

International Strategies in the Human Rights Movement against Female Genital Cutting

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M.A. HUMAN RIGHTS THESIS

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Executive Summary

The thesis focuses on the numerous debates positioning around the international involvement in the eradication of female genital cutting practice. On one level, it answers to the stark criticism directed at the international involvement in this eradication movement; on another level, it provides ideas which are relevant for devising the best approaches to fighting this traditional practice. The main questions posed are: were the international human rights actors in the movement fueled by Western ethnocentricity, employing inappropriate approaches towards the local African efforts, as claimed? What kind of international approach would be beneficial rather than detrimental to the local African actors fighting this controversial issue?

The paper reassess the role played by the international human rights actors in the fight against female genital cutting through the analysis of past and present efforts of various actors of the movement. In doing so, it refutes the critiques which only focus on cultural insensitivity of the global campaign. The international human rights movement was fragmented; insofar two streams within it employed different type of eradication strategies. Namely, while the formal human rights actors (IGOs) were extremely cautious in their approach hence employing strategies which did not contain elements of coercion, the approach of other, non-formal human rights actors (NGOs) was exactly the opposite. Moreover, while coercion was to a great extent employed by other global actors in the eradication movement, since they are guided by interests other than human rights protection, they must be clearly distinguished from the human rights actors.

Additionally, when looking at the more recent efforts between international human rights actors and local actors, which are becoming increasingly cooperative, the appropriate role of the international actors in delicate human rights issues can be identified.

Introduction

This paper will deal with the movement organized around the practice of female genital cutting. The practice still exists in several parts of the world, with the greatest prevalence on the African continent. It is highly controversial in the context of everyday conversations and causes passionate reactions from strong worldwide opposition to its grave consequences for females in terms of health, psychology and subordinate place in society. However, the movement that was formed in effort to eradicate female genital cutting was, perhaps surprisingly, also accompanied by a high degree of controversy. The controversy that accompanied the eradication movement itself was tied to sharp disagreements on numerous firmly-held principles. The issue was discussed from different aspects of human rights, politics, medicine, economy and religion, to name only a few. In those discussions, female genital cutting has often served as a point of discussions where different polarities of views in various fields met without attempts to find a common ground. In this sense, it is crucial to note that these polarities frequently represented contrasting views of Western and of Southern actors.

While related human rights debates were mostly concerned with the right approach to tackling the issue, not whether the practices constitute a human rights violation, the extent and strength of disagreements within the field must not be underestimated. For example, a truly great amount of extensive academic literature exists on the so-called universalist-relativist debate focusing on the issue of genital cuttings. Within the human rights field, disagreements were also arising on values of individual rights versus communitarian ones and on whether the practices fall under health rights, child rights or women rights, whether law should be the main or even significant instrument of eradication efforts and finally, what is the most appropriate approach to tackling it.

As the paper will show, the international human rights movement and domestic movement against the genital cutting practices are operating complementarily. Nonetheless, for a long period of time this was not the case. International movement against female genital cutting has been frequently criticized as “inappropriate” and insensitive from the viewpoint of domestic actors. Was this really the case? Were international human rights actors approaching the issue of female genital cutting with a lack of understanding and cultural sensitivity, which is necessary to engage in a constructive fight against the practice? Should international actors be involved in the movement against the practice that is claimed to be highly sensitive and dependant on the local context? If so, based on lessons learned, what should be their role?

Numerous authors¹, both African but also some of Western background have stated that international movement against female genital cutting was ethnocentric, hypocritical and culturally insensitive. For example, Shweder calls this movement a political campaign led by human rights organizations and political leaders of Western countries. He starkly opposes the movement because, as he claims “...offence to the culturally shaped tastes and sensibilities of cosmopolitan elites or citizens of rich and powerful societies...is not sufficient reason to eradicate someone else’s valued way of life.”² Furthermore, Mutua criticizes the international movement against the practices, invoking the metaphor of savages-victims-saviors and claiming

¹ Those authors have mostly critiqued the whole of the international movement against the practices while relying on accounts of individual responses to the issue of several so-called radical Western feminists or other actors which in actuality cannot be identified as belonging to the human rights field. See, e.g., R.A.Shweder: *Tradition or Values? A Critique of the Global Anti-FGM Campaign*, in C.L.Eisgruber and A.Sajó (eds.): *Global Justice and the Bulwarks of Localism*, The Netherlands: Koninklijke Brill NV. (2005), p.181-199; L. A. Obiora: *Colloquium: Bridging Society, Culture and Law: The Issue of Female Circumcision: Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision*, 47 *Case Western Reserve Law Review* 275 (1997), p.275-378; M. Mutua: *Human Rights: A Political and Cultural Critique*, Philadelphia: University of Pennsylvania Press (2002)

² Shweder, see *supra* note 1, p.185. In dismissing the whole human rights aspect, he even disregards the fact that human rights violations are legitimate and sufficient reason for intervention.

that international organizations failed to take into account the input from the local actors.³ The implication of this is that “Any Western intervention risks being seen quazi-colonial or even racist”⁴. Obiora has a more reconciliatory attitude, but in attempting to find a compromise, she still does not recognize positive aspects of international involvement.⁵ However, the error in perception that persists in many of these critiques can be seen in the equalization of only particular segments of the global movement with its wholeness and in neglecting to adequately assess the approach of the international human rights movement. However, several authors have through their work, more or less indirectly, negated these over-generalizing findings.

These authors are also among the few ones that have researched the issue of female genital cutting from perspective of international influences. Elizabeth Heger Boyle whose findings will be highly relevant for this paper, has provided extremely valuable insight in the interplay of global politics with national actors and analyzed in detail the effect which international forces leave on formation of local policies.⁶ Yet her perspective seems to emphasize political and disregard the human rights aspect of the movement. For example, she makes no distinction between human rights actors and other political actors, which is a shortcoming given that the practice is placed on the human rights agenda and given the importance of the input of human rights actors. Additionally, she does not attempt to conclude on the appropriateness of particular strategies employed in the movement and the appropriateness of the roles particular actors played. The work of Katherine Brennan gives partial answers to the above questions, by providing overview of the United Nations bodies’ responses to the genital

³ Mutua, see *supra* note 1, p.7-11, 26-27; his critique actually extends to the wholeness of the human rights movement whereas the movement against female genital cutting is only one of the most obvious examples of its ethnocentrism.

⁴ Bibbings, L.S.: *Female Circumcision: Mutilation or Modification?* In *Law and body politics: regulating the female body*, ed by Bridgeman, J. & Millns, S., Brookfield, USA: Dartmouth Publishers (1995), p.157

⁵ Obiora, see *supra* note 1, p.275-378

⁶ Boyle, E.H.: *Female Genital Cutting: Cultural Conflict in the Global Community*, The John Hopkins University Press, Baltimore (2002)

cutting. She directly establishes that the formal human rights system was careful in its approach and deferential to local cultures.⁷ Nonetheless, the answers to the above questions remain only partial since Brennan did not examine the effect of other actors' more coercive approaches and since the article was written during the early movement, leaving the recent evolvments in the relationship between international and local actors unexplored. Finally, Lois S. Bibbings has established that Western actors have modified their initial approach after realization that it caused the local backlash. She further finds that by becoming more aware of the issue, Western actors decided to play a supportive role in eradication efforts.⁸ This was however only a side conclusion, to which not much relevance was devoted in sense of further meaning and implications.

The aim of this paper is to further their findings by objectively assessing both positive and negative impacts of international human rights actors on eradication efforts in order to come to an understanding of the "appropriate" role that international human rights actors can play in complex human rights issues such as this one. This will be achieved through examining international, regional and national legal and policy framework, a number of reports, representative academic articles dating from the early campaign efforts until the most recent ones, as well as through several articles published in media.

It is worthwhile to note that the objectivity by no means implies neutrality in the position regarding the need to eradicate the practice. It is strongly embraced by this paper that female genital cutting is a harmful practice which represents a severe form of human rights violation of both girls and women who undergo it. On the other hand, objectivity for the purposes of the

⁷ Brennan, K.: *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7 *Law & Inequality* 367 (1989) p.367-398

⁸ Bibbings, see *supra* note 4, p.160

paper does imply non-engagement into what has primarily become a politicized debate between the West and the South on universality and cultural relativism and arguing in favor or against either side. Rather, objectivity will enable that the prevalent assumption - that international efforts failed in mobilizing domestic African efforts because, by being ethnocentric and sensationalist, they were simplifying the complex nature and context in which the practices exist, is critically examined. This will be done by distinguishing the *types of actors* and *types of strategies* they deployed.

Firstly, when it comes to the type of actors involved, it will be crucial for further understanding of the issue to notice that the international eradication movement is fragmented on two levels. On the first level, the movement consists of *human rights* actors and other actors, which will be referred to as the *mainstream* or *global* actors.⁹ International actors which are outside of the human rights movement in this case include authorities or decision-makers in other fields such as politics, economy or religion. Hence, even though the emphasis in the paper is on examining the role of human rights actors, the inherent power of political or economical actors cannot be disregarded¹⁰ and their significance will be discussed in light of their influence on domestic eradication efforts. Additional important reason for examining actors other than those

⁹ Similar view is formed by author Nancy Ehrenreich: Intersex Surgery, Female Genital Cutting, and the Selective Condemnation of “Cultural Practices”. 40 *Harvard Civil Rights-Civil Liberties Law Review*, (2005), p.81, 96-97. She distinguishes the streams within the international anti-FGM movement – she sees the mainstream movement as the most vocal stream consisting of Western feminists, Western political leaders and the media following their discourse. On the other hand, she sees most scholars and academics, as well as a number of activists who criticize the mainstream movement for its superiority attitude in treatment of the issue as a primitive cultural practice. In researching the works of academics for the purposes of this paper, it may be noted that for the most part, they approach the issue with cultural sensitivity and criticize the approach of other mainstream actors. Therefore, Ehrenreich’s description of the international movement as divided between two streams while perhaps generalization, is a realistic portrayal which helps to understand the conflicts and opposition within the movement both on the international level and local level. This paper will however develop a more precise distinction of according to the actors’ function within or outside the field of human rights.

¹⁰ Perhaps the most obvious example can be found in the universalist-relativist debate: even though this is primarily a human rights debate, the roots of it lie in the debates on power politics and political domination of the West over the “developing” world. This is to say that no human rights discourse can be examined in vacuum, since politics will always play a role.

from the human rights field is that they reflect on the actions of human rights actors and the latter are often mistakenly judged by the negative effects of the formers' actions. On the second level, the human rights movement itself can be divided between the formal and non-formal human rights actors.¹¹ The formal human rights movement can be described as formal because it has the authority over legal and policy creation,¹² while the non-formal human rights movement consists of academics, activists and non-governmental organizations in charge of advocacy.

Secondly, as for the type of strategies deployed, the paper will attempt to establish that those actors which constitute the formal human rights movement, unlike other actors in the abandonment movement, have not used coercion in their strategies to tackle female genital cutting. Here, a methodological framework developed by Elizabeth Heger Boyle, which will be presented in detail in Chapter 1, will be used as a basis for strategy analysis. Finally, the paper will attempt to establish that use of non-coercion in case of these practices given their culturally delicate context, is a precondition for success in motivating and engaging local activism. These premises can be tied to the main statement which the paper will follow: *the formal human rights system deployed non-coercive strategies in the movement to end female genital cutting. As opposed to the coercive ones, those are appropriate strategies because they are culturally sensitive.*

This research should improve the understanding of the role that human rights actors played in the human rights movement against female genital cutting. However, by establishing what the appropriate role of human rights actors is in this particular issue, this research can also be relevant to the general contemporary international human rights scene. We are witnessing strengthening and improvement of the human rights movement where more and more issues are

¹¹ This is implicated from the research conducted on the issue.

