

AFRICAN SYSTEM OF HUMAN RIGHTS PROTECTION. CASE STUDY: FEMALE GENITAL MUTILATION IN ETHIOPIA

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Abstract

Respecting human rights is the evidence of the respect for human dignity and physical and mental integrity. Their continuous evolution and change have always been rooted in cultural reasons. The culture of a state, its customs, traditions, and community values shape its identity; therefore, culture plays a crucial role, even at the legal level in a state. This article focuses on their impact on the rights of girls and women, analyzing the debate between practices for and against human rights, as well as between gender equality and equal opportunities. The topic of cultural practices and women's rights has led to a brief analysis of Female Genital Mutilation in Ethiopia, covering causes, risks, and main challenges, along with recommendations.

Keywords: Human Rights, African System, Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, Female Genital Mutilation, Ethiopia

JEL Classification: [K38]

1. Introductory Aspects in Human Rights

Throughout history, human rights have taken various forms, from representing privileges for certain groups of individuals to expanding today to be held by every human being equally and universally. Article 1 of the Universal Declaration of Human Rights emphasizes 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*".¹ One thing is certain, the history of human rights is closely linked to human emancipation and the desire and need to live in peace and understand humanity (Zlătescu, 2008, pp. 9-10).

With the development of democracy, people have gained a clearer understanding of human rights. The English Civil War, the French Revolution, and the Declaration of Independence of the United States are just a few events that led to obtaining the right to vote, freedom of expression, and so on (Kjaerum, 2019, p. 19). Regarding the modern history of human rights, discussions became more intense after World War II, especially following the Holocaust, which prompted the international community to make significant efforts to protect human beings. Therefore, in 1948, the United Nations adopted the Universal Declaration of Human Rights, a document with strong moral significance, emphasizing the global prioritization of the development of civil and political rights, ensuring free

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¹ The Universal Declaration of Human Rights, Publication Date: 10 December 1948, Article 1.

expression, participation, representation, and democratic governance, as well as cultural, social, and economic rights, a content extremely powerful and unique (Hannum, James Anaya&al, 2023, p. 6).

Therefore, human rights are interdependent on various factors, they are inalienable, being lost only in certain situations, such as death; they are indivisible and foundational elements of human dignity without which a person cannot be considered a human being. Fighting for human rights means demanding human dignity for all people (Kori Salkesh, 2018, p. 65).

As for the classification of human rights, they can be divided into three categories (Kori Salkesh, 2018, p. 65):

1. First-generation rights, which include civil and political rights;
2. Second-generation rights, such as economic, social, and cultural rights;
3. Third-generation rights, such as the right to self-determination and the right to participate in the benefits of mankind's common heritage.

2. African System of Human Rights Protection: African Charter on Human and Peoples' Rights

Regarding the history of human rights in Africa, it is closely tied to the political and ideological landscape of the continent, including colonialism and the struggle for independence, and the era of nationalism. Until the early 1800s, various traditional ethnic communities on the African continent lived under diverse forms of traditional democracies, where human rights were ingrained in the religion and culture of these communities. However, their path took a different turn upon contact with European states, initially marked by commercial relations but later evolving into the slave trade, the rise of European imperialism, capitalism, and colonization, formalized with the declaration of terra nullius at the Congress of Vienna in 1815 (EI-Obaid, EI-Obaid, 1996, p. 821). Consequently, significant changes emerged from the 1800s concerning religions, borders, spoken languages, legal systems, and African communities underwent various ideological forms from the mid-1900s to the late 1980s: socialism, pro-Americanism, one-party rule, pan-Arabism, and pan-Africanism (Zlatescu, 1997). In this diverse but incomplete customary right, a right of colonial-local power has been added, forming relationships of dominance but also coexistence. This right is comprised of legislation enacted by governors, the law of the metropolis, which became applicable in colonies. Consequently, African territories became subject to the common-law system or the legal systems of France, Italy, Spain, Portugal, Belgium, or Germany (Zlatescu, 1997, pp. 823-824).

Thus, the evolution of human rights begins with the desire for self-determination, the economic, social, and cultural liberation of communities. The Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms played a crucial role in

inspiring the founding principles of African nations and shaping human rights within them (Bujra, 2002, pp.108-124).

The Pan-African movement and its evolution led to the founding of the Organization of African Unity and later the African Union. Initiated by intellectuals in the late 19th century, it gradually transitioned from protests against exploitation and racism to the fight against colonialism. A pivotal moment was the Pan-African Congress of 1945, where African nationalist leaders played a crucial role in shaping this ideal. In 1957, Ghana became the first independent African state, and in 1963, the OAU was established to coordinate efforts by states in achieving independence. In 2002, it transformed into the African Union, incorporating new principles such as human rights, the promotion of social justice, and gender equality (Bujra, 2002, pp.108-124).

