of Women with female genital mutilation/cutting' 2011 *Swiss Medical Weekly*. Available at <http://www.smw.ch/content/smw-2011-13137/> (accessed on 13 November 2012).

others believe that cutting a bit of the tissue to decrease risks can be accepted.³³⁹ Circumcised women in Somalia suffer severe pain due to inadequate healthcare and failure to access these and unprofessional performance during the traditional operations.

An infibulated woman must undergo de-infibulation and re-infibulation before and after each sexual intercourse to prove her fidelity to her husband. These repetitive surgical operations expose the woman to high risks of infections such as septicaemia, tetanus, hepatitis and HIV/AIDS and extreme pain due to inadequate precautions.³⁴⁰ They endure bleeding and infections that affect them during labour without any sanitary assistance.³⁴¹ While those with sunna are at risk of suffering immediate complications often resulting from unhygienic tools used such as knives, razors, scissors, cut glass, sharpened rocks and fingernails.³⁴² Therefore, its complications are less severe than the one from infibulation. The absence of adequate healthcare access causes the deterioration certain infections that often lead to death.³⁴³

4.2.1.1. Prevalence, age and types of FGM/C

The prevalence of FGM/C in Somalia is muted due to emigration. Statistics of women who undergo the practice is revealed to be the highest in Africa. It is estimated that between 99-100 per cent of all Somali women living in the country undergo this operation.³⁴⁴ The 2001 human development report on Somalia confirmed that of all the women who underwent FGM/C, 91 per cent have been infibulated while 9 per cent underwent sunna.³⁴⁵

³³⁹ Moussa A et al 'Somalia/Land core country evaluation: External evaluation of Oxfam Novib's strategy in Somali, August 2007 *Synthesis Report*' 34.

³⁴⁰ Abdulcadir J et al 'Care of women with female genital mutilation/cutting' 2011 *Swiss Medical Weekly*.

³⁴¹ Edna Adan University Hospital 'Female Genital Mutilation' undated. Available at <http://www.ednahospital.org/hospital-mission/female-genital-mutilation/> (accessed 22 September 2012).

³⁴² Abdulcadir J et al 'Care of women with female genital mutilation/cutting' 2011 *Swiss Medical Weekly*. See also Kelly E, Paula HJA 'Female genital mutilation: Current Opinion in Obstetrics and Gynecology' 2005, 17 (5): 490–4.

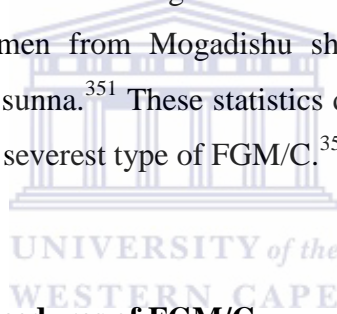
³⁴³ Dirie M & Lindmark G 'The risk of medical complications after female circumcision' (1992) 69 *The East African Medical Journal* 479–482.

³⁴⁴ The World Bank & UNFPA 'Female Genital Mutilation/Cutting in Somalia' 2004. Available at http://siteresources.worldbank.org/INTSOMALIA/Data%20and%20Reference/20316684/FGM_Final_Report.pdf (accessed on 29 August 2012).

³⁴⁵ UNDP 'The human development Report on Somalia' 2001 *United Nations Development Programme* 80.

FGM/C or gudniinka dumarka in the Somali language is performed on adolescents as a ritual for initiation into womanhood. The 2008 LandInfo declared that FGM/C is usually performed between the ages of five to eight in Somalia generally and much older in the Somali diaspora.³⁴⁶ The Joint Fact Finding Mission Report (JFFMR) of March 2004 stated that the practice is performed between the ages of four to seven.³⁴⁷ The United Nations News Agency IRIN reported in February 2009 on women who live in Dadaab camp in Kenya who confessed to having been fully infibulation at about five to seven years.³⁴⁸ Another study released by the World Bank in 2004 reveals that girls are now circumcised between ages of five and eight; and often within the privacy of their homes.³⁴⁹ This indicates that the age at which women undergo FGM/C in Somalia varies between four and eight.

A 1981 investigation made on 2092 Somali women demonstrates that in 99.3 per cent of circumcised women; 75.7 per cent have undergone infibulation and 23.6 per cent, sunna.³⁵⁰ In 1991, another study on 300 women from Mogadishu showed that 88 per cent had been infibulated and the rest undergone sunna.³⁵¹ These statistics demonstrate that Somali women are mostly exposed to infibulation, the severest type of FGM/C.³⁵²



4.2.1.2. Decision-making and Procedures of FGM/C

The 2007 Joint Fact-Finding Mission Report on human rights and security in central and southern Somalia compiled by the Danish Refugee Council and the Danish Immigration Services

³⁴⁶ Landinfo 'Report: Female genital mutilation in Sudan and Somalia' 10 December 2008, 13. Available at http://www.landinfo.no/asset/764/1/764_1.pdf (accessed 30 September 2012).

³⁴⁷ Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7–21 January 2004, published 17 March 2004, 33. Available at <http://www.unhcr.org/refworld/docid/405b2d804.html> (accessed 30 September 2012).

³⁴⁸ UN Office for the Co-ordination of Humanitarian Affairs, Integrated Regional Information Networks. Hawo N 'My biggest fear is that somebody will take my daughters and circumcise them' February 2009. Available at <http://www.irinnews.org/Report.aspx?ReportId=82837> (accessed 30 September 2012).

³⁴⁹ World Bank 'Female Genital Mutilation/Cutting in Somalia' November 2004, 19. Available at http://siteresources.worldbank.org/INTSOMALIA/Data%20and%20Reference/20316684/FGM_Final_Report.pdf (accessed 30 September 2012).

³⁵⁰ Gallo GP & Abdisamed M 'Female Circumcision in Somalia: Anthropological Traits' (1985) 43 *Antropologische Anzeiger* 4:311-326.

³⁵¹ Dirie AM & Landmark G 'Female Circumcision in Somalia and Women's Motives' (1991) 70 *Acta Obstetricia et Gynecologica Scandinavica* 581-585.