¹² For the purposes of this paper, those will be confined to the UN bodies and agencies.

being accepted as falling within the scope of human rights and becoming defined as legitimate subjects of the field. Parallel to this development is a growing backlash and opposition to universal concern for particular local issues¹³. Hence, it becomes imperative to preserve the legitimacy of formal human right bodies and clarify the roles which these and other human rights actors play, particularly in delicate human rights issues that arise within regional or national contexts.

While due to the scope of the paper it will not be possible to provide an exhaustive list of events, the paper will offer a comprehensive overview of major events which have become landmarks in the movement of abandonment of the practices of female genital cutting. Chapter 1 will give a definition and a background of the practice. It will further introduce its framework consisting of the main debates that have formed around the practice which is necessary for understanding the movement against it. Lastly it will introduce the politics of the movement. In laying out these relevant frameworks the chapter will mostly be based on the review of relevant literature, but the nature of the topic will demand a more critical analysis. Chapter 2 will examine the international discourse both from legal and action aspects; the latter will include both recent and contemporary strategies deployed by the human rights actors and global mainstream actors. Similarly, Chapter 3 will look at developments in the movement, but from the point of view of African legal and action framework. A distinction will be made between strategies on regional and national levels. Chapter 4 will serve as a synthesis of the previous chapters reexamining the importance of international movement and by looking at interaction between international and local and by discussing implications of the strategies which were previously laid out. Based on the established, Chapter 5 will offer conclusion and further recommendations.

¹³ This can be seen in the increasing frequency and intensity of debates on universalism of human rights values.

Chapter 1 – Conceptual Framework

This chapter will provide the conceptual framework surrounding the practice of female genital cutting and the movement against it. Firstly, the chapter will look at the definition and factual situation relating to the practice. Secondly, it will introduce a framework consisting of discussions and academic debates within which the general movement against the practice was developing. This will help the reader to develop an understanding of the complexity of issues surrounding the practices by pointing out some of the controversies that accompanied them. Lastly, the politics of the eradication movement will be introduced through outlining the strategic responses by different actors. This description of the politics of the movement will lay ground upon which further analysis in Chapter 2 and consequently, Chapter 4 will be developed.

1.1. General Information and Background

In describing the motivations and characteristics of the practice of female genital cutting, one author consistently uses the expressions “often, but not always” or simply “often”.¹⁴ On that note, it must be kept in mind that the variety of types of practices exists, as well as large difference in prevalence rates between the countries and a variety of cultures performing the practices. Additionally, it is also essential to understand how these factors, in combining with the often overlooked ones, such as the countries’ resources, their strengths in the international system or existence of different critical factions, affect the way a particular state deals firstly with the international response to FGC and secondly with FGC itself.

¹⁴ Boyle, see *supra* note 6; p.37-38

1.1.1. Definition of the practice

In defining the practice of the female genital cutting (in further text FGC)¹⁵, there is a consensus among scholars and organizations that there are different types of the practice varying in the degree of manipulation of female genitalia. Most academics, adopt the World Health Organization's (WHO) classification of FGC within four types:

Type I or clitoridectomy is defined as partial or total removal of the clitoris and/or the prepuce;

Type II or excision is defined as partial or total removal of the clitoris and the labia minora and/or the removal of labia majora;

Type III or infibulation is defined as partial or total removal of labia minora and labia majora with or without removal of clitoris and narrowing of the vaginal opening by stitching;

Type IV includes all other harmful practices done for non-medical purposes, but not limited to cutting, such as pricking, piercing, incising, scraping and cauterization.¹⁶

1.1.2. Prevalence of the practice

With the inclusion of type IV in the definition of FGC which is a fairly recent development,¹⁷ the number of countries where FGC is practiced has grown significantly higher than in the past.¹⁸ Most scholars again refer to the WHO's data when analyzing the spread of the practice. The most recent data gathered by WHO has been derived from the national surveys conducted on women and girls aged 15 – 49 in 27 African countries (from 2000 to 2006) and in

¹⁵ There have been many discussions even on the official term used to describe the practice. While international instruments and a number of scholars adopt "mutilation", another stream adopts "circumcision" or "surgeries". For the purposes of the paper, the practice will be named "cutting" mainly for two reasons. Firstly, in own opinion both "mutilation" and "circumcision" represent polarities of views, which have caused the friction between West and Africa in the first place. As the attempt of the paper is not to add further to the friction, a more neutral term, "cutting" is more appropriate in this sense. The second reason for use of this term has less to do with the political correctness and more with connotation that girls or women who underwent the procedure are mutilated. Identifying a person who underwent the procedure as mutilated stigmatizes the individual and can give rise to personal feelings of inadequacy and incompleteness. "Cutting" is therefore, more appropriate as connotes the seriousness of the practice while at the same time is free from the insensitivity towards the individual.

¹⁶ OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO: *Eliminating Female genital mutilation*. An interagency statement, (2008), p.4

¹⁷ Ibid, p.24

¹⁸ Banda, F.: *Women, Law and Human Rights: An African Perspective*. Hart Publishing, Oxford-Portland, Oregon (2005), p.209

Yemen (1997) and published by either Macro or UNICEF.¹⁹ According to these sources, estimated prevalence rates vary greatly from the lowest ones in Uganda (0.6%), Cameroon (1.4%), Niger (2.2%), Ghana (3.8%) and Togo (5.8%) to the highest ones in northern Sudan (90.0%), Mali (91.6%), Djibouti (93.1%), Sierra Leone (94.0%), Egypt (95.8%), Guinea (95.6%) and Somalia (97.9%). Other countries with high (over 50%) prevalence rates are Mauritania, Burkina Faso, Ethiopia, Gambia and Eritrea. The prevalence of FGC is below 50% in United Republic of Tanzania, Benin, Nigeria, Yemen, Central African Republic, Senegal, Kenya, Côte d'Ivoire, Guinea-Bissau, Chad and Liberia. Nonetheless, the practice is not exclusive to the African continent. WHO further states that some form of FGC has been documented also in India, Indonesia, Iraq, Israel, Malaysia and United Arab Emirates, however without any official estimates on the prevalence. Additionally, unofficial reports have been made on FGC occurring in Colombia, Democratic Republic of Congo, Oman, Peru and Sri Lanka.²⁰

Moreover, due to the migrant populations, the practice has spread worldwide increasing number of females undergoing FGC outside of their native country. Worldwide, WHO states that between 100 and 140 million of females have undergone one of the first three types of FGC – cliterodectomy, excision or infibulation. It is also estimated that around 90% of the cases fall within type I, type II or type IV of FGC while the most severe type, infibulation, comprises around 10% of total FGC cases.²¹

¹⁹ An interagency statement (2008), see *supra* note 16, p.29

²⁰ Ibid, p.30

²¹ Yoder and Khan in *ibid*, p.4-5

1.1.3. Justifications for the practice

It has been observed that the contextual variation of the practice “is as stunning as the temptation by outsiders to overgeneralize”.²² While different tribes practice FGC for different reasons, it is usually considered to be a cultural ritual deriving its power from symbolism and creating or strengthening women’s identities.²³ In some cases, the practice is considered to be an important factor in gender identity formation since by removal of the malelike genital parts (clitoris and surrounding tissue) a smooth scar tissue is created and considered to be feminine. In that sense, the procedure is seen as a mandatory alteration serving to make a distinction between the sexes and construct gender identity.²⁴

Additionally, in most communities, the practice is seen as a rite of passage for girls marking the point of transition from childhood to womanhood.²⁵ It links a girl to the role which other women in her culture play and in that sense serves as a safeguard of tradition and culture. As a part of the female rites of passage, the ritual conveys a visible mark of the individual girl’s new status as well as her community affiliation.²⁶ It is noteworthy to emphasize the aesthetic side of the ritual – many practicing communities regard smooth female genitalia as hygienic and beautiful while uncut ones are considered unnatural, ugly and animalistic.²⁷ Banda provides an array of additional explanations for the practice, such as controlling the growth of genitalia or belief in greater fertility.²⁸

²² Gruenbaum, E: *The female circumcision controversy: an anthropological perspective*, Philadelphia : University of Pennsylvania Press (2001), p.67

²³ Ibid, p.66

²⁴ Ibid, p.67

²⁵ Center for Reproductive Rights and RAINBO: *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*, ed. by Rahman, A. & Toubia, N, St. Martin’s Press (2001), p.5

²⁶ Gruenbaum, see *supra* note 22, p.71

²⁷ Bibbings, see *supra* note 4, p.155; also Gruenbaum provides an insightful discussion on aesthetics and body alteration among cultures, see *supra* note 22, p.71-75.

²⁸ Banda, see *supra* note 18, p.210-211

Often, performing FGC has been tied to religious reasons, nonetheless, taking into consideration that groups of varying religious beliefs engage in the practice, there is a firm consensus on the notion that none of the three major religious doctrines requires or proposes the cutting on females.²⁹ This is particularly important to emphasize in respect of the Muslim religion since proponents of the practice often invoke Islamic law in its support. Nonetheless, the academia agrees that such invocation is a result of misinterpretation of Islamic provisions.³⁰

The anthropologist Gruenbaum offers the explanation to most profound meaning of the practice – the one connected to honor and marriage. Virginity and marital fidelity are of utmost importance in many cultures and they connoted not only individual, but also family honor and decency. Misconduct therefore, especially by females, is highly sanctioned. Additionally, since women are believed to be weaker emotionally, men are often held responsible for preservation of family honor by controlling female behavior. Infibulation serves this purpose in so far as it represents a physical barrier to any intercourse and ensures a preservation of virginity. Excision as a removal of the most sensitive tissue - clitoris, on the other hand, is believed to reduce females' sexual desires and consequently, their inducement to premarital sexual relations.³¹ It is worth mentioning that it has been noted that men generally describe the role of infibulation in different terms than women do. While men generally see the practice as means to prevent promiscuity, women on the other hand invoke aesthetics and purity of the body as a preparation for marriage and reproduction.³²

²⁹ Gruenbaum, see *supra* note 22, p.219; Center for Reproductive Rights and RAINBO, see *supra* note 25, p.6; Bibbings, see *supra* note 4, p.153-154; Slack, A.T.: Female Circumcision: A Critical Appraisal, 10 *Human Rights Quarterly* (1988) p.446; Mackie, G. Ending Footbinding and Infibulation: A Convention Account. *American Sociological Review*, Vol. 61, No. 6: 999-1017 (1996), p.1008

³⁰ Center for Reproductive Rights and RAINBO, see *supra* note 25, p.6

³¹ Gruenbaum, see *supra* note 22, p.78

³² Boddy in Gruenbaum, see *supra* note 22, p.79

Even though FGC is usually seen as a symbolic initiation to the adulthood, the underlying purpose it serves is ensuring proper marriage by securing that the female traits which society perceives as fundamental to the male honor are left intact. In this view, FGC is clearly one of the means used by the society to keep its female members subordinate to the male ones. Still, some authors would claim that focusing on men and their oppressiveness disregards the significant roles and interests that women themselves have in the practice.³³ It has become common view that women in practicing societies support the practice by performing it or encouraging their daughters to undergo.³⁴

Yet this does not negate the premise of male oppressiveness. If we draw a conclusion from a widespread feminist argument that in constructing their identities females adopt the norms of the dominant reality, the one which is constructed by males, we can say that women are only perceivably free in adoption of their role in society, since this role only perpetuates norms established through male dominance. But this “false-consciousness” argument is not a single explanation as to why women themselves would be proponents of the practice – there is another factor which emerges from a concrete social and economic context which directly affects daily lives of women. Women are pressed by environments of economic dependence, poverty and lack of opportunities, in which their inability to own property severely limits their potential for independency.³⁵ Aware of these limitations, women wish to preserve own social and economic security, as well as that of their children. In that sense, there is nothing surprising about

³³ Korieh, C.: “Other” Bodies: Western Feminism, Race, and Representation in Female Circumcision Discourse in *Female circumcision and the politics of knowledge: African women in imperialist discourses*. Edited by Nnaemeka, O. Praeger Publishers, Westport, Connecticut, (2005), p.121

³⁴ Mackie states: “Virtually every ethnography and report states that FGM is defended and transmitted by the women”, see *supra* note 29, p.1003

³⁵ Gunning, I: Arrogant Perception, World-Travelling and Multi-Cultural Feminism: The Case of Female Genital Surgeries, 23 *Columbia Human Rights Law Review* 189, 227 (1991), p.216-219

succumbing to strong social pressures which are exerted on girls and women in order to perpetuate the practice.