Regarding the adoption of the African Charter on Human and Peoples' Rights in Nairobi², Kenya, it took place during the eighteenth Summit of Heads of State and Government of the Organization of African Unity in 1981 and enter into force in october 1986. This marked a two-year drafting process initiated in 1979 in Dakar, Senegal. The purpose was to establish an African human rights charter that would reflect African legal philosophy and address the specific needs of African communities. Discussions leading to this historic step, resulting in the drafting and adoption of the Charter, began in 1961 with the African Conference on the Rule of Law in Lagos, Nigeria. This conference represented the broader human rights movement in Africa and continued with the Monrovia Seminar in 1979 (Gittleman, 1982, pp. 667-674).

The Charter, divided into three parts covering human and peoples' rights, measures to safeguard these rights, and general provisions for the African Commission on Human and Peoples' Rights, represents a significant milestone in the ongoing African human rights movement (Gittleman, 1982, pp. 667-674).

However, this unique instrument is acknowledged to be controversial because, despite placing a strong emphasis on social, economic, and cultural rights, there is an apparent lack of recognition for the right to privacy and protection against forced labor (Patrick-Patel, 2014). In most African countries, national legislation takes precedence; therefore, human rights may be limited or even violated, despite being protected by the Charter (Mutua wa Makau, 2000, p. 6). The responsibility for implementing the Charter primarily lies with institutions such as the African Union, the African Commission, and the African Court of Justice.

The lack of a clear definition for terms such as "peoples" or "individuals" has led to various uncertainties. Additionally, controversial elements include the obligations of individuals in a social and political void, the types of obligations they have, and the absence of adequate provisions regarding women's rights (Mutua wa Makau, 2000, p. 6). All these issues have been the subject of various research papers that have debated the topic based on their own interpretation. One thing is certain,

² African Charter on Human and Peoples' Rights, Entry into force: October 21, 1986.

the lack of clarity throughout the history of the Charter's member states has led to different interpretations and criticisms.

3. Empowering women's rights in Africa in the context of cultural activity conservation

Human rights, as emphasized in the previous paragraphs, belong to all individuals, without differentiation based on gender, ethnicity, age, and so on, including, therefore, the rights of women and girls. Therefore, to ensure these rights and guarantee full participation in all areas of life, it is necessary for them to be based on the principles of gender equality and non-discrimination. A clear indication of the respect for this crucial step is reflected in the presence of significant documents, such as gender equality and women's emancipation (GEWE) treaties, the Maputo Protocol on the Rights of Women in Africa of the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Labour Organization's (ILO) Convention on Equal Remuneration for Work of Equal Value.

However, for these treaties to be translated as effectively as possible at the level of the needs of African communities, they had to be ratified and transposed into national legislation, as follows: 38 states have signed and ratified the Maputo Protocol (as of August 2021), 46 have ratified CEDAW, and 46 are members of the Convention on Equal Remuneration out of 48 states (UN, 2023). Some states either have not ratified and signed one of these, or have only signed but not ratified. Although there is progress at the national level through commitments, policies addressing issues such as child marriage, violence against women, participation in decision-making, trafficking for sexual exploitation, female genital mutilation, challenges persist due to the persistence of gender discrimination issues, limited opportunities, or underrepresentation (UN, 2023).

When we talk about order in a society, human rights, evolution, and emancipation, we must also talk about culture. Culture, as in any domain of society, but especially for the law, is crucial (Dana, 2011, pp. 31-49). Culture is what shapes a community, like a hammer shaping iron just pulled from the fire; it reflects the values, beliefs, traditions, and lifestyle that people or groups follow³, an identity that differentiates peoples.

However, to better understand the behavior of a community, the cultural dimension of the individual, represented by three elements, must be analyzed; *cultural skills (cultural equipment)* consisting of know-how, tools, etc., *cultural norms (adiaphora)* referring to rules that regulate human activities considered indifferent from the perspective of cosmopolitan law, such as clothing, marriage, divorce, and so on, and *ideology (comprehensive doctrine)* reflecting political beliefs about justice and fairness based on religion, ethics, and philosophy. All these, together, form the individual cultural dimension (Almqvist, 2005, pp. 40-41).

³ UNESCO Universal Declaration on Cultural Diversity, Paris, 02 November 2001

It is emphasized and recognized that understanding other cultures is important, as they are included in human rights, such as in the Universal Declaration of Human Rights, Article 27, through the right to "*freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*" However, an important aspect to understand is that cultural rights, according to international law, end where the human rights of others begin:

"The defense of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope." - Article 4, UNESCO Universal Declaration on Cultural Diversity of September 2001

Thus, cultural challenges have often been considered obstacles regarding the opportunity to exercise women's rights (Banda, 2005, p. 248), which has often led to debates in understanding the idea of gender equality. While some interpret it as the capability of women to reproduce the strength and agility activities of men, others understand it as the fight for equal opportunities without discrimination or gender-based suspicions in obtaining, for example, a leadership position. Therefore, culture and traditions would be more appropriate to be considered the path to active participation in cultural and traditional life, and not obstacles to women's rights without violating human dignity and rights (Banda, 2005, p. 248).