³⁵² Obermeyer MC 'Female Genital Surgeries: The Known, the Unknown, and the Unknowable' (1999) 99 *Medical Anthropology Quarterly* 15.

declared that the decision-making for FGM/C is taken by the father. In his absence, the brother can decide. If daughters or sisters do not undergo the practice, the father and/or brother can be attacked by family or clan members.³⁵³

FGM/C surgery is painful. The testimony of one practitioner interviewed describes this operation:

We first cut the clitoris from its base, then the sides, the black feather like part which comes down is cut up to its bottom and the sides which does not have the black feather is scratched with a bent blade on both sides and virtually remove everything between the legs and the edges are brought together and then smeared with a paste locally called malmal3. These days we stitch, but [for a] long time we used acacia thorns for stitching.³⁵⁴

In urban areas of Somalia, FGM/C is often discouraged by modern practices, or medicalization. The Professional Nursing Association in Mogadishu has organized FGM/C under sterilized and anaesthetic conditions. This procedure has significantly decreased the traditional practice. A Lebanese medical practitioner started the performance of circumcision in Martini Hospital at Mogadishu.³⁵⁵

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4.2.2. Legislation in Somalia with regard to FGM/C

At the time of conducting this research, there was no specific legislation expressly banning FGM/C in Somalia. This absence of legislation has been interpreted variously as condemnation of the ritual. Consequently, women are forced to undergo this practice. Migration constitutes a significant aspect that encourages eradication of FGM/C because it gives a wake-up to women to

³⁵³ Report on the Human rights and security in central and southern Somalia: Joint fact-finding mission by the Danish Refugee Council and the Danish Immigration Service published August 2007, 32. Available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=46e109d92&skip=&coi=SOM> (accessed on 27 September 2012).

³⁵⁴ Askew I et al 'Female Genital circumcision among the Somali of Kenya and Management its complications' February 2005 *United States Agency for International Development*. Available at http://www.popcouncil.org/pdfs/frontiers/FR.../Kenya_Somalia.pdf (accessed on 10 September 2012).

³⁵⁵ World Bank, 'Female Genital Mutilation/Cutting in Somalia' November 2004, 19. Available at http://siteresources.worldbank.org/INTSOMALIA/Data%20and%20Reference/20316684/FGM_Final_Report.pdf (accessed 24 September 2012).

intensify the fight against FGM/C. Sometimes, it is an occasion for women to freely talk about their experiences and to make others aware of the risks involved.

4.2.2.1. The provisional constitution

A recent Somali provisional constitution³⁵⁶ has recognized FGM/C as violation of human rights.³⁵⁷ In August 2012, the Somali people adopted a forward-leaning provisional constitution that courageously speaks out against FGM/C. Article 15(4) of the constitution states that: ‘Female circumcision is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited.’

In Somaliland and Puntland, FGM/C has been illegal before the collapse in 1991 of the Barre government. UN agencies and NGOs have made considerable efforts to educate people about the risks of FGM/C but no reliable statistics have been obtained to evaluate the success of their actions because people are very traditional and continue to secretly perform FGM/C.³⁵⁸

Since 1980, several ministries joined the Somali Family Health Care Association (SFHCA) and the Somali Women’s Democratic Organization (SWDO)³⁵⁹ to drum up support for the eradication of FGM/C under a comprehensive program overseen by the USAID. Under the Family Health Services project, the Italian Association for Women in Development (AIDOS) also supported SWDO by carrying out anti-FGM/C educational programs. AIDOS created the Somali Academy of Arts and Sciences; and the Ministry of Education and the Anti-FGM with a

³⁵⁶ Draft Constitution Technical Review Committee Somali Federal Republic, adopted on 12 June 2012 in Mogadishu.

³⁵⁷ Women Deliver ‘New Somali Constitution bans Female Genital Cutting’ August 2012. Available at <http://www.womendeliver.org/updates/entry/new-somali-constitution-bans-female-genital-cutting> (accessed on 17 September 2012).

³⁵⁸ US States Department Human Rights Report 2010. Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm> (accessed on 17 September 2012). See also Landinfo ‘Female genital mutilation in Sudan and Somalia’ December 2008.

³⁵⁹ SWDO is a national Somali women’s organization created in 1977 in Mogadishu, with objectives to inspire and motivate Somali women to leadership roles in all aspects of their communities. See Raqiya AD ‘My grandmother called it the three feminine sorrows’ comment in Abusharaf MRB ‘*Female Circumcision: Multicultural Perspectives*’ (2006) 201.

view to empowering women.³⁶⁰ The efforts made for the eradication of FGM/C failed to change people's attitudes towards this practice. Somalia has not ratified the CEDAW and CRC, recognised to be the most effective instruments for the protection of women and children in the history of human rights.

However, the 2004 Somali Transitional Federal Charter (TFC) recommends that the government ensure the protection of the fundamental rights and freedoms of its citizens.³⁶¹ Article 14 of the same Charter states that the Somali Republic must recognize and enforce all international human rights conventions and treaties to which the Republic is a party. While Article 71 states that the Charter must have force of law pending the eventual enforcement of the National Federation Constitution. It further states that the 1960 Somalia constitution and other national laws must apply in respect of all matters not covered and not inconsistent with this chapter. Article 16 of the TFC recognizes the right to life and provides that no one shall be deprived of his/ her life.



4.2.2.2. The Penal Code

FGM/C causes severe pain and wound infection that physically and psychologically affects the child. FGM/C leaves many women and young girls unprotected from the serious medical harm that often lead to death. This analyse paints a picture of human rights violation; and consequently, FGM/C performed on Somali women and girls must be outlawed and prosecuted. Article 445 of the Somali Penal Code stipulated that: 'covers hurt grievous hurt and very grievous hurt and clarifies that FGM/C is also prohibited by Islam.'³⁶² Article 432 of the same Penal Code stipulates that:

³⁶⁰ FORWARD 'Female genital mutilation: Information Pack' 2002 *Foundation for Women's Health, Research & Development NW10 5NY 9*. See also World Bank & UNFPA 'Somalia: Female Genital Mutilation/Cutting in Somalia' *World Bank & UNFPA*. Available at <http://web.worldbank.org/Wbsite/external/topics/extgender/0,,contentMDK:20275883~pagePK:148956~piPK:216618~the sitePK336868,00.html> (accessed on 15 June 2012).

³⁶¹ Article 5 of the Transitional Federal Charter of the Somali Republic (TFC) is the principle organizing document of Somalia written and adopted in February 2004.

³⁶² The Somali Penal Code is still used in the Republic of Somaliland and in Puntland. This code is based on the Italian Penal Code of 1930 that was initially drafted by the Italian Somalia court of Justice in 1957 and it was finalised by special Legal Committee in 1962. The Code came into force on 3 April 1964. Available at <http://www.somalilandlaw.com> (accessed on 17 July 2012).