1.2. Framework of Debates Surrounding the Practice

As noticed from the relevant works, the emergence of debates surrounding the FGC came about during the 1970s and initially, those centered on the wrongness of the practices. These initial responses mostly included stark Western opposition without actual inclusion of the views of the African actors. Even though some local African opposition to the practice existed at the time, it was not developed in an organized and prominent fashion.³⁶ In that sense, it would be accurate to conclude that the actual debate between West and South did not exist at the beginning; rather Western unilateral condemnation was dominating early global eradication movement.

One of the main reasons why the practice has not been transparent in Africa at that time was fear of unwelcome outsiders' condemnation. African societies have had wide experience of the ethnocentrism of Europeans and North Americans in their most destructive forms, which were disguised in rhetoric of helping the uncivilized in becoming civilized. Hence, from the perspective of African societies, the intention to downplay the extent and importance of the practice is not surprising.³⁷ This elitist and patronizing attitude of the Westerners who were seeking to enlighten the ignorant and barbarian, an attitude which was dominant at the emergence of the awareness of FGC, is highly insulting to the Africans because it fails to take into consideration the standing of the people themselves. In doing so, Western structures simply dismiss the whole culture as barbarian and urge it to transform according to own model.

³⁶ Banda says that voices of African women, both local and diaspora became prominent in debates over time, but the years of their published works indicate that this happened only in the mid-1980; in Banda, see *supra* note 18, p.216

³⁷ Gruenbaum, see *supra* note 22, p.16

While some proponents of the legalization of the practice might always exist, most of the relevant clashes between local and international actors cannot be defined as clashes between the proponents and opponents of the practice. Rather, the typical collisions in the discourse arise in the form of a particularly strong critique of the international involvement *per se* or of the manner in which international community involves itself in the delicate issue that is believed to be of local concern only.³⁸ It is crucial for an understanding of these disagreements or in academic circles, debates, to note that local actors view international ones as outsiders. While the starting point in all debates is perhaps the oldest human rights debate – the one on universalism and cultural relativism, the particular issues of appropriateness of using culture and tradition as justification for FGC and Western feminist arguments and human rights arguments in anti-FGC discourse will be explained in more detail.

1.2.1. Arguments relating to culture and tradition

Given the wide extent of the academic debate on universalism of human rights and cultural relativism and without attempts to underscore its importance, the position of the paper is that discussion in relation with FGC is somewhat outdated. Even though the argument of cultural defense is still used by proponents of the practice occasionally, it was foremost employed by local actors resisting to a change in the early movement against the practices. The main argument which was arising in defense of the practice was that it is a cultural issue, implying that it constitutes an integral part of a culture itself and it should not be interfered with. A more updated

³⁸ This is best explained in Nnaemeka, O: African Women, Colonial Discourses, and Imperialist Interventions: Female Circumcision as Impetus in Female circumcision and the politics of knowledge: African women in imperialist discourses. Edited by Nnaemeka, O. Praeger Publishers, Westport, Connecticut, (2005), p.27-42, see *infra* p.21&22

version of this argument is that in the name of equal worth of cultures, *outsiders* should not interfere in issues specific to one culture.³⁹

Given the above, it is necessary to present the main arguments used to advance the view that human rights as universal values cannot be subjected to the test of culture and tradition. In order to do so, firstly an important distinction between culture itself and the particular behaviors which are justified by the cultural beliefs and norms should be made. It is then seen that most behaviors which are categorized as “cultural” on the basis of being unique to that culture are in reality a result of wide-spread, if not universal, prejudicial ideas about women and women’s roles. For example, when looking into another similarly harmful traditional practice of footbinding in China, which is nowadays extinct, the same line of justifications for existence was given as in the case of FGC: ensuring proper marriage by enforcement of female chastity and enhancement of sexual arousal and pleasure of males.⁴⁰ Hence, it can be stated that female subordination to male interests was rather a universally spread concept, but the measures employed by societies to concretize its norms varied in their form and/or degree of severity. This realization not only negates the uniqueness of culture, but more importantly draws attention to the need for a more universal approach to a globally held biases resulting in discrimination. Additionally, a clear distinction between culture and concretizations of culture is significant because it guarantees that neither will a practice be protected on grounds of its specificity and uniqueness, nor will an entirety of a particular culture come under attack because it supports behaviors reinforcing globally persistent prejudice.

³⁹ “(...) perhaps it is time for those who care about the accuracy of local representations in public policy debates to insist that the voices of the many African women and girls who value the practice be heard and acknowledged (...)”, in Schweder, see *supra* note 1, p.194

⁴⁰ Mackie, see *supra* note 29, p.1001

Another argument against cultural defense is tied to the dynamic nature of culture. Practices such as previously mentioned footbinding or even slavery were also once perceived as cultural, yet from today's perspective, no arguments in favor of those practices sound convincing. What is more, the societies which used to practice those behaviors, still managed to preserve their distinct cultural identities despite ceasing to engage in the practices. This tells us not only that culture is dynamic, but also that particular behaviors which are rationalized by culture and perpetuated by tradition do not constitute an integral and essential part of cultural identity.

1.2.2. Different human rights approaches

The formal inclusion FGC under the human rights framework happened gradually and is a fairly recent development, as will be described in Chapter 2 in greater detail. This inclusion represents the most progressive framework in the movement against FGC because it enumerates wholeness of the injuries resulting from the practices, gives the movement a legitimate universal value and provides a basis for both domestic and global action. Nevertheless, specific human rights approaches have either in practice or in academic debates proved to be problematic. In this sense, while Chapter 2 and Chapter 3 will discuss in detail how specific legal instruments treat FGC, this section will be dedicated to the implications that arise when identifying it one way or another as discussed extensively in academic debates. Over time, as it is visible from the *Cairo Declaration for the Elimination of FGM*, four different approaches have been crystallized within the human rights framework: health, child's rights, violence and equality and discrimination.⁴¹

⁴¹ Cairo Declaration for the Elimination of FGM, Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation, Cairo (2003), para 1

The initial approach to the practice was through a health discourse and only later, relating specifically to the right to health. The gravity of consequences of FGC has been discussed extensively in the literature and can be summarized as: hemorrhage, infection and urinary retention. These immediate consequences could become fatal if not treated. Furthermore, there are also serious long-term effects – build up of urine and menstrual blood that may lead to chronic infections, variety of obstetric complications as well as profound impact on intercourse and sexuality in general.⁴² The health approach was firstly embraced by the formal international human rights community as it was seen as the most neutral and acceptable approach to a culturally sensitive issue. Nevertheless, the initially overlooked insufficiency of this approach was obvious when proponents of the practice, quite expectedly started arguing for medicalisation of the practice. For opponents of the practice, the compromise such as this one out of the question, as legitimizing the practice under controlled medical conditions would not only obstruct the efforts leading to its elimination, but also avoid the real concern – issue of gender-based violence.⁴³ Another important but overlooked concern when discussing the inadequacies of the health approach is that it relied on exposing the most serious health consequences mostly associated with infibulation, which made women who experienced milder forms of cutting feel it was false and exaggerated.⁴⁴ This means that international tendency to sensationalize by emphasizing the worst scenarios, undermined the credibility of this approach and distanced the target population which was unable to relate to the discourse.

The second approach concerns the rights of a child. While the exact age of girl undergoing the practice varies depending on local circumstances, almost as a rule, FGC is

⁴² Wasunna, A: Towards Redirecting the Female Circumcision Debate: Legal, Ethical and Cultural Considerations, *McGill Journal of Medicine*, Vol 5, No. 2; 104-110 (2000), p.107

⁴³ Ibid, p.107

⁴⁴ Boyle, see *supra* note 6, p.140; Shell-Duncan, B.: From Health to Human Rights: Female Genital Cutting and the Politics of Intervention. 110 *American Anthropologist* 2 (2008), p.226

performed on girls under 18 years of age.⁴⁵ The painfulness, severity of the consequences and the irreversible nature of the procedure, at first instance provide a clear case for using child's rights approach. However, the problems arise with this approach when trying to draw a line to parents' autonomy to decide what is in the best interest of their child. The principle of the best interest is a shaky ground when it is apprehended from the perspective of practicing societies – the best interest of a female child might be a safe future and economic security, conditions that would be realized only if a girl is married. Western interpretation implies that parents do not know what is in their child's best interest or that they are abusers who do not wish well to their children.⁴⁶ The above implications are drawbacks to child's rights approach in a sense that it did not resonate within the practicing communities.

Violence and equality and discrimination approaches might be examined in combination given the similarity of their nature. The most recent *Interagency Statement* by the leading international organizations on the issue invoked primarily principles of equality and non-discrimination on the basis of sex, because the practices are caused by deeply rooted gender power imbalances and inequalities.⁴⁷ Yet, this firm position is confronted by some authors who argue that practices do not easily fall within the gender-specific human rights violations as they cannot be seen as a violent coercion of females by males.⁴⁸ Moreover, the *Interagency Statement* declares that the practice constitutes torture or cruel, inhuman or degrading treatment or

⁴⁵ In some communities, FGC is performed on infants, in some on the wedding night of a young girl. Still, most authors agree the most common ages are between 2 and 8 years; Gruenbaum, see *supra* note 22, p.2; Slack, see *supra* note 29, p.443; Boulware-Miller, K.: *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, 8 *Harvard Women's Law Journal* (1985), p.157; Breen, C.: *The standard of the best interest of the child: a western tradition in international and comparative law*, the Hague: Martinus Nijhoff Publishers (2002), p.90

⁴⁶ Breen, *ibid*, p.131-132; Center for Reproductive Rights and RAINBO, see *supra* note 25, p.25-26: the practitioners, even if aware of some of the harms of the practice, generally consider that its benefits outweigh the harms. Similarly, parents are usually unaware of the discriminatory implications of the practice and arrange it for girls in order to obediently meet cultural obligations and secure their social acceptance.