Regarding African communities, women have the role of transmitting cultural and group identity to family, society, and future generations.⁴ This may bring constraints on their right to make decisions about their own sexuality, procreation, marriage, nationality, or even the citizenship of their children (Babb, 2012, pp.36-50). While some customs may lead to the denial of education, acts of violence, constraints, various forms of violating women's rights, others condemn them, as before colonialism, women were the first teachers of trapping, hunting, and fishing; they promoted African culture through dance, music, art, and clothing; they had extensive knowledge of traditional medicine; older women were responsible for teaching children to be respectful, thankful, and gentle with animals (Mba, 1982, p. 27). Even until the 19th century in Sierra Leone, the leaders of towns and sub-regions, such as the Mende and Sherbro peoples, were women, such as Madam Yoko (Day, 1994, pp. 481-503).

"It is important to emphasize that not all customs and traditions are not protective of human rights...However, those practices that constitute definite forms of violence against women

⁴ United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues, *Gender and Indigenous Peoples' Culture*, Briefing Note no. 4, p. 2, https://www.un.org/esa/socdev/unpfii/documents/BriefingNote4_GREY.pdf, accessed by 22.12.2023

cannot be overlooked nor justified on the grounds of tradition, culture or social conformity."⁵

Among the practices that violate women's rights, their personal independence, and human dignity, the result is often the behavior within the family, in relation to parents or men, such as dowry payments, forcing girls into ritual servitude, Wahaya (fifth wife), Ukuthwala (kidnapping girls for marriage), Trokosi (slaves to the Gods), female genital mutilation, ghost marriage (nyumba-ntobhu), and child marriage (many of these being more prevalent in ethnic groups in eastern, western, and southern sub-Saharan Africa) (Hashim Msuya, 2017, p. 223).

4. Case Study: Female Genital Mutilation in Ethiopia

Among the cultural practices mentioned in the previous paragraphs, female genital mutilation (FGM) was also addressed. This represents a procedure that violates human rights at the international level, not performed for medical reasons, involving the partial or total removal of female external genital organs or other forms of harm to female genital organs carried out through traditional practices with a blade and without anesthesia on girls up to 15 years old⁶ (with the majority experiencing this before the age of 10), and the underlying reasons for this are cultural, religious, and social (maintaining virginity, preventing premarital sexual relations, and social acceptance)⁷; by 2030, an estimated 68 million girls worldwide are at risk of undergoing this procedure. This activity is practiced in approximately 31 countries in Africa, the Middle East, and others.

Regarding the Federal Democratic Republic of Ethiopia, it has the highest number of individuals affected by FGM in Eastern and Southern Africa.⁸ On December 8, 1994, a significant step was taken in Ethiopia's Constitution, Article 35 (4), regulating that women are protected by the State from customs and practices that may cause them physical or mental harm.⁹ Therefore, the legal framework of the Constitution does not explicitly mention the prohibition of the FGM practice. Additionally, the Ethiopian Civil Code of 1960 states that causing bodily harm is a civil offense. The primary law that prohibits this practice is Proclamation No. 414/2004, known as The Criminal Code of the Federal Democratic Republic of

⁵ United Nations, *Traditional practices affecting the health of women and children*, in: Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the commission alternative approaches and ways and means within the united nations system for improving the effective enjoyment of human rights and fundamental freedoms, E/CN.4/1996/53, 5 February 1996

⁶Parlamentul European, *Mutilarea genitală a femeilor: unde, de ce, care sunt urmările*, 13.02.2022, <https://www.europarl.europa.eu/news/ro/headlines/society/20200206STO72031/mutilarea-genitala-a-femeilor-unde-de-ce-care-sunt-urmarile>, accessed by 22.12.2023

⁷ UNICEF, *Case study on ending child marriage and female genital mutilation in the Federal Democratic Republic of Ethiopia*, April 2021, p. 4

⁸ *Ibidem*

⁹ United Nations, *op.cit.*, 5 February 1996

Ethiopia 2004. Articles 569 and 570 of the Criminal Code address the procurement of, and aiding and abetting, FGM/C, making it a criminal offense for "a parent or any other person" to commission the practice or encourage others to defy legislation prohibiting harmful traditional practices. They also criminalize organizing or participating in any movement promoting FGM/C. However, the Criminal Code does not provide protection for uncut women (and their families) from verbal abuse or societal exclusion, as is present in the laws of some other East African countries. The Ministry of Women, Children, and Youth Affairs is responsible for implementing Ethiopia's National Strategy on FGM/C. In 2013, Ethiopia established the National Implementation and Monitoring Platform, tasked with coordinating and implementing the National Strategy and Action Plan on Harmful Traditional Practices against Women and Children. In 2015, the Ethiopian Midwives Association conducted a two-day training for 254 midwives to equip them with the skills to prevent FGM/C and resist pressure to perform the practice.¹⁰