‘...ill-treats a member of the family or a person under the age of 14 years, or a person subject to his authority or entrusted to him for the purpose of education, instruction, treatment, supervision, or custody or for the exercise of a profession or craft shall be punished with imprisonment from one to five years.’

4.2.2.3. Human rights legal regime against FGM/C

Somalia accessed to the ICCPR and the ICESCR without reservations in 1990.³⁶³ Consequently, this country have to promote economic, social and cultural rights including the right to self-determination of all peoples;³⁶⁴ the right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³⁶⁵ It also has an obligation to ensure universal respect for human rights as stipulated by Article 2 of the ICCPR, and observe them. According to Article 2(1), States parties to the ICESCR must undertake steps to progressively achieve the full realization of the rights adopted in the Covenant.³⁶⁶

Art 2(1) of the ICESCR obliges states to:

Take steps, individually and through international assistance and cooperation ...to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means ...

Article 3 of the ICESCR provides that men and women have the right to enjoy equal rights. ICESCR also ensures the right to health;³⁶⁷ the right to education;³⁶⁸ and the right to cultural freedom.³⁶⁹ The ICCPR and the African Charter on Human and Peoples’ Rights (African

³⁶³ Somalia has adopted the ICCPR the ICESCR in 1990 without reservations. Available at http://www.law.emory.edu/ifl/legal/somalia.htm-united_states (accessed on 18 July 2012).

³⁶⁴ Article 1 of the ICESCR.

³⁶⁵ Article 2 of the ICESCR.

³⁶⁶ WHO ‘International Covenant on Economic, Social and Cultural Rights ‘Available at <http://www2.ohchr.org/english/law/cescr.htm> (accessed on 22 July 2012).

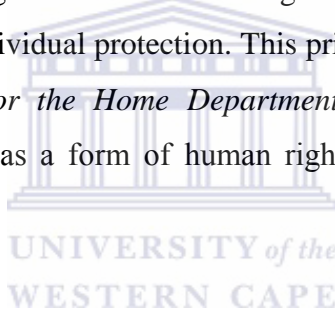
³⁶⁷ Article 12 of the ICESCR.

³⁶⁸ Article 13 & 14 of the ICESCR.

³⁶⁹ Article 15 of the ICESCR

Charter) also protect the right to life.³⁷⁰ The ICCPR states that the right to life cannot properly be understood in a restrictive manner; therefore, the protection of the right requires states to ‘adopt positive measures.’³⁷¹ CRS Report for Congress on asylum law and FGM/C states that asylum seekers must be females from ethnic groups that usually perform FGM/C.³⁷² The case of *Mohamed v. Gonzales*³⁷³ constitutes one of the successful cases of asylum in USA. In the case of *Sufi & Elmi v. the United Kingdom*,³⁷⁴ the United Kingdom Tribunal³⁷⁵ provided asylum to Somalis in accordance with Article 2 and 3 of the European Court of Human Rights (ECHR) and Article 15(c) of the Qualification Directive, to safeguard life.

Article 16 of the African Charter refers to the best attainable state of physical and mental health and implies that this obligation should be interpreted in similar terms.³⁷⁶ FGM/C is considered by the UN High Commission for Refugee (UNHCR) as a breach of human rights and of Article 3/15(b) of ECHR. The UNHCR argues that if women or girls are at risks of persecution and seek asylum, they should be granted individual protection. This principle was reinforced in the case of *Katrinak v. Secretary of State for the Home Department*.³⁷⁷ This UNHCR stipulates that: ‘FGM/C has been acknowledged as a form of human rights abuse, and its threat or forcible



³⁷⁰ Article 6 of the ICCPR, opened for signature 16 December 1966, entered into force 23 March 1976; African Charter of Human and Peoples’ Rights (African Charter) opened for signature 27 June 1981 and entered into force 21 October 1986.

³⁷¹ Article 6 of the ICCPR General Comment N 6 on the right of Life, 60th Session, UN Doc.HRI/Gen/1/Rev.7, 1982 Para5.

³⁷² Yule K ‘Asylum law and female genital mutilation: recent developments’, 2008 *Report for congress 2*.

³⁷³ Mohamed Kadija fled her country during civil war with her family and sought to reopen her asylum, withholding of removal, and CAT claims on the basis of her first attorney’s failure to present evidence that she suffered FGM/C in the past could constitute past persecution and torture. According to the CAT, the appeals court argues that Mohamed’s claim for protection can be possible because of violence in Somalia, specifically towards females which leave to escape risks of harm. *Mohamed v Gonzales*, 03-70803, 9th cir.: Ct. (2005). See Yule K ‘Asylum law and female genital mutilation: recent developments’, 2008 *Report for congress 2*.

³⁷⁴ *Sufi & Elmi v. The United Kingdom* (Somalia CG 2011 ECHR 1045), See Upper Tribunal, ‘AMM and others Somalia CG 2011 UKUT (conflict, humanitarian crisis, returnee, FGM)’, The immigration acts, immigration and asylum chamber, 21 June 2011, 2.

³⁷⁵ *Katrinak v. secretary of state for the Home Department* [2001] EWCA Civ 832: Recital 27 to council Directive, 2004/83/EC.

³⁷⁶ Odinkalu AC ‘Analysis of Paralysis or Paralysis by analysis? Implementing Economic, Social and Cultural Rights under the African Charter on human and Peoples’ Rights’ (May 2001) 23 *Human Rights Quarterly* 327-349.

³⁷⁷ *Katrinak v. Secretary of State for the Home Development* [2001] EWCA Civ 832: recital 27 to Council Directive 2004/83/EC.

imposition can amount to persecution. Therefore, a woman can be considered a refugee if she or her daughter feels being compelled to undergo FGM/C against their will...³⁷⁸

The experiences of Dirie³⁷⁹ demonstrate the level of child violence. She was forced to undergo FGM/C at the tender age of five. At the age of thirteen, she was forced to migrate to the UK in order to escape a forced and early marriage to a much older man. Dirie's life better explains the reasons why several Somali women seek asylum overseas and refuse to go back in their country. The case of *Hafza H. Hassan v. Alberto Gonzales*³⁸⁰ also demonstrates the same issue.