⁴⁷ 2008 Interagency statement, see *supra* note 16, p.10

⁴⁸ Obiora, see *supra* note 1, p.260

punishment and represents a severe threat to women's physical and mental health. The challenge to employing the torture argument arises from the requirement of intent.⁴⁹

The above review of debates on human rights approaches to FGC show the extent of complexity surrounding the issue. Not only are there opponents of abandonment who need to be persuaded by the movement, but the human rights movement itself had a difficult time finding a adequate human rights approach which could not be countered by supporters of the practice. As it can be noted both from the *Cairo Declaration* and the 2008 *Interagency Statement*, the current movement encompasses all the above human rights approaches. Despite the weaknesses that every approach exhibits, embracing the comprehensive discourse which would rely on all those approaches is a strategic advancement. Not only does it avoid the rhetoric directed against a single group of actors, but it also makes a weaker case from the practice supporters' arguments. Importantly, the comprehensive approach also opens choices to local activists to identify the approach that resonates most within their local context.

1.2.3. Feminist debates on the practice

The early movement was marked by active interference of Western feminists who recognized FGC as an illustrative although shocking example of the male domination and consequently felt the responsibility towards saving the victims of the practice. This approach did not receive acceptance from the local feminists. The debate between feminists from the West and those from Africa centers on the question of who should be fighting FGC and who should be a representative of the movement. The discussion on the involvement in the movement will be presented because this question is of central importance to the paper, and because the arguments against Western feminists' involvement are still present even in later in the movement.

⁴⁹ This will be elaborated later on in Chapter 2.

The root of the clash can be noticed in the double standard which has been usually labeled as hypocrisy of the West – while experiencing continuous problems of gender inequality and women’s rights violations at both, home and workplace, the Western nations choose to treat their norms and values as a role model for societies they label undeveloped.⁵⁰ For example, many Westerners are unaware that genital surgeries were practiced on females in 19th century in Europe in order to cure excessive masturbation and nymphomania in selective cases.⁵¹ Additionally, the main argument of feminists in the West that genital cutting is to be eradicated because it represents the worst form of male dominance over women concretized in controlling their sexuality, indeed loses much of its strength when it is compared to the practices women frequently perform in Western culture such as plastic surgeries, liposuction or vagina reconstructions. Many academics⁵² have argued that those practices are comparably painful and present comparably high health risks, while performed without any real health benefits and under socially pressing circumstances in which male norms dominate female behavior. Additionally, there is another striking example of non-consensual genital cutting in the US, which has been proven to be harmful – infant intersex surgeries.⁵³ All these examples do not only disapprove the claim that harmful bodily disfigurement and dismissal of importance of female sexual pleasure does not happen in the West, but indeed show unawareness of the Westerners of own comparable cultural contexts.

Another important point is that because of a tendency to single out the problem of cutting, Westerners create a sensationalist approach which disregards other interconnected and

⁵⁰ Obiora, see *supra* note 1, p.329: “Throughout the years in Africa, outside interventionists (...) continue to presume that it is their duty as the ‘advanced’ to elevate and enlighten the ‘backward’.” But at the same time: “(...) it is not as if women in the West can boast of originating choices that are ‘free’ or unencumbered by casual necessity”, p.317

⁵¹ Gruenbaum, see *supra* note 22, p.9; Gunning, see *supra* note 35, p.206-209

⁵² Gunning, see *supra* note 35, p.212; Obiora, see *supra* note 1, p.318-323; Ehrenreich, see *supra* note 4, p.91; Bibbings, see *supra* note 9, p.161

⁵³ Ehrenreich, see *supra* note 4, p.92

women's issues such as education, health and poverty.⁵⁴ Western unawareness of the priority concerns is probably coupled with unfamiliarity with importance of culture and traditions in African societies, as well as with concepts of duties and communitarian spirit. Hence the Western heavy emphasis on sexuality⁵⁵ and individualism has not found a fertile ground in local activism.

Activists and scholars in Africa and Middle East have not stayed indifferent to the attitude of their counterparts in the West. While their reaction was harsh and unsympathetic, it must be emphasized that the disagreement here was not about the need to put an end to the practice itself. The disagreement and objections of Africans came from the strategies and methods used by the West to bring the attention to the issue – strategies and methods which were labeled insensitive and hegemonic as they turned people into objects through imperialist process which silenced them and exhibited them to the outside world.⁵⁶

In this regard, the most significant was the statement by the Association of African Women for Search and Development which sent the ultimate message to Westerners that FGC is a problem of African women and that the change will be possible only with the conscious participation of women in Africa. The Association also expressly stated concerns regarding outsider's contributions:

(...) new crusaders (...) have become insensitive to the dignity of the women they want to "save". They are totally unconscious of the latent racism that such a campaign evokes in countries where ethnocentric prejudice is so deep-rooted. And in their conviction that this is a "just cause", they have forgotten that these

⁵⁴ Korieh, see *supra* note 33, p.121; This is a highly relevant critique coming from the Africans. Indeed when looking at writings of African authors on the issue, it is frequently presented in the context of other human rights issues that concern women in their regions such as early marriage, reproductive rights, polygamy, education, property rights, poverty etc. Organizations such as Inter-African Committee, while focusing on genital practices, also do not look at the issue in isolation from other traditional practices detrimental to women. This is a highly relevant critique coming from the Africans, as it will be shown later on in the paper.

⁵⁵ Obiora calls this "the fetishization of sexuality", see *supra* note 1, p.298

⁵⁶ Nnaemeka, see *supra* note 38, p.29

women from a different race and a different culture are also human beings, and that solidarity can only exist alongside self-affirmation and mutual respect.⁵⁷

Following on this stark domestic opposition to the inconsiderate nature of the involvement of the West, some activists have taken the lesson. For example, Gunning's approach has contributed to the reconciliatory tone and building of understanding between the two sides. She has developed a model for a sensitive approach to discussing the cultural issues.⁵⁸ This is a "world traveling approach" which is based on the principle of putting oneself in the place of other person before judging them and its methodology comprises of a three-level strategy: understanding own historical background, seeing oneself from the perspective of other women and seeing the other women through her own perspective.⁵⁹

In conclusion, while Western activists and scholars have been frequently failing in applying the sensible and understanding approach which would be accepted by Africans and developed into constructive action, the question to be posed is how similar or different was the approach of other international actors? Did the feminist discourse influence international human rights organizations' efforts? What was the reaction of actors in concerned countries to these approaches? Finally, how can we define the appropriate international strategy to successfully deal with the issue, which will not be objected by the affected societies, but embraced as good-faith and valuable contribution to the eradication efforts and local sustainability of those? The question guiding the next chapters can be defined as: *how appropriate and effective were initiatives of international human rights actors in tackling the issue of female genital cutting in Africa?*

⁵⁷ AAWORD "A Statement on Genital Mutilation" reproduced in Steiner, H and Alston, P: International Human Rights in Context: Law, Politics, Morals (Oxford, Clarendon Press, 2000); in Banda, see *supra* note 18, p.213

⁵⁸ Gunning, in Banda, see *supra* note 18, p.217

⁵⁹ Ibid, p.217

1.3. The Politics of the Movement

The initiatives of international actors in tackling the FGC undeniably have to be seen from the larger political context. This is so because the influence which global policymaking and activism had or failed to have on national systems is a result of interplay of factors such as political interests and power. Therefore, the politics of the movement will be a larger framework under which the human rights movement on FGC eradication will be discussed.

As already briefly presented in the Introduction, this section will identify the main actors of the international movement assuring that the difference between the actors of the international human rights and the global mainstream movement is noted. Specific organizations and entities will be classified accordingly. Following, a model developed previously by Elizabeth Heger Boyle for classification of responses of global actors to the practices will be presented. This will look at the two types of strategies used by the actors previously stated. Additionally, rationale on why particular types of actors used particular type of strategies will be presented, but this political analysis will be built upon from the human rights perspective.

1.3.1. Actors in the movement

It is of primary importance to define the terms international and local in the context of this particular human rights movement. Unless otherwise specified, the term *actors* will commonly refer to both state and non-state actors. When referring to the communities, governments, NGOs and activists within the practicing states, the terms *local* or *domestic* actors will be used. On the other hand, the term *international* will encompass all actors who, being positioned outside of the states, nationals or portion of nationals of which practice FGC, had a direct or indirect effect on related policy or behavior change. Among those are both human rights actors and global mainstream actors.

International human rights actors are foremost formal actors which have developed an official strategic approach to dealing with FGC elimination. Additionally, those actors, it can be said, have a large influencing force on national policy makers.⁶⁰ When referring to FGC, the central role in international policymaking belongs to the United Nations with its agencies: United Nations Children's Fund (UNICEF), World Health Organization (WHO) United Nations Development Fund for Women (UNIFEM) and United Nations Population Fund (UNFPA); Charter-based bodies: Human Rights Council and previously, Commission on Human Rights; as well as treaty-based bodies: Human Rights Committee (CCPR), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee on the Rights of the Child (CRC).⁶¹ Therefore, it can be seen that international policymaking is reserved for particular international governmental organizations (IGOs). Other international human rights actors who, even though not having authority to create official policies, still have tremendous effect through their advocacy and action are: international non-governmental organizations (INGOs) with human rights agenda and academia circles in the field. Those are non-formal human rights actors.

On the other hand, global mainstream actors are those who cannot be seen as having direct interest in eradication of the practices, given that their missions are not directly concerned with human rights. Rather, they have joined the cause after being introduced to the issue by the human rights actors. Despite their somewhat indirect involvement, their effects should not be

⁶⁰ "The **United Nations** plays a crucial role in providing international standards and promoting and undertaking research, in collaboration with academic and development partners, to ensure that standards are grounded in sound evidence. United Nations agencies are particularly well placed to promote cooperation and coordination among all actors. Several United Nations bodies are tasked with monitoring the implementation of international legal commitments to protect and promote human rights for all without discrimination on any basis. The role of **development cooperation agencies** in supporting international and national initiatives by providing technical and financial support is also essential to achieve the common goal of ending female genital mutilation." (emphasis in original), in 2008 Interagency Statement, see *supra* note 16, p.20

⁶¹ The Office of the High Commissioner for Human Rights website: *Human Rights Bodies*, retrieved on 20 November 2009, from <http://www.ohchr.org/EN/HRbodies/Pages/HumanRightsBodies.aspx>

underestimated given that they have power to relate their policies to specific issues such as FGC and/or power to reach wide audiences. These actors include economic and financial IGOs such as International Monetary Fund (IMF) and the UN's World Bank, as well as the European Community or currently, European Union (EU), the United States and international media.⁶²

1.3.2. Strategies employed by actors

Two types of strategy are used by the international actors in attempting to abandon the harmful practice of FGC – non-coercive and coercive.⁶³ The first type relates to the use of methods which are more cautious and leave deference to the governments of the practicing states. Their goal is not to force these states on compliance with international norms, but rather to convince and facilitate their voluntary acceptance of the norms. Such strategies include: organization of conferences which facilitate exchange of ideas and experiences between global and local, producing recommendations and funding health programs, projects or research addressing FGC. Additionally, non-coercion in legal sense is related to promotion of ratifying international legal instruments.

On the other hand, coercive strategies through confrontation and conditioning call for a prompt reaction of the states in order to bring local norms into compliance with global ones. In the case of FGC movement, such strategies were also frequently employed by international actors. Those included: colonial prohibition laws, linking financial aid to enactment of anti-FGC laws and embarrassing the governments for existence of the practice. The essential difference

⁶² Due to the limited scope of the paper, only two actors' strategies will be elaborated: the US and the EU. Even though the US is a national entity it will be included in this analysis given that the effects of its national policies resulted in truly international reach .