According to the 2016 Demographic and Health Survey, it mentions that 65% of girls and women aged 15 to 49 have undergone some form of FGM, with 47% of them being between the ages of 15 and 19. Additionally, Muslim girls and women living in rural areas with lower formal education are at higher risk.¹¹

In a research paper on this topic, Mhairi A. Gibson et al. presented this practice among the Arsi Oromo. Genital cutting of type 1¹² is done before marriage, typically about a month before, in front of the bride's parents' door, surrounded by acquaintances from both female families, and performed by a experienced local person for less than \$1 (Gibson, Gurmu & al, 2023, p. 3).

Before the ceremony, the woman is given a local plant-based beer called "gesho," acting as a laxative and anesthetic. Following this, a portion of the bride's nape is shaved, and cosmetic products are applied to her body to indicate her readiness for marriage (Gibson, Gurmu & al, 2023, p. 3). The authors introduced reasons captured during a 2010 focus group discussion: the transition from child to woman, reduction of sexual desire, ensuring fidelity to the husband, increased obedience to the husband, and responsibility for the household. However, the discussion also highlighted a significant aspect; with the involvement of volunteers, sexual education information, health extension workers, awareness of risks, especially the effects during childbirth, have increased, and more and more young people oppose this practice (Gibson, Gurmu & al, 2023, p. 3).

One of the challenges in 2023 in this regard is related to insufficient regional-level data, given that Ethiopia has a very large population. It is difficult to identify hotspots within regions and efficiently target programs to address these

¹⁰ Orchid Project, Ethiopia: The Law and FGM/C, July 2018, pp. 1-8, [https://www.fgmcri.org/media/uploads/Country%20Research%20and%20Resources/Ethiopia/ethiopia_law_report_v2_\(no_vember_2023\).pdf](https://www.fgmcri.org/media/uploads/Country%20Research%20and%20Resources/Ethiopia/ethiopia_law_report_v2_(no_vember_2023).pdf), accessed 13.01.2024

¹¹ UNICEF, *op.cit.*, April 2021

¹² Clitoridectomy: "partial or total removal of the clitoris, and in rare cases, only the prepuce" - *Encyclopedia of Forensic and Legal Medicine (Second Edition)*, 2016- is referred to as "huuba irrafuudhuu," translated as "elimination of waste/undesired

issues (report). Additionally, it has been observed that even with increased awareness through various tools, the approach with which issues are addressed is crucial. There are cases of potentially negative impact that may drive the practice underground, multiplying the associated risks (report). Last but not least, there are recommendations regarding the provision of programmatic support for the economic empowerment of women and girls. Refusal to practice FGM may expose them to social exclusion, further economic insecurity, and even the risk of death. It emphasizes that in the context of rural areas in Ethiopia and those affected by drought, famine, and crises, a woman's capacity to marry is her only survival strategy.

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5. Conclusions

The historical evolution of human rights reflects a progression from privileges to universal rights, rooted in events such as the Civil War and the Declaration of Independence. Modern discussions intensified after World War II. Ultimately, the Universal Declaration of Human Rights in 1948 emphasized civil and political rights alongside economic and social rights, highlighting that human rights are inalienable and fundamental to human dignity.

Regarding the history of human rights in Africa, it is closely tied to colonization, struggles for independence, and the Pan-African movement. The African Charter on Human and Peoples' Rights, adopted in 1981, marked a milestone, but challenges persist due to cultural influences and limitations at the national level. Despite progress, issues of clarity and varied interpretations continue to affect the implementation of human rights across the continent.

¹³Orchid Project, *FGM/C in Ethiopia: Country Profile Update, June 2023*. Available at www.fgmcri.org/country/ethiopia/, 2023, p. 52.

¹⁴*Loc. cit.*

¹⁵*Ibidem*, p. 53.

This work emphasized that even cultural norms impact women's rights. Cultural understanding is crucial, but cultural rights must not violate human rights, underscoring the need to find a balance between cultural preservation and the protection of individual rights.

Female genital mutilation (FGM) represents a serious violation of human rights, especially in Ethiopia. Legal measures, constitutional protections, and increased awareness have been implemented, but challenges persist. Thus, insufficient regional data, potential negative impacts of awareness campaigns, and the economic empowerment of women are highlighted as crucial aspects in the ongoing fight against FGM.

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Legal framework

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2. UNESCO Universal Declaration on Cultural Diversity, Paris, 02 November 2001.
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