4.2.3. Is FGM/C violating women's rights in Somalia?

FGM/C is a typical case of gender-based inequality in Africa and especially in Somalia. The absence of specific legislations prevents the prosecutions of perpetrators. Somalia is a traditional community in which women are taken out of school and forced to undergo sunna and/or infibulation for an arranged marriage and for dowry.³⁸¹ The conditions in which girls are treated in Somalia reveal notorious nonchalance towards these rights as established by the UDHR. The fact that young girls are forced to abandon school to be initiated for early or forced marriage violates Article 26 of the UDHR that states for education for everyone. Also girls are taken out of school without their own consent constitutes a violation according to Article 18 of the same Declaration which stipulates that: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

Even if Somalia has not ratified CEDAW and CRC, the key safeguards of women and children's rights, citizens must be protected from violence by the UDHR. (These conventions have also

³⁷⁸ Division of International Protection of UNHCR, draft general legal advice, Geneva, 21 February 1996.

³⁷⁹ Waris Dirie is a Somali supermodel, actress and most famous advocate against FGM/C.

³⁸⁰ The case of *Hafza H. Hassan* brings certain clarifications according to the reasons why Somali women ask for asylum overseas; and it also demonstrates the level of violence against women. They are often exposed to serious abuses by their community members that motivate them to leave. The arguments evoked by Hassan demonstrate these realities. She refused to go back to Somalia because she is afraid to be married by force and; she would like also to protect her American-born daughter who would also be forced to undergo FGM/C. See *Hafza H. Hassan v. Alberto Gonzales*, 484F. 3d513 – N 05-2084, United States Court of Appeals, Eighth circuit, February 12, 2007.

³⁸¹ The practice of FGM/C upon young girls is recognized to be a violation of child's rights according to Article 15 of the new constitution of Somalia.

acquired international customary law status i.e opinion juris, state practice and widespread recognised.)

FGM/C prevents women from enjoying sexual health. In this context, FGM/C violates the right to health as stipulated by the Programme of Action in its paragraph 7(2) that recognizes that: ‘Reproductive health is a state of complete physical, mental and social well-being...Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capacity to reproduce and the freedom to decide...’ It also infringes Article 3 of UDHR, Article 16 of the African Charter,³⁸² Article 3 of the ICESCR,³⁸³ Article 445 of the Somali Penal Code³⁸⁴ and Article 16 of the TFC.³⁸⁵

The inaccessibility to healthcare and human rights issues constitute the greatest dilemmas in Somalia. This situation infringes Article 25 (1) of the UDHR. Infibulation brings a lot of bride wealth and family honour while sexuality and autonomy of women are being violated by men.³⁸⁶ Women are often discriminated against in Africa; their rights are marginalized for men’s benefit.³⁸⁷

The lack of access to healthcare facilities that exposes women to long-term complications and increases the possibility of contracting communicable diseases such as HIV/AIDS, tetanus, cancer also violate the right that recognizes good health for everyone.³⁸⁸

The testimony of a young girl stresses the risks in which women are exposed to due to the practice of FGM/C in Somalia:

³⁸² Article 16 of the African Charter stipulates: ‘that every individual shall have the right to enjoy the best attainable state of physical and mental health. States parties to the present Charter shall take the necessary measures to protect the health people and to ensure that they receive medical attention when they are sick’.

³⁸³ Article 3 of ICESCR recommends states to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

³⁸⁴ The Somali Penal Code adopted December 1965 and still applied in the Republic of Somaliland and in the northern Somalia of Puntland. It is still current in South and central Somalia. Article 445 of deals with death caused by negligence.

³⁸⁵ Article 16 of the Transitional Federal Charter of the Somali Republic written and approved in February 2004 deals with the right to life, personal liberty and security.

³⁸⁶ UNFPA ‘Briefing paper: The rights to contraceptive information and services for women and adolescents’ 2010 *Centre for Reproductive Rights* 13.

³⁸⁷ Rahman A & Toubia N ‘*Female genital mutilation: A guide to Laws and Policies Worldwide*’ (2000) 6. See also Article 1 of the ICESCR.

³⁸⁸ Article 6 of the ICCPR. See also Article 25 of the UDHR.

‘Before I was born, my elder sister had died at age nine from tetanus as a result of FGM/C. If my father had had support we wouldn't have been cut but it was my stepmother's responsibility and she didn't know any better. I suffered. I only learnt my sister had died after I was cut. In those days no-one spoke out. Human rights issues were not discussed but the health issues were always there...’³⁸⁹

The absence of consent before the performance of FGM/C violates Article 1 of UDHR which states that: ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’

FGM/C also constitutes a kind of torture when read together with Article 1 of CAT. This convention states that the absence of legislation banning FGM/C in a number of States parties amounts to acquiescence of the practice by State agents. The absence of central Government in Somalia enforces the emergence of traditional laws.³⁹⁰ The non-intervention of the Somali government into the process of eradication of FGM/C constitutes a violation of Article 5 of the TFC.³⁹¹

Circumcised women experience certain gynaecological complications during childbirth such as the necessity for episiotomies.³⁹² One in twelve circumcised women in Somalia is at risk of dying during childbirth.³⁹³ In other words, FGM/C violates the rights to health and as well to life.³⁹⁴ Packer considers human rights, human dignity and life as universal values that transcend all cultural customs. Culture and tradition are not admitted as a valid limitation on these rights; thus, criticism made against FGM/C does not target culture and traditions of people but the violation of human rights as affecting people's lives.³⁹⁵

³⁸⁹ UNICEF ‘United Nations in Somalia, Hawa Aden Mohamed: a woman of courage’ 7 March 2011. Available at <http://www.unctsom.org/unicefstory.html>, (accessed 25 September 2012).

³⁹⁰ Edwards A ‘Violence against women under international human rights (2011) 220.

³⁹¹ Article 5 of the Transitional Federal Charter of the Somali Republic declares Mogadishu as the capital and grants Parliament rights to pass laws over its governance.

³⁹² Episiotomy is a surgical operation that consists in the cutting of the tissue bridging the vagina and rectum to facilitate childbirth and to prevent tearing of the vagina

³⁹³ UNICEF ‘At a glance: Somalia, Statistics’ Unicef 2010. Available at http://www.unicef.org/infobycountry/somalia_statistics.html (accessed on 17/09/2012).

³⁹⁴ Article 25(1) of the UDHR.

³⁹⁵ Packer C ‘Circumcision and human rights discourse’ in Nnaemeka O & Ezeilo J ‘Engendering human rights: Cultural and socio-economic realities in Africa’ (2005) 231.

In Somalia, FGM/C can be examined as an intention to destroy women because people intentionally close their eyes to all risks which women are exposed to just because society desires to control their sexuality and maintain the political and economic subordination of women. This principle of respect for persons does not mean that we ought to respect all aspects of cultures that endorse the violation of human rights. Such culture clearly does not deserve respect simply because it is part of a tradition.