⁶³ This is the methodological framework established by Boyle, see *supra* note 6. She uses the terminology of coercive and assimilative strategies. However, the term “assimilative” seems to imply that such strategies were successful in assimilation of international norms in local institutions. While assessing the success of both approaches described here is one of the aims of this paper and consequently will be discussed later on, this paper will use the terms “non-coercive” and “coercive” as it is believed that they best describe the nature of action without any implications of their outcomes.

between the two approaches is that non-coercive strategies rely on “legitimation of the dominant values” within local contexts and by the local actors themselves, while coercive ones require domination over local actors.⁶⁴

1.3.3. Use of strategies according to the type of actors

In answering the question which strategies were employed by which type of international actors, it is helpful to look at the organizational structure and at the extent of political power an entity perceives to have. It should be noted that following are conclusions which were established by Boyle, yet they will be adjusted to human rights perspective and treated as assumptions to be further verified in Chapter 2.

Certain organizations are, because of their structural dependency on national politics, more influenced by the principle of national sovereignty than others.⁶⁵ For example, because their membership is voluntary, the existence of international governmental organizations (IGOs) depends on the respect of the member states’ sovereignty. As employing non-coercive strategies would not jeopardize the autonomy of the individual states and cause diplomatic controversy, this is the type of strategies that would be used by IGOs.⁶⁶ As established earlier in the section, formal human rights actors are particular agencies and bodies of the UN, the largest global IGO. From this follows that formal human rights actors have been employing non-coercive strategies in supporting the opposition movement to FGC. On the other hand, the existence of non-governmental organizations is justified by higher moral ideals, pursuit of which implies direct confrontation with norms established by authorities.⁶⁷ Their legitimacy is hence judged by how strongly they advocate for change. Following this rationale, it can be established that INGOs, in

⁶⁴ Ibid, p.67

⁶⁵ Ibid, p.17

⁶⁶ Ibid, p.63

⁶⁷ Ibid, p.63

this case comprising non-formal human rights movement, would be more likely to use the coercive strategies towards the governments.

First assumption therefore is that formal human rights actors used different type of strategy in approach to the goal of eradication of FGC eradication than other human rights actors, the non-coercive strategy. The rationale above however, implicates that this happens only because the two types of actors have different organizational structure. An element that needs to be added would stress the perceived authority of the UN bodies in the human rights field. Awareness of related controversies prevented any official action which could be interpreted as an imperialistic value judgment on a particular culture. Hence, it could be said that non-use of coercion in their approach for formal actors was indispensable to preserve the legitimacy of the human rights field.

When it comes to the global mainstream actors outside the human rights stream, such as the EU or the US they are clearly of different entity structures making generalizations quite difficult. But, following the above rationale, it can be assumed for a time being that the above actors do not derive power and legitimacy from the membership of individual states affected by FGC. Moreover, the EU and the US political authorities perceive their entities as actors of great political and economic power which lessens their regard for autonomy of other nations. Second assumption therefore is that international mainstream actors in the eradication movement generally used coercive strategies, because neither the structure of their entity or their perception of where they belong in the global order requires sensitivity towards individual practicing states.

This chapter has showed that female genital cutting is much more than a widespread harmful practice affecting a substantial part of the female population worldwide. In politics it

has been used as cultural and identity issue serving as a defense from the Western neo-imperialism and domination bringing in question the universalism of human rights values; in human rights field it spurred many debates as to which approach should be taken to counter the practice; in feminism it raised questions about the authority to speak on behalf of other women.

Given that all these issues and circles affected the abandonment movement, analysis of the political context of the eradication movement shows that human rights was only one stream within it. The chapter also provided a basic analysis of politics relations within the movement, which are founded on different interests and power attributed to different actors. This provided space for developing two main assumptions. Chapter 2 will examine whether indeed international human rights movement was fragmented in sense that formal human rights actors employed non-coercive approach while non-formal human rights actors employed coercive approach to locals. On the second level it will look at the effects of action of global mainstream actors and examine whether they indeed employed coercion in their FGC eradication approach.

Chapter 2 – International Discourse

After the contextual basis of the FGC has been provided and the movement against it clarified in light of actors and strategies, this chapter will be dedicated exclusively to examining the international discourse on eradication of the practice. International community in the case of FGC and particularly American and other Western nations' perspectives has had an immense role in shaping anti-FGC politics in African states.⁶⁸

This chapter will start by laying out the international legal framework, which is entirely under the auspices of the international formal human rights actors. It will discuss to what extent it can be useful in fighting the practice. Continuing on the legal framework of the human rights movement, we will look at the actions of the human rights movement. Separately, the chapter will look at the action framework of global mainstream actors. The purpose of the chapter is to establish the fragmentation of the global eradication movement by proving the assumptions developed in Chapter 1. Moreover, by looking at both streams of the movement at early stages and contemporary times, the additional purpose of the chapter will be to note the changes in approaches throughout the time.

2.1. International Legal Framework.

It is important to establish the basis in the international legal framework which could be used in work on eradication of FGC. More specifically, human rights approaches (discussed in Chapter 1) are formed on the basis of human rights norms which are articulated in the international instruments discussed below. The importance of the international norms is

⁶⁸ Boyle; E. H. & Preves, S. E.: National Politics as International Process: The Case of Anti-Female-Genital-Cutting Laws, 34 *Law & Society Review* (2000), p.732

undisputed because they give legitimacy and provide a basis for action to the local advocates who are working on making own governments accountable for human rights protection.

None of the major international legal instruments mentions FGC as a rights violation expressly. Still, the practice is clearly implicated in many provisions of the internationally accepted legal norms. The relevant norms are found in the following documents: Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social, Economic and Cultural Rights (ICSECR), Convention on Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁶⁹ Within the international framework, FGC is implicated either from the context of broadly stated right such as the right to life, liberty and security, within even broader principle of non-discrimination, or as an explicit mention of discriminatory or harmful traditional practices.

The text of the Universal Declaration of Human Rights (UDHR) sets out the principle of freedom from discrimination based on sex, among other grounds,⁷⁰ the right to equality,⁷¹ the right to life, liberty and personal security⁷² and the right to adequate standard of living for the health and well-being.⁷³ UDHR is a non-binding legal instrument, yet it is one of tremendous political influence. It may be said that, considering the fact it has served as a basis for all other legally binding instruments, the UDHR is a document of particular authority in the field of human rights.

⁶⁹ Despite the paper's position that the practice of FGC does not fulfill the intent requirement of the CAT, it is noteworthy to mention it because this serves to illustrate one of many departing points of actors (both international and local) in their convictions.

⁷⁰ UDHR, Art.2

⁷¹ UDHR, Art.1

⁷² UDHR, Art.3

⁷³ UDHR, Art.25

International Covenant on Civil and Political Rights (ICCPR) confirms the principle of non-discrimination based on sex,⁷⁴ equality⁷⁵ and the right to liberty and security.⁷⁶ It also contains provisions on obligation of states to prevent and punish violations committed by the non-state/private actors⁷⁷, which is particularly relevant in case of performing FGC. This means that international community mandates to states the requirement to undertake positive obligations in order to protect individual rights and freedoms contained in the Covenant. Most importantly, the ICCPR is a legal instrument with binding force on ratifying states and the enforcement mechanism in form of not only state reporting, but also individual communications from victims of violations.

International Covenant on Social, Economic and Cultural Rights (ICSECR) also reiterates the principle of non-discrimination based on sex,⁷⁸ emphasizes the dignity of the human person⁷⁹ and the right to highest attainable standard of health.⁸⁰ While ICSECR has a binding force on the ratifying states, its shortcoming is that this instrument currently lacks enforcement mechanism beyond the periodical state reporting system.

Convention on Elimination of Discrimination against Women (CEDAW) naturally provides a more elaborate definition of the term “discrimination against women”,⁸¹ but importantly, in this context it adds to the protection of women from the practice by explicitly expressing the obligation of State Parties:

⁷⁴ ICCPR, Art.2(1)

⁷⁵ ICCPR, Art.3

⁷⁶ ICCPR, Art.9(1)

⁷⁷ ICCPR, this is implicated in the language of Art.2(1): “to *ensure*”; but also Art.2(2): “...each State Party to the present Covenant *undertakes* to take the necessary steps...to adopt such laws or *other measures* as may be necessary to give effect to the rights recognized in the present Covenant” (emphasis added).

⁷⁸ ICSECR, Art.2(2)

⁷⁹ ICSECR, Preamble

⁸⁰ ICSECR, Art.12

⁸¹ CEDAW, Art.1: “The term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

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.⁸²

Despite strong protection that CEDAW affords to women, its legal authority is somewhat weakened by the fact that it remains an instrument with the highest number of reservations.⁸³ Its weakness in this sense means lack of international consensus and therefore, difficult enforcement internationally.

Similarly, the explicit address of the harmful traditional practices can be found in the Convention on the Rights of the Child (CRC), an instrument which has the widest worldwide ratification.⁸⁴ State Parties are called to:

(...) take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.⁸⁵

CRC also contains two principles which have raised discussions on whether the complete ban on the practices of FGC would be in compliance with the Convention. The principles of the best interest of a child and the principle of child's evolving capacity are implicating questions on what exactly constitutes the best interest of a girl child in this issue and whether a girl child should be given an opportunity to make a decision affecting own life even if it is in the form of consent to the harmful practice.⁸⁶

⁸² CEDAW, Art.5(1)

⁸³ Despite questionable legitimacy of broad reservations mostly relating to assertion of Sharia Law supremacy over fundamental principles of the instrument, such as non-discrimination, a great number of reservations seems to weaken the instrument's force; in Center for Reproductive Rights and RAINBO, see *supra* note 25, p.59

⁸⁴ As of October 2009, only two countries – Somalia and the United States have not ratified the Convention; *The United Nations Treaty Collection*, Status of Treaties, Chapter IV: Human Rights retrieved 20 November 2009 from http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

⁸⁵ CRC, Art.24(3)

⁸⁶ An in-depth discussion on how those two principles relate to the practice of FGC can be found in Center for Reproductive Rights and RAINBO, see *supra* note 25, p.30

Some have argued that FGC can even fall under the framework of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁸⁷ Yet, the first requirement for the act to be considered torture under the Convention is the existence of the intention to inflict suffering.⁸⁸ Given the earlier comments on good intentions of family members who make the girls undergo the practice, this paper will adopt the view that this requirement in most cases of FGC is not fulfilled. Nevertheless, it is noteworthy to mention that 2008 General Comment No.2 of the Committee against Torture, in defining the States' obligation to perform due diligence in order to prevent ill-treatment by the non-state parties, states that the Committee has previously applied this standard when examining States parties' failure to prevent and protect victims from gender-based violence, including FGC.⁸⁹

While it can be noticed that none of legally binding instruments specifically mentions FGC as a form of violence or discrimination of girls and women, there are various supporting documents that attest to this. For example, in 1990 CEDAW has issued a specific recommendation to the issue of FGC being a matter of gender discrimination.⁹⁰ Further on, in 1993 the General Assembly became explicit in including FGC in the term "violence against women" in the Declaration on the Elimination of Violence against Women.⁹¹ Importantly, definition of violence contained in the Declaration does not have the requirement that the harm is

⁸⁷ Hess, J.R.: United States and Africa on FGM: cultural comparatives, resolutions, and rights, 10 *ILSA Journal of International & Comparative Law* (2004), p.591-592

⁸⁸ CAT, Art.1(1)

⁸⁹ Committee against Torture: General Comment No.2, CAT/C/GC/2 (24 January 2008), section IV. *Scope of State obligations and responsibility*, para 18 retrieved 20 November 2009 from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>

⁹⁰ CEDAW, General Recommendation No.14 (9th Session, 1990): Female Circumcision, A/45/38 (General Comments) retrieved 20 November 2009 from <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

⁹¹ Art.2(a): "Violence against women shall be understood to encompass, but not be limited to, the following: Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation (...)" General Assembly resolution 48/104 of 20 December 1993 retrieved 20 November 2009 from [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en)

inflicted intentionally⁹² thus indicating a stricter approach. Additionally, in her reports, the Special Rapporteur on Violence against Women, Radhika Coomaraswamy was regarding the practice as an act of violence against women.⁹³

Overall, a firm argument can be made that the nature of FGC makes it a clear violation of all of the above international instruments. The invasive nature of the procedures which can leave serious physical, mental and emotional consequences certainly invokes general provisions of the right to health, the right to liberty and security of the person, as well as the broader right to bodily integrity. Given that in extreme cases the practice could result in death, it might extend to the implication of the right to life. Since the procedure is performed only on females⁹⁴, general provisions of freedom from discrimination are implicated. Personal health risks, lack of choice and discriminative treatment give rise to violations of personal dignity.