4.2.4. Efforts aimed at eradication in Somalia

The eradication movement initiated by SWDO, AIDOS and SFHCA has been supported by the Ministry of education and Ministry of Health. This movement has gained currency by organising seminars and study tours for policymakers and youth; training for health providers supported by the family health division; reaching out to the youth through youth and sport with the support of SFHCA and the Ministry of Health.³⁹⁶

In 1993, several international and local organisations were created to ensure the protection of women. The National Committee against FGM/C and the Save Somali Women and Children (SSWC)³⁹⁷ was adopted to fight FGM/C under a comprehensive program inspired by the USAID under the Family Health Services Project. Unfortunately, efforts made by these organisations failed due to political instability the country. Since 1996, UNICEF has also followed efforts made by other NGOs by organising training workshops for communication and change of behaviour. These organisations also supported anti-FGM/C programs on hygiene education, HIV/AIDS awareness, youth mobilisation, breast-feeding and promotion of girls.³⁹⁸

³⁹⁶ The Somali Family Health Care Association (SFHCA) fights against the practice of FGM/C under a comprehensive program created by USAID under family health services and family education.

³⁹⁷ Save Somali Women and Children (SSWC) is a non-government humanitarian and development organisation, founded in 1992 by a group of Somali women from all sections of the community, as an urgent imperative to address the needs of Somalia's women and children. Its objective was focused on improving women's rights and promoting their participation in building peace. In addition, they provide support to some vulnerable countries and marginalized women through education programs and campaigns to eradicate FGM/C, early and forced marriage. Available at <http://www.blog.world-citizenship.org/wp-archive/515> (accessed on 13 July 2012).

³⁹⁸ Population Council 'Female Genital Mutilation abandonment Program: Evaluation summary Report' April 2008, 6, Available at http://www.unicef.org/evaldatabase/files/EGY_FGM_AP_report.pdf (accessed on 18 October 2012).

The Gardo Women Network (GARWONET) is an NGO created in 2004 in Somalia to combat FGM/C by conducting informational activities and awareness through discussion groups.³⁹⁹ According to a 2008 IRIN article, a local organisation, called We Are Women Activists (WAWA) developed in Puntland has supported women objectors and lobbied for the eradication of FGM/C.⁴⁰⁰ The Galkayo Education Centre for Peace and Development (GECPD) which aims to improve the lives of Somali women by increasing girls' enrolment in the Mudug region of Puntland has also supported this process:

'... Hawa's FGM abandonment programme is now renowned in Galkayo and communities there acknowledge her enormous contribution to girls' education and women's economic and social empowerment. Several women from IDP communities now have the skills to run a bakery and are selling their products in the market while their daughters study at the Centre's schools...' In Somalia [FGM] is considered 'a women's issue' but women alone cannot fight for its elimination. It will take time. There are still places where they haven't even heard that it is not right. Maybe one day there will be no FGM and one day we will get government support' [Hawa said].⁴⁰¹

Many efforts have been launched in efforts to combat FGM/C in Somalia but these have stalled due to political instability and; conflicting beliefs and attitudes of communities towards the practice.

³⁹⁹ GARWONET is a Somalia Network constituted by 9 NGOs with objectives to inform and educate people by awareness –raising workshops according to the issue of FGM/C. It process by house visits, training of nurses, sensibilization of religious leaders, supports and provision of medical treatment care to victims of FGM/C and awareness raising through the media. See Moen LH et al 'A comparative Evaluation of Fokus FGM project in East Africa' January 2012 *NordSor Konsulentene* 27. Available at <http://www.fokuskvinner.no/PageFiles/5228/FGM-support-thematic%20evaluation.pdf> (accessed on 18 October 2012)

⁴⁰⁰ IRIN 'UN Office for the Co-ordination of Humanitarian Affairs, Integrated Regional Information Networks, Raising awareness against FGM in Puntland', 7 April 2008. Available at <http://www.irinnews.org/report.aspx?ReportID=77642> (accessed 25 September 2012).

⁴⁰¹ UNICEF 'United Nations in Somalia, Hawa Aden Mohamed: a woman of courage' 7 March 2011. Available at <http://www.unctsom.org/unicefstory.html> (accessed 25 September 2012).

4.3. Conclusion

Efforts for the eradication of FGM/C in Somalia are challenged by several realities that blunt the movement. Many people know that FGM/C is harmful to women, but continue to practice it as a recommendation from Islam. Few religious leaders admit that FGM/C can be eradicated because they believe that it is a part of their dogma. Even among educated people, the religious conception of FGM/C remains one that must be respected.

The effectiveness of efforts made by NGOs to eradicate FGM/C in Somalia will only be seen if there is political stability in the country. As shown above, many efforts have been made but have floundered due to the collapse of the government and state. The educational sphere is also a very significant vehicle that can be used to change Somalis – especially men – mind sight towards FGM/C.



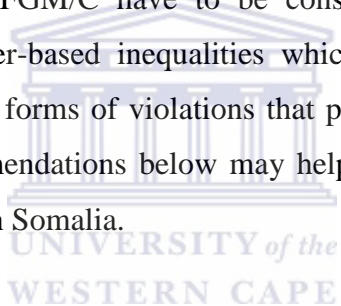
CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1. Recommendations

This thesis has argued that the continued use of FGM/C in Somalia is mounted on community attitudes and beliefs. These actors reinforce and support gender discrimination and violence against women and young girls. Important measures must be elaborated for eradication as FGM/C is deeply rooted into community. The political situation, absence of a constitution and subsidiary legislation reinforce violation of fundamental human rights norms.

In Somalia, efforts to eradicate FGM/C have to be considered as the main step towards remedying and rooting out gender-based inequalities which are steeped in patriarchy. This harmful practice results in several forms of violations that prevent the enjoyments of rights by women and children. The recommendations below may help bring significant solutions to the process of eradication of FGM/C in Somalia.



5.1.1. Vision and priority initiatives

As found by a number of studies, FGM/C in Somalia is so deeply entrenched that only a robust efforts can result in its eradication. The strong influence of religious leaders on the communities considerably challenges efforts made for its eradication. My study suggests integrating religious leaders into efforts to combat FGM/C by incorporating of them into specific educational programs which can be run at mosques.⁴⁰² Education of the population is also key to successful implementation of legal institutions capacity building, community empowerment, policy development and consciousness measures in the short-term, and changes of attitudes and behaviours by the adoption of effective measures and institutions.

⁴⁰² ReliefWeb 'Somalia', Report – integrated regional information Network, August 2012. Available at <http://reliefweb.int/report/somalia/activists-laud-ban-fgmc-say-implementation-will-require-more> (accessed on 18 October 2012).

Literacy, education and empowerment of Somalis, especially women, are preponderant to the applicability of strategies and to the prohibition of FGM/C into communities. In the process of change of attitudes and behaviours, the collaboration between Somali government and NGOs is very important because, these organizations are deeply integrated into the community's life and could easily play the role of facilitators for change.⁴⁰³

5.1.2. International institutions

Various international conventions and declarations such as the CRC, the Covenant on the Rights of the Child integrated in the Organization of the Islamic Conference (OIC),⁴⁰⁴ the Maputo Protocol and the Cairo Declaration have been adopted as tools for prevention and protection of women and children against the practice of FGM/C and all others forms of violence against women and children. The adoption of these legal instruments demonstrates the commitment of the UN to issues of women and children's security and the eradication of FGM/C.

It is trite that there is a pressing requirement for the adoption of legal instruments that prohibit the practice because of the level of violence perpetrated against women and children in this way. The high prevalence of FGM/C should be matched by an unwavering determination by the authorities to adopt and domesticate international legal instruments that seek to protect the rights of women and children.

5.2. Conclusion

FGM/C matches-lock-in-step with some of Somalis treasured cultural tenets and has been practiced in the country for hundreds of years that measures to eradicate it invariably flounder. It is mounted on pervasive gender inequality and segregation, consequences of a sturdy patriarchal system. This traditional practice is understood as an act of violence against women and young girls and at the same time, violates the fundamental human rights of women and several rules

⁴⁰³ Sadiwa SL et al *'No more excuse!: Ending all harmful traditional practice against girls and young women'* (2007) 27.

⁴⁰⁴ The Covenant on the Rights of the Child in Islam was adopted by the 32nd Islamic Conference of Foreign Ministers in Sana'a, Yemen, in June 2005. See Abiad N & Zia F *'Criminal law and the rights of the child in Muslim states: A comparative and analytical perspective'* (2010) 48.

protected in international and regional human rights instruments. In general cases, practicing communities judge efforts to eradicate FGM/C as an attempt to alienate them from their culture. They argue that this would tantamount to disengaging them from their roots and identity.

FGM/C specially affects the socio-cultural spheres of life such as certain social conventions, the fear of shame and stigmatisation, the deep-rooted beliefs and assumptions with regard to health, sexuality and religion that prevent the desired change of attitudes. For family honour and integration into the community, parents and family members force their daughters and sisters to follow this traditional ritual because of the dowry would be paid and also the enhanced chance of their daughter getting married.

FGM/C reflects attitudes and a values system given to women in African communities. Women are viewed as less than human; they are often exposed to extreme treatments. Their rights to health and life are often at high risks because they have little or no health education to understand the consequences of this this harmful procedure. The reduction of their sexual libido, the risks of severe bleeding and infections leading to infertility, transmission of HIV/AIDS, and complications during childbirth, are clearly the highest forms of denial of violations of women's human rights.⁴⁰⁵

The low literacy rates among Somali people prevent the process of effective eradication of FGM/C because they do not perceive how the practice can damage women's health and their socio-development. It is universally recognized that women are a vital force for maintenance and stability of families and societies. Thus, all obstacles against their development must be removed. Socio-economic pressures and cultural beliefs constitute principal elements that perpetuate violence of women.

In order to guarantee the effectiveness of any legislation prohibiting FGM/C in Somalia, adequate strategies must be established, including capacity building of all significant participants. Dissemination information and education through the mass media is significant and can help change of attitudes and beliefs of members of community. This argument has also been endorsed by Jibrell, a Somali women's advocate who said that the process of eradication of

⁴⁰⁵ SOS Children's village, 'Somalia has a new constitution which aims to protect girls from female circumcision', August 2012. Available at <http://www.soschildrensvillages.org.uk/charity-news/archive/2012/08/somalia-has-a-new-constitution-which-aims-to-protect-girls-from-female-circumcision> (accessed on 02 October 2012).

FGM/C must include deliberate education, awareness-raising campaigns and strong legal provisions to engineer successful change of attitude.⁴⁰⁶