Nevertheless, while an argument can be made that FGC is a clear violation of international treaties, the fact that this is a subject left to legal argumentation and interpretation means that international human rights bodies were not specific enough to prevent confusion in legal positioning of the practice. The realistic explanation for non-explicitness in the provisions of basic instruments such as ICCPR or ICESCR is in a simple fact that those instruments predated global awareness of the practice. Even so, non-inclusion in the more recent CEDAW (adopted in 1979) and CRC (adopted in 1989) despite the presence of anti-FGC advocacy, speaks to a highly careful approach of the formal human rights bodies to the issue. However, still more recent developments in the international human rights policy making show a stricter

⁹² Center for Reproductive Rights and RAINBO, see *supra* note 25, p.25

⁹³ Ibid, p.25

⁹⁴ The discussion on differences and similarities between male circumcision and female genital cutting is beyond the scope of this paper. However, the stand taken here is that even in the case of the milder form of FGC – cliterodectomy, the procedures performed on male and female children are different in their severity as well as purpose and cannot be rationally compared.

approach in various General Comments and Recommendations. This stricter approach refers to not only to explicit mention of FGC as violation of women's rights, but also to its inclusion in practices constituting violence against women.

In conclusion, while over time there has been a notable change in the specificity of international policy on the issue, this change is insufficient for providing a firm legal basis to fight the practice. This is even clearer when noticed that specificity can be found only in documents forming the *soft law*, meaning those which do not have force to impose any explicit legal obligations on state actors.

2.2. International Action Framework

The following two sections of the chapter will provide overview of the specific actions taken by firstly human rights actors in the movement against FGC and secondly, by the global mainstream actors. Policy will be treated as action for this purpose since it indicates the official standpoint of the actors towards the issue.

2.2.1. Human rights actors

Both formal movement represented by IGOs and non-formal movement represented by INGOs had a direct input in the FGC abandonment campaign. Despite deploying different strategies, their efforts were intertwined to a large degree. Hence, the section will provide an overview of organizations' efforts in the abandonment movement in combination.

2.2.1.1. Early agenda of human rights actors

The awareness of FGC started emerging in the international arena in the early 1950s.⁹⁵ While NGOs were responsible for spreading the awareness about the practice in human rights circles, the same cannot be said for the formal actors. The UN agencies and bodies took a completely non-interferential attitude towards the practice. This is clearly visible from the double refusal in 1951 and 1961 of WHO to undertake a health survey on girls affected by the practice declaring FGC a social and cultural issue which is beyond the competence of WHO.⁹⁶ Additionally, UNICEF refused to undertake any action until 1980 supposedly due to the need for cultural sensitivity.⁹⁷ The reasons for refusals were differently interpreted, but a general justification for inaction was that international intervention would be considered a breach of national sovereignty of particular African nations. Additional explanation for inaction was that the perceived cultural sensitivity drove UN agencies to delay their consideration of practice.⁹⁸

On the other hand, a question that imposes itself is where the request for action of the UN agencies came from. The conclusion regarding this is somewhat unclear as information presented in the writings of academics differs.⁹⁹ Still, whichever body submitted the request for undertaking a survey to the WHO, it is highly indicative that this request was a result of persistent advocacy on behalf of individual Western feminist activists and the NGOs headed by them. As an illustration, Fran Hosken in her report states that WIN NEWS, a Western NGO founded by Hosken herself, has forwarded a petition to the Secretary General and to the UN

⁹⁵ Charlesworth, H., Chinkin, C.: *The boundaries of international law: A feminist analysis*, Manchester University Press, Manchester (2000), p.226

⁹⁶ Ibid, p.226; Boyle, see *supra* note 6, p.41; Brennan, K.: *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7 *Law & Inequality* 367 (1988-1989), p. 378

⁹⁷ Minority Rights Group, in Brennan, *ibid*, p.378, fn 55

⁹⁸ Bibbings, see *supra* note 4, p.160

⁹⁹ Brennan states that this proposal came from the Economic and Social Council of the UN, *ibid*, p.378; Hosken says the request was made by the United Nations Commission on Women, see *infra* note 100, p.58, yet the authors do not analyze the motivation of the Council itself.

Human Rights Office which was signed by thousands of people worldwide stating that the practice is a fundamental offence of women's and children's human rights. Despite this demand for an action to be taken, the matter was ignored at the meetings of the bodies in question.¹⁰⁰ But Hosken also says that later her articles documenting health consequences of the practice, which were published in major medical journals in the West, and her organization's reports on the practice have influenced WHO to finally address the issue.¹⁰¹

Hosken's and other Western activists'¹⁰² persistent and vocal approach and strong leadership were often praised for moving FGC as an issue in the global arena "from periphery to center". However, the manner in which they did so generated much controversy over the appropriate approach to bringing this issue to the international attention.¹⁰³ This was most evident in practice. The winning of the Western activists' argument that the cultural justification is not a defense for FGC manifested in 1979. That year WHO organized the Khartoum conference the first one to call for the rapid abolishment of the practice. Following, in 1980 the UN Conference on Women in Copenhagen took place, as one in the series of conferences organized during the United Nations Decade for Women, goal of which was to improve the lives of women worldwide. Both of these international conferences were marked by unsuccessful dialogue of the participants and the immediate reaction of the African participants was calling for

¹⁰⁰ Hosken, F.: *The Hosken Report: Genital and Sexual Mutilation of Females*, 4th ed., Women's International Network News (1993), p.25: "The time has come for international agencies, anthropologists and international organizations to stop protecting the violence against women and FGM as 'cultural traditions' as UNICEF, WHO and many others still do.", p.9

¹⁰¹ Hosken, *ibid*, p.59: "...the facts that I had documented in this article could no longer be denied – that FGM is a major public health problem that damages the health of millions of women and children in large region of Africa and the Middle East."

¹⁰² For example, Mary Daly and Gloria Steinem mentioned by Boyle, see *supra* note 6, p.45

¹⁰³ Welch, C.E.Jr.: *Protecting Human Rights in Africa: Roles and Strategies of Non-governmental Organizations*, Philadelphia: University of Pennsylvania Press (1995), p.92; Brennan, see *supra* note 96, p.376, fn 47; Boyle, see *supra* note 6, p.48; Breen, see *supra* note 45, p.121

more sensitivity in dealing with the issue.¹⁰⁴ Tensions between international and local activists were clearly visible from the African participants' boycott of the discussion led by the Western feminists.¹⁰⁵ While Western feminists embraced the approach that the practices are violations of the right to sexual and corporal integrity, the African participants saw these efforts as a monologue which was pursued in attempt to advocate own Western feminist principles without much regard for sensitive and complex nature of the issue.¹⁰⁶

At this point in time, huge tension between local and international participants in the movement existed; there was no official standpoint of the human rights bodies despite the increasing Western NGO advocacy which gained impetuous during the two conferences mentioned.¹⁰⁷ The controversy finally reached the human rights bodies of the UN in 1981, evidently under the pressure from non-formal human rights actors. This happened when a Western NGO, the Minority Rights Group presented its report *Female Circumcision, Excision and Infibulation* calling for eradication of the practices, to the Working Group on Slavery during a session of the Sub-commission on Prevention of Discrimination and Protection of Minorities.¹⁰⁸

The extremely careful approach was continued through the work of the Sub-commission and the newly established Working group on Traditional Practices. Firstly, even the decision of the Sub-commission to undertake the study on the issue and form a Working Group was not approved before 1984 by the Sub-commission's parent bodies – the Commission on Human

¹⁰⁴ Welch, *ibid*, p.92-93

¹⁰⁵ Obiora, see *supra* note 1, p.327-329

¹⁰⁶ Boulware-Miller, see *supra* note 45, p.171-172; a more detailed overview of this debate is presented in the previous chapter.

¹⁰⁷ More specifically, during the UN Copenhagen Conference among various women issues, FGC was an issue which grabbed attention of many Geneva and New York-based NGO participants. In turn, those exhibited pressure on UN bodies to appeal to governments of African countries concerned and to organizations in order to tackle the issue, in Welch, see *supra* note 103, p.93

¹⁰⁸ Brennan, see *supra* note 96, p.379-380

Rights and the Economic and Social Council.¹⁰⁹ Secondly, the members of the Sub-commission included representatives from both Western and non-Western including African countries ensuring local representation. Thirdly, the Working group studied not only the practices of FGC, but several practices that were identified as harmful, thus not singling out the practice. Fourthly, the report produced in 1986 suggests that the Working group was very careful about using arguments which might appear Western.¹¹⁰ While because of the magnitude of the problem, the Sub-commission was expected to devise a prompt action, the language of the report was indicative of a subtle approach to local governments.¹¹¹ And finally, the human rights bodies initially based their involvement on a more neutral health approach in arguing for the elimination of the practice.¹¹²

2.2.1.2. Contemporary agenda of human rights actors

More recently, several milestones for women's rights advancement and within that context, a dialogue on eradication of FGC practices were achieved. Following on the echoes of messages sent out to the world during the UN Decade for Women (1975-1985), the Vienna World Conference on Human Rights was organized by women worldwide in 1993. During the UN Decade for Women it appeared that the level of debate has risen above mutual criticisms.¹¹³

¹⁰⁹ Brennan, see *supra* note 96, p.381; Welch, see *supra* note 103, p.93

¹¹⁰ Brennan, see *supra* note 96, p.389, for example, even though the chairperson of the Working group commented during Sub-commission's discussions on the element of sex discrimination in FGC, the report did not include this element in the explanatory justifications of the existence of the practices.