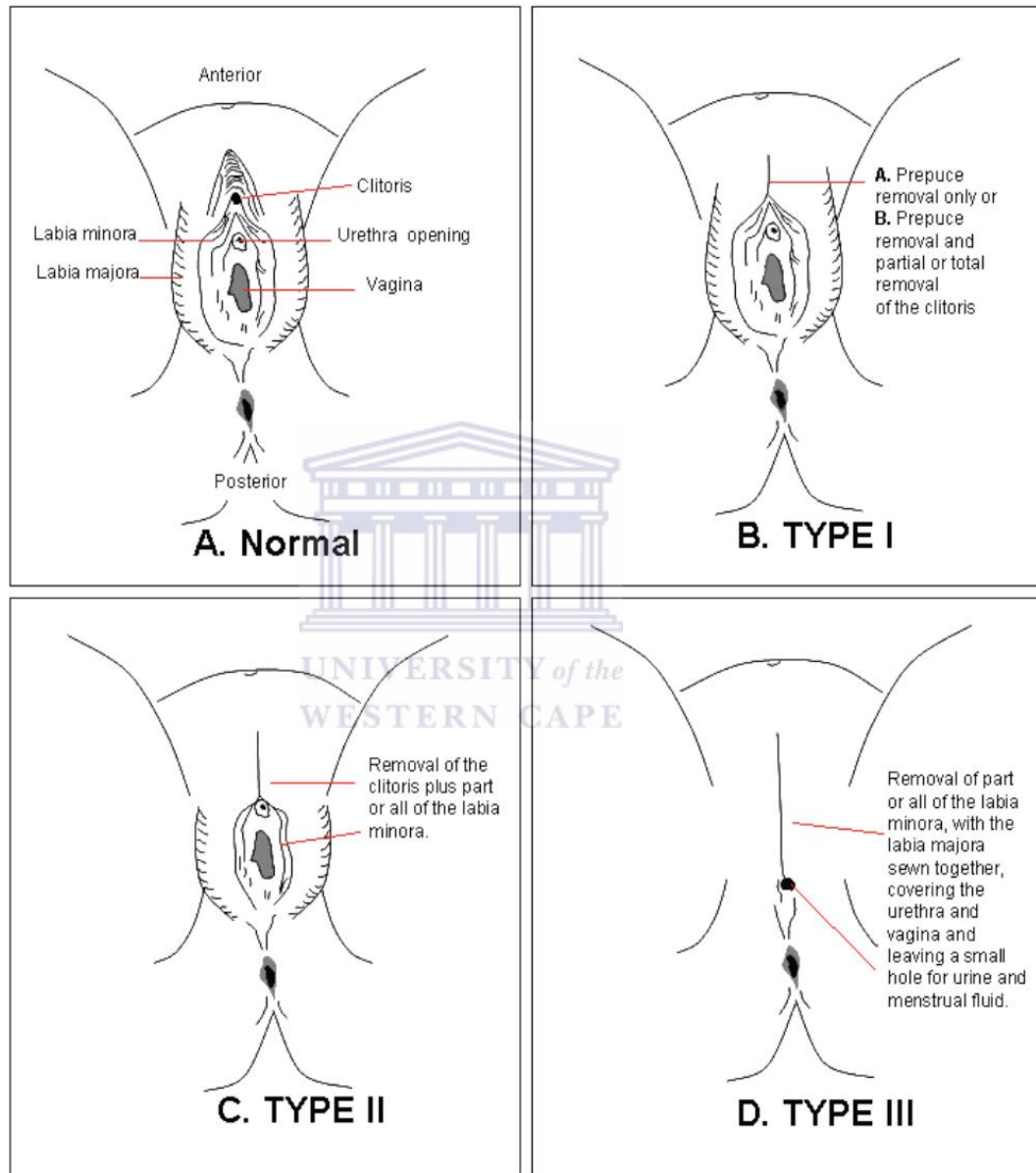
Word count is as follows: 32 310 words



⁴⁰⁶ GHANA MMA 'Somalia: New Constitution Bans Mutilating Girls', 13 August 2012, Available at <http://www.ghanamma.com/2012/08/somalia-new-constitution-bans-mutilating-girls/> (accessed on 02 October 2012).++

ANNEXURE A

TYPES OF FEMALE GENITAL MUTILATION/CUTTING



Source of information: ACCM/UK 'Supporting communities, enterprising minds and active citizens' available at

<http://www.accmuk.com/?target=whatisfgm&menuitem=FGM&submenuitem=What%20is%20FGM?> (Accessed on 10 October 2012).



ANNEXURE B

**PREVALENCE & CRIMINALIZATION OF FEMALE GENITAL MUTILATION IN
AFRICA**

COUNTRY	PREVALENCE (%)	YEARS	CRIMINALIZATION Date of entering into force
Benin	30	1999	2003
Burkina Faso	78	1999	1996
Cameroon	15	1999	No specific legislation against FGM
Central Africa Republic	35	1999	1966
Chad	40	1999	2003
Cote d'Ivoire	40	1999	1998
Dem. Rep. of Congo (formerly Zaire)	5	Unknown	No specific legislation against FGM
Djibouti	95	1999	1994
Egypt	55	1999	2008
Eritrea	97	1995	2007
Ethiopia	85	1999	No specific legislation against FGM
Gambia	85	1985	No specific legislation against FGM
Ghana	20	1999	1994
Guinea	99	1999	1965, 2000
Guinea-Bissau	45	1999	No specific legislation against FGM
Kenya	40	1999	2001
Liberia	55	1999	No specific legislation against FGM
Mali	80	1999	No specific legislation against FGM
Mauritania	55	1999	2005
Niger	11	1999	2003
Nigeria	55	1999	No specific legislation against FGM
Senegal	20	1999	1999
Sierra Leone	90	1987	No specific legislation against FGM
Somalia	99-100	2004	No specific legislation

			against FGM
Sudan	90	1999	state of South Kordofan 2008 and state of Gedaref 2009
Tanzania	15	1999	1998
Togo	40	1999	1998
Uganda	20	1999	2009

Source of information: *Inter-African Committee on Harmful Practices*, Research studies, 1999.

See also The World Bank, United Nations Population Fund 'Female Genital Mutilation/Cutting in Somalia' Washington DC 2004 available at http://siteresources.worldbank.org/INTSOMALIA/Data%20and%20Reference/20316684/FGM_Final_Report.pdf (accessed on 29 August 2012).



ANNEXURE C

TRADITIONAL TOOLS USED DURING THE OPERATION



Source of information: WorldNetDaily 'New Stanek WND.com column, No compromise on female genital mutilation' available at <http://www.jillstanek.com/new-stanek-column-no-compromis.html> (accessed on 10/10/2012).

ANNEXURE D

TREATIES RATIFICATION IN AFRICA

Country	CEDAW	CRC	ICCPR	ICESCR	Banjul Charter	Children's Charter	Maputo Protocol
Benin	X	X	X	X	X	X	X
Burkina-Faso	X	X	X	X	X	X	
Cameroon	X	X	X	X	X	X	
CAR	X	X	X	X	X		
Chad	X	X	X	X	X	X	
Cote d'Ivoire	X	X	X	X	X		
DRC	X	X	X	X	X		
Djibouti	X	X	X	X	X		X
Egypt	X	X	X	X	X	X	
Eritrea	X	X	X	X	X	X	
Ethiopia	X	X	X	X	X	X	
The Gambia	X	X	X	X	X	X	
Ghana	X	X	X	X	X		
Guinea	X	X	X	X	X	X	
Guinea-Bissau	X	X		X	X		
Kenya	X	X	X	X	X	X	
Liberia	X	X	X	X	X		
Mali	X	X	X	X	X	X	X
Mauritania	X	X		X	X		X
Niger	X	X	X	X	X	X	
Nigeria	X	X	X	X	X	X	X
Senegal	X	X	X	X	X	X	X
Sierra-Leone	X	X	X	X	X	X	
Somalia			X	X	X		
Sudan		X	X	X	X		
Tanzania	X	X	X	X	X	X	
Togo	X	X	X	X	X	X	X
Uganda	X	X	X	X	X	X	

Source of information: Center for Reproductive Health 'Female Genital Mutilation: A Matter of Human rights' Center for Reproductive Health 2006, 44-46.

ANNEXURE E

OFFICIAL ACTION AGAINST FGM/C IN AFRICA

Country	Specific FGM/C Law Regulations	Existing laws recognized as applicable to FGM/C
Benin	Criminal Law Reproductive health law	-
Burkina-Faso	Criminal Law	-
Cameroon	-	-
Central African Republic	Criminal Law	-
Chad	Reproductive Health Law	-
Cote d'Ivoire	Criminal Law	-
Democratic Republic of Congo	-	-
Djibouti	-	-
Egypt	Ministerial Decree	Criminal Law
Eritrea	-	-
Ethiopia	Criminal Law Constitutional Law	-
The Gambia	-	-
Ghana	Criminal Law Constitutional Law	-
Guinea	Criminal Law Reproductive Health Law	-
Guinea- Bissau	-	-
Kenya	Criminal Law Child Protection Law Civil Law	-
Liberia	-	Civil Law
Mali	Ministerial Decree	Criminal Law
Mauritania	X	Criminal Law
Niger	Criminal Law	-
Nigeria	Criminal Law (State laws only)	-
Senegal	Criminal Law	-
Sierra-Leone	-	-
Somalia	-	-
Sudan	-	-
Tanzania	Criminal Law	-
Togo	Criminal Law	-
Uganda	Child Protection Law Constitutional Law	Civil Law

Source of information: Center for Reproductive Health, Female Genital Mutilation: A Matter of Human rights, Center for Reproductive Health, 2006, 42-43.



ANNEXURE F

OFFICIAL ACTION AGAINST FGM/C INTO COUNTRIES OF MIGRATION

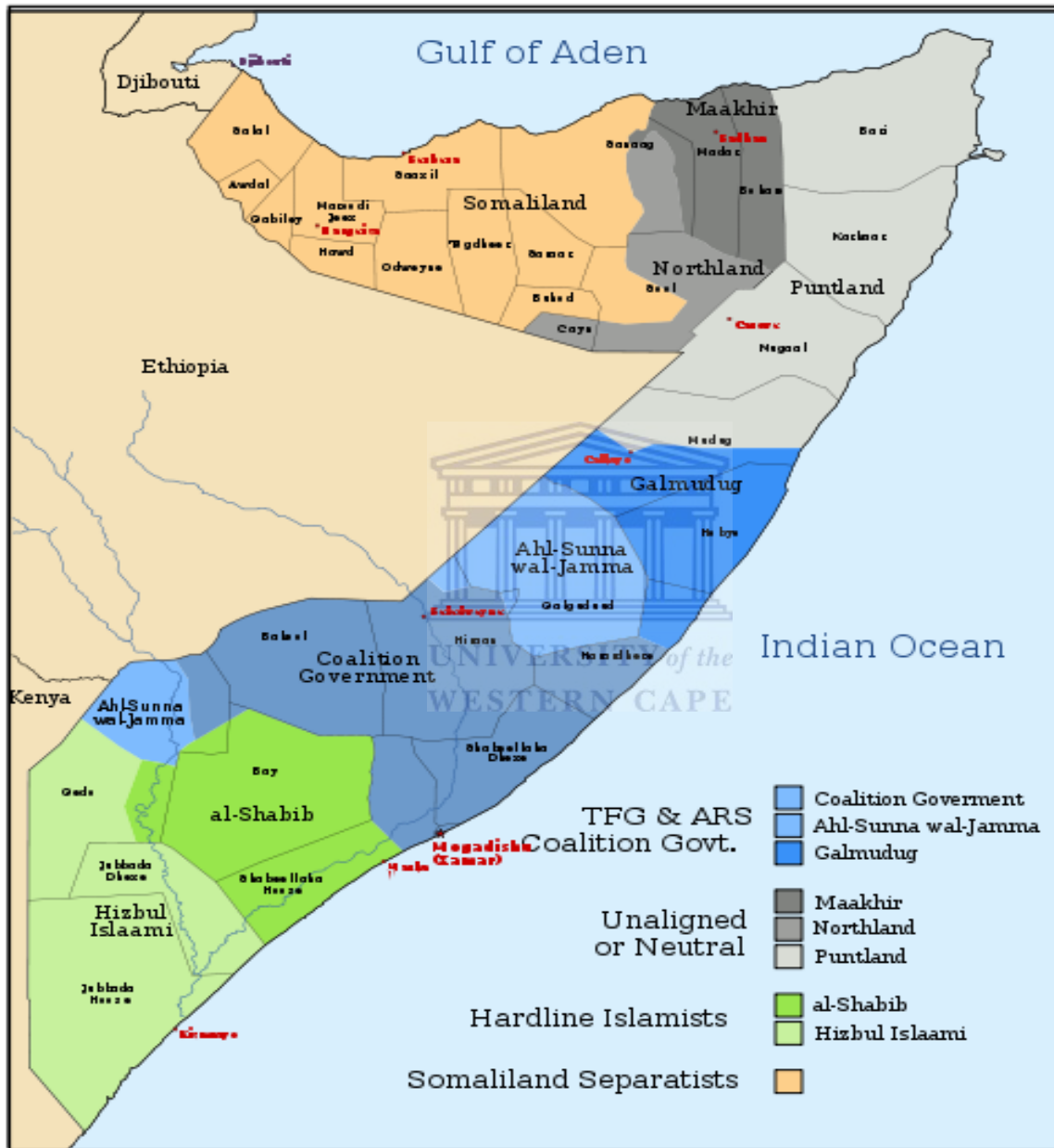
Country	Specific FGM/C Law Regulations	Existing Laws recognized as applicable to FGM/C
Australia	Criminal law	-
Belgium	Criminal Law	-
Canada	Criminal Law Child Protection Law	-
Denmark	Criminal Law	-
France	-	Criminal Law Child Protection Law
Germany	-	Criminal Law
Italia	Criminal Law	-
The Netherlands		Criminal Law
New Zealand	Criminal Law	-
Norway	Criminal Law	-
Spain	Criminal Law	-
Sweden	Criminal Law	Civil Law
United Kingdom	Child Protection Law Criminal Law	-
United States of America		-

UNIVERSITY of the
WESTERN CAPE

Source of information: Center for Reproductive Health ‘*Female Genital Mutilation: A Matter of Human rights*’ Center for Reproductive Health 2006, 42-43.

ANNEXURE G

MAP OF SOMALIA



Source of information:

http://www.google.co.za/search?q=map+somalia+regions&um=1&hl=en&biw=1366&bih=667&tbm=isch&ei=Z_yZUNS8I4O4hAe32YDYDq&start=0&sa=N (accessed on 07 November 2012).

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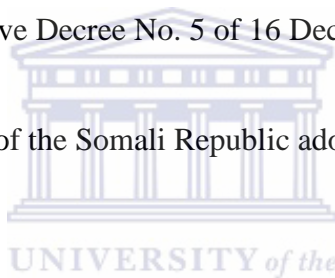
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