¹¹¹ Brennan further analyses the language of the report, concluding it is very cautious and diplomatic, frequently using the expression "concern" unlike in some other issues when the Sub-commission was "especially disturbed" and prepared to embarrass governments to act out of discomfort for being publicly criticized; p.392-394, fn 132

¹¹² Boulware-Miller, see *supra* note 45, p.174; Banda, see *supra* note 18, p.218

¹¹³ For example, a scholar, Arvonne Fraser states that both Western and African feminists have driven the issue of FGC to the forefront of the debates taking place at the Decade's conferences. Furthermore, they actually created an informal network in international level through which they exchanged information and ideas in order to increase mutual conscious raising about the issue. In Brennan, see *supra* note 96, p.378, fn 57

While its goal was promotion and protection of women's rights by making recommendations of for the most part, NGO sector to the UN and governments, the UN was a provider of the platform which women's rights advocates used. The women's rights activists from all parts of the world were said to have managed to extend the human rights agenda over the gender-specific violations – a consensus was established that violence against women (VAW) should be examined within international human rights standards. In relation to FGC, the practices were classified as a form of VAW.¹¹⁴ In this regard, the Conference placed the movement within the international movement against violence against women. Another major milestone was achieved through the Fourth World Conference on Women in Beijing in 1995. Within the broader discussion on women's rights, the Platform for Action was set up in which a provision mentioning FGC in the context of other harmful practices to which girl children are frequently exposed to. The Platform is explicit that FGC is one of the many forms of discrimination and violence against girls.¹¹⁵

Aside from providing a platform for discussions and advocacy, another milestone of the human rights movement should be seen in the 2008 *Interagency Statement Eliminating Female Genital Mutilation*. It is significant because it signaled the commitment to FGC elimination from ten agencies of the UN system, as opposed to the 1997 when only three agencies – WHO, UNICEF and UNFPA have issued a joint statement.¹¹⁶ The 1997 statement identified that the purpose of agencies is: “(...) neither to criticize nor to condemn. Even though cultural practices may appear senseless or destructive form from the standpoint of others, they have meaning and

¹¹⁴ Shell-Duncan, see *supra* note 44, p.227

¹¹⁵ Art.38, Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, (4-15 September 1995), 1 UN Doc. DPI/1766/Wom (1996) retrieved 20 November 2009 from www.un.org/womenwatch/daw/beijing/platform/plat1.htm

¹¹⁶ OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO

fulfill a function for those who practice them.”¹¹⁷ Rationale for the re-issuance of the statement is agencies’ recognition that despite growing support for the abandonment movement, high prevalence of the practice still persists and that the years have brought much knowledge in terms of research and experiences that should be recognized internationally.¹¹⁸ The new Statement clearly shows a stricter approach when compared to the health approach which was taken early in the movement – it not only enumerates all human rights grounds which FGC is in violation of, but also elaborates on inclusion of the type IV of the practices which indeed cannot be said to have health consequences.¹¹⁹ With this in mind, the agencies explicitly recognized that the social convention of different forms of FGC is what marks them human rights violation, not solely their health consequences. But, the Statement also places a strong emphasis on further research and development of knowledge as necessities for elimination and prevention of FGC and care for affected girls and women.¹²⁰

The recent involvement has not remained on the declaratory level of issuance of statements. The websites of all relevant UN agencies show that they have a strategy which can be seen in the participation in particular projects addressing FGC. For example, WHO works mostly under its Department of Reproductive Health and Research to eliminate the practice through advocacy, research and providing guidance to health systems. This includes developing advocacy tools and guidelines for health professionals on all international, regional and local levels.¹²¹ UNICEF supported efforts in 15 African countries, with a stated example of

¹¹⁷ Female genital mutilation: a joint WHO/UNICEF/UNFPA statement (1997), retrieved 20 November 2009 from http://www.childinfo.org/files/fgmc_WHOUNICEFJointdeclaration1997.pdf

¹¹⁸ 2008 *Interagency Statement*, see *supra* note 16, p.3

¹¹⁹ *Ibid*, p.23-27

¹²⁰ *Ibid*, p.20

¹²¹ WHO website: Media Center: *Fact sheet N°241* (May 2008) retrieved 20 November 2009 from <http://www.who.int/mediacentre/factsheets/fs241/en/>

sensitization campaign in Djibouti.¹²² UNIFEM supported, among others, a project in Kenya where local communities worked on developing alternative adulthood-entry rituals.¹²³ UNFPA addresses FGC by funding and implementing culturally sensitive programs, undertaking joint action with local human rights groups in achieving reforms and building national capacity. It does so through providing technical support and making alliances with all stakeholders, especially NGOs, national ministries and religious and community leaders. So far it supported implementation of projects in Egypt, Senegal, Eritrea, Ethiopia, Nigeria, Burkina Faso and Gambia.¹²⁴ Financial role of these actors has been emphasized by creation of the Donor Working Group whose role is to harmonize funding to anti-FGC projects through improving communication, cooperation and increasing resources at the international level.¹²⁵ Additionally, international NGO PATH has provided information about variety of local projects in which some 31 international non-governmental and governmental organizations have participated by providing funding and/or technical assistance.¹²⁶

This section suggests that the standpoints and actions of formal human rights actors on one side and non-formal human rights actors on the other were intermingled from the early movement. Despite that mutual influence, the efforts undertaken by the two streams were differentiated to a large degree. In particular, it is evident that initial UN rejection of taking a stand towards the practice is highly contrasted with a persistent advocacy of NGOs. But, the

¹²² UNICEF website: UNICEF in Action: *Eight elements of protective environment* retrieved 20 November 2009 from http://www.unicef.org/protection/index_environment.html

¹²³ UNIFEM website: *International Day against Female Genital Mutilation* (6 February 2007) retrieved 20 November 2009 from <http://www.unifem.org/news-international-day-against-female-genital-mutilation.php>

¹²⁴ UNFPA website: Gender equality: *Calling for an End to Female Genital Mutilation/Cutting* retrieved 20 November 2009 from <http://www.unfpa.org/gender/practices1.htm#work>

¹²⁵ Members of the Donor Working Group are: UNICEF, World Bank, WHO, UNFPA, USAID, Ford Foundation, Dutch Development Agency, GTZ, CIDA, SIDA, Wallace Global and other donor agencies. In Rogo, K., Subayi, T., Toubia, N.: *Female Genital Cutting, Women's Health and Development: The Role of the World Bank*, World Bank Working Paper No. 122, The World Bank, Washington D.C. (2007), p.8

¹²⁶ Muteshi, J., Sass, J.: *Female Genital Mutilation in Africa: An Analysis of Current Abandonment Approaches*. Nairobi: PATH; 2005, p.67-76

advocacy was fruitful insofar as formal stream captured the rhetoric of NGOs and feminists, by eventually undertaking a stand. Nevertheless, formal actors devised own approach of relying on the scientific arguments on harmfulness of the practices, instead of on the feminists' arguments.¹²⁷ It can be said that by this approach formal actors avoided legitimization of the irrational responses fueled by the lack of understanding and resulting in strong local backlash. In this case the key to overcoming the controversy arising from sharp disagreements on universality, culture and representation seems to have been a reliance on nonjudgmental evaluation of the factual health discourse.

The contemporary agenda shows that formal actors gained much more visibility and prominence in the eradication movement compared to their earlier involvement, but perhaps also compared to the involvement of international NGOs. The global developments within a wider women's rights movement opened space for formal actors to take a firmer, non-negotiable human rights stand towards FGC. Another significant feature of the formal actors which allowed for their prominence in the movement is their resource power. It enabled them to directly participate in the numerous local projects. Still, the common characteristic of this involvement is that the role of international formal actors is mostly financial and supportive, focusing on research and alliances with local stakeholders in implementation. It is significant that at the same time non-formal actors are developing a more cooperative approach through networking and participation on regional conferences and locally implemented projects.

2.2.2. Global mainstream actors

The purpose of the following analysis is to establish that the difference in the approach of human rights stream and global stream existed. Correspondingly this would draw attention to the

¹²⁷ Boyle, see *supra* note 6, p.48

need to differentiate between the two. While two streams of human rights movement separately used contradictory strategies of shaming and carefulness early in the movement, other global actors involved themselves later in time, applying more coercion. This can be seen in deployment of strategies of shaming, conditioning financial aid and criminalizing the practice within own jurisdictions. Still, before examining those, it will be useful to look at the first outsiders' efforts to ban the practice. The nature of those efforts left larger implications on the involvement of outsiders as well as on the importance of locals' feelings of the ownership over eradication movement.

2.2.2.1. Early agenda of global mainstream actors

The earliest involvement of the global actors in FGC can be traced back to the colonial times. When discussing the earliest efforts of eradication of the practice, academics refer to the colonial initiatives in Kenya and Sudan.¹²⁸ In Kenya, the missionaries' opposition to the practice in 1920s provoked Jomo Kenyatta who will later become the first President of Kenya to defend the practice in light of African social tradition in which Europeans should not be involved.¹²⁹ In Sudan, British Parliament in 1946 passed a law prohibiting infibulation. Even though the British initiative, unlike the Kenyan one, included a prior education campaign, and a public awareness campaign, it led only to massive cuttings in secret.¹³⁰ Regardless of whether these early initiatives involved the educational component (Sudan) or were exclusively designed as a top-down process (Kenya), the mere fact they were coming from the colonialists, who were seen as oppressors of indigenous identities, was sufficient to make them coercive. Much like the whole governing form of protectorates, this imposition conveyed a message of locals' inferiority and

¹²⁸ Banda, see *supra* note 18, p.230; Brennan, see *supra* note 96, p.375; Gunning, see *supra* note 35, p.227; Slack, see *supra* note 29, p.477

¹²⁹ Boyle, see *supra* note 6, p.39

¹³⁰ *Ibid*, p.40

resulted in exclusion from the processes of policy creation and implementation. Also, for many women and girls, resisting these international bans enabled them to become a part of the anti-colonial struggle.¹³¹ Aside from the national governments of particular European states, in the early years of the movement, research suggests that no other actors have formed any particular approach to eradication of FGC.

2.2.2.2. Contemporary agenda of global mainstream actors

According to the findings, first campaign approaches by global actors were somewhat delayed in comparison to the NGOs' and even the formal human rights stream's approaches. The contemporary agenda of global actors can be characterized as concrete, direct and containing a coercive element. Firstly, the outside actors' involvement in the issue came in form of linking financial aid to developing countries where FGC is practiced to the enactment of domestic anti-FGC laws and policies or development of anti-FGC programs. Secondly, outsider actors embraced development of own anti-FGC policies and/or laws. This came on the agenda after the realization that the large influx of immigrants from the affected countries made FGC an internal reality of Western states and ceased to be a distant issue. Even though such regulation of own jurisdictions, in particular immigration law does not aim to directly influence governments of affected countries, criminalization indeed sends a message that these practices are globally intolerable.

In the US, the two issues happened simultaneously. The US federal government enacted a bill that criminalizes the practice in 1996¹³², as a part of the Illegal Immigration Reform and Immigrant Responsibility Act. A year later it introduced an amendment which, as Senator Harry

¹³¹ Banda, see *supra* note 18, p.230

¹³² It was firstly introduced in 1993 as part of the Women's Health Equity Act by the Representative Patricia Schroeder, but it did not pass at the time; in Center for Reproductive Rights and RAINBO, see *supra* note 25, p.237

Reid stated: “(...) will give the US executive directors of each international financial institution the power to oppose loans for the government of any country that does not enact laws that make it illegal and enact policies to educate and eliminate this brutality.”¹³³ Importantly, the Congressional debates were marked by overwhelming sensationalist displays of politicians’ ethnocentrism.¹³⁴

While the legislative and executive branches of the US were taking a stand on the issue of FGC, the courts received a case of a girl Kassindja who, out of a fear from being forced to undergo the procedure, fled her country Togo and requested an asylum.¹³⁵ The court decided she was eligible for asylum on the basis of persecution as a member of social group. The case and the individual girl received a wide public and media attention in the US, but decision itself became controversial for a number of reasons two of which have a global dimension. Firstly, a problem of a procedural, but importantly, moral nature arose as soon as FGC was recognized as

¹³³ Senator Harry Reid in The US Congress: Congressional Record Volume 142: *Female Genital Mutilation* (26 July 1996), p.2;

The text of the statute states: “1 year after the date of the enactment of this Act, the Secretary of the Treasury shall instruct the United States Executive Director of each international financial institution to use the voice and vote of the United States to oppose any loan or other utilization of the funds of their respective institution, other than to address basic human needs, for the government of any country which the Secretary of the Treasury determines - (1) has, as a cultural custom, a known history of the practice of female genital mutilation; and (2) has not taken steps to implement educational programs designed to prevent the practice of female genital mutilation.” 22 USCS sect. 262k-2 (1996)

The term “international financial institution” includes following institutions: the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the Asian Development Fund, the African Development Bank, the African Development Fund, the International Monetary Fund, the North American Development Bank, and the European Bank for Reconstruction and Development. While the World Bank working paper is silent on this particular issue, Boyle states that both World Bank and International Monetary Fund have linked their aid to the reform on the stimulus coming from the US, see *supra* note 6, p.41.

¹³⁴ Senator Reid tells a story about a “courageous young woman” from the US who wanted to see the world and went to Kenya where she photographed the circumcision of a young, screaming girl and won a Pulitzer Prize for her work. Senator indeed uses these photographs in Congress to prove his point that the practice is a “barbaric” form of “child abuse”, in Congressional Record Volume 142, see *supra* note 133.

Furthermore, Senator Simpson says: “All of us admit that this is a hideous, barbaric thing.” In The US Congress: Congressional Record Volume 142: *Immigration Control and Financial Responsibility Act of 1996* (1 May 1996), p.6

¹³⁵ The case was 21 I.&N. Dec. 357 (B.I.A. 1996), the applicant was Fauziya Kassindja; throughout the adjudication of her case, her name was misspelled, hence the case is known as Kassinga case, in Center for Reproductive Rights and RAINBO, see *supra* note 25, p.241, fn 19.

“persecution” – by the nature of the US asylum law.¹³⁶ It could mean that any member of the community in which FGC was practiced on non-consenting individual and who did not explicitly oppose the practice would be barred entry to the US when applying for asylum. Secondly, the decision resonated with the potential victims of many other harmful cultural practices and their advocates as unfair or perhaps even undeserving.¹³⁷

Another major actor on the world level, especially in field of development aid – the European Union, has also linked its aid to the treatment of FGC by governments of the countries in which it is practiced. In order to avoid controversies around the EU’s intention to ban the development aid to non-cooperating countries altogether, it has been decided to link the aid expressly to those countries whose governments express commitment to fight the practice through legal and educational efforts.¹³⁸ This is seen from the Resolution on Female Genital Mutilation where the EU:

Calls for promotion of foreign aid to those countries which have adopted legislative and administrative measures prohibiting and punishing the practice of FGM and to promote, in places where mutilation is habitual, educational, social and health programmes in order to prevent and combat this practice; urges the governments concerned to prohibit female genital mutilation and calls on the Commission to cooperate closely with those NGOs, local initiatives and religious leaders working to eradicate such practices¹³⁹

¹³⁶ In the Immigration and Nationality Act (INA); the symmetrical nature of the definitions of the persecutor and the persecuted implicate that if an act is defined as persecution and the asylum awarded to the persecuted, there must exist a persecutor. Whereas a persecutor bar would deny asylum to anyone who “assisted or otherwise participated” in the persecution; in Walls, L.K.: The persecutor bar in the U.S. immigration law: toward a more nuanced understanding of modern “persecution” in the case of forced abortion and female genital cutting, 16 *Pacific Rim Law & Policy Journal* (2007), p.251-252

¹³⁷ A suggestion was made by the Immigration and Nationalization Service that a new framework is made for granting asylum in cases of violations by cultural practices. The suggested new standard for granting asylum was that a practice must “shock the conscience”. This would indeed serve as a display of an overwhelming degree of ethnocentrism in the US immigration policy. Luckily, the Board of Immigration Appeals rejected the suggestion; in Walls, *ibid*, p.250

¹³⁸ Osborn, A. and Boseley, S.: EU may ban aid to states that allow female circumcision, *The Guardian*, 30 November 2000, retrieved from <http://www.guardian.co.uk/world/2000/nov/30/andrewosborn.sarahboseley> on 10 October, 2009

¹³⁹ European Parliament Resolution on Female Genital Mutilation (2001/2035(INI)), A5-0285/2001, from *Official Journal of the European Communities*, C 77 E/126 (28 March 2002), para 24

Still, the EU has left space to withhold the aid from the governments which fail to react to domestic practices of FGC:

(...) in the context of the human rights provisions of the EU's development programmes, FGM constitutes such a grave assault on the rights of women that the Commission should be prepared to invoke these provisions, should the governments concerned not be willing to include the fight against FGM as a sector of cooperation¹⁴⁰

The Resolution also calls on the Member states to recognize the right to asylum in cases of risk to being subjected to the practice and calls that this topic is included in the agenda on the international level as a "priority item".¹⁴¹ Interestingly, the EU calls on the Member States that not only they recognize the practice as crime, irrespective of the women's consent, but to punish "anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or a girl" and to prosecute even in cases when the procedure was done extraterritorially.¹⁴²

From the above described generally it can be noticed that global actors, mainly powerful national and supranational players used clear coercion in their approaches to FGC. This is evident from punitive legal strategies in enactment of criminal laws and from implications that granting asylum had on barring entry to population loosely defined to be persecutors. In this sense, granting asylum was a strong and urgent statement that FGC is wrong, but at the same time omission to grant asylum for victims of other, also harmful and culturally justified practices sends out a message that those are less deserving of such condemnation. Secondly, coercion is again evident from tying aid to local eradication efforts. And thirdly, a strong element of shaming the practicing societies was frequently present through use of sensationalism, as seen in

¹⁴⁰ Ibid para 23

¹⁴¹ Ibid, para 14&15

¹⁴² Ibid, para 11

the example of Congressional debates. The manner in which condemnation of the practice was delivered by these particular actors indeed contains elements of cultural superiority and arguably, it can be said that it resonates the early agenda of the colonial powers.

In conclusion, this chapter offers a basis for comparison of the two approaches – of the human rights actors and global actors. While one stream of the human rights movement has been particularly cautious in handling the practice, the other was particularly vigorous, yet culturally insensitive and exclusionary in its condemnation. Over time, however, both streams seem to converge as the cautious one becomes more explicit in legal policy and more active while the insensitive one becomes more attentive to local activism. On the other hand, global political and economic actors in early attempts approached the practicing societies through politics of imperialism which implicated imposition of foreign values. Over time, efforts of this type of actors became more indirect and sophisticated, but retained an element of coercion.

The next chapter will look at related actions occurring solely on the African ground in order to place the local movement in the center of concern and to establish a link between international and local. When the link is established, actions of all streams of international actors will be evaluated according to their success in mobilizing local anti-FGC activism or alternatively, causing a local backlash to the international movement.

Chapter 3 – Domestic Discourse

The international discourse cannot be discussed in vacuum, meaning without analyzing and recognizing the immense efforts invested by local actors in movement against the FGC. It should be borne in mind however that while most significant efforts in the movement are of both international and regional nature, the chapter will focus on all efforts from the local actors' perspective. The chapter will look at legal basis which can be used to fight the practice on regional and national levels as well as specific standpoints towards the practice undertaken by the authorities, also on regional and national levels. Importantly, this will give an idea of how these views and efforts progressed over time. Understanding of that will be useful for linking the international action to domestic which will be the topic of the next chapter.

3.1. Domestic Legal Framework

It has already been established in Chapter 2 that individual states have an obligation to undertake all positive measures in order to give effect to the rights enshrined in the international human rights instruments. This would include ratification of other compliant instruments, constitutional amendments, enactment of national laws or regulations, enforcement of laws and regulations through court system, creation of policy, implementation of policy through appropriate budgeting planning, undertaking promotional and educational measures, cooperation with civil sector etc. This section will look at regional legal framework which can be useful in

tackling the issue of FGC by individual states, and will subsequently examine the legal efforts on national levels.

3.1.1. Legal framework on regional level

The creation of the African Charter on Human and People's Rights (Banjul or African Charter) was prompted by series of happenings of human rights concern on the African continent.¹⁴³ However, two issues on international level gave impetus to the consensus of African nations for the need of a legal instrument. The first one was raising prominence of the human rights on the international level. The second one was raising international attention to the actions of particular individual African leaders who consistently violated human rights of people in their countries. This led to the mounting initiative to signify the continents' commitment to human rights protection and in this way stop undermining the image of the continent in international arena.¹⁴⁴

The Charter is a unique regional instrument. Its many innovations¹⁴⁵ make it particularly specific to the context of the continent. While the Charter offers explicit protection to women, it is questionably adequate protection given that it appears only in the context of family, children and traditional values.¹⁴⁶ Therefore, the instrument's emphasis on regional particularities in view

¹⁴³Ouguergouz, F.: *The African Charter on Human and People's Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, The Hague, The Netherlands: Kluwer Law International (2003), p.39

¹⁴⁴ Ibid, p.37

¹⁴⁵ Preamble is indicative of the uniqueness: it takes into consideration historical particularities of the continent, emphasizing the importance of tradition and African values, takes note of the indivisibility of civil and political on one hand and social and economic human rights on the other, considers that enjoyment of rights and freedoms implicates also fulfillment of individuals' duties etc.

¹⁴⁶ While Art.2 and Art.3 provide for general equal enjoyment of rights and freedoms and equal protection, a more specific protection of women appears in Art.18:

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. (...)

of importance of tradition and community values, can raise serious uncertainties in light of protection of women, including in cases of FGC.

Yet, while some believe in the sufficiency of substantive protection of women in the African Charter,¹⁴⁷ others recognize that serious concerns existed that the emphasis on traditional values in the Charter would override protection of women.¹⁴⁸ While other reasons certainly existed,¹⁴⁹ this concern was definitely one of the initiating forces in creation of a separate document which will address women's concerns in greater detail. The idea itself came from the two African NGOs – Women in Law and Development in Africa (WILDAF) and International Commission of Jurists (ICJ).¹⁵⁰ Following the drafting process, Additional Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo or Women's Protocol)¹⁵¹ was created. The creation of Women's Protocol was therefore influenced by both, international and regional developments. For example, while the initial draft of the Protocol was considered to be an elaboration of the Charter, the subsequent ones expended the principles of non-discrimination in the direction of CEDAW.¹⁵² Additionally, even though it is not clear whether CEDAW was regarded as a benchmark in the drafting of the Protocol, it is

While the Preamble stipulates the duty of African States to fight all forms of discrimination including those based on sex, women are explicitly referred to in only one provision of the Charter.

¹⁴⁷ Banda, F.: *Protocol to the African Charter on the Rights of Women in Africa* in *The African Charter on Human and People's Rights: The System in Practice 1986-2006*, second edition, ed by Evans M. & Murray, R., UK: Cambridge University Press (2008), p.445

¹⁴⁸ Murray, R.: *Women's Rights and the Organization of African Unity and African Union: The Protocol on the Rights of Women in Africa*, in *International Law: Modern Feminist Approaches*, ed by: Buss, D. & Manji, A., Oxford & Portland: Hart Publishing (2005), p.258

¹⁴⁹ For example, failure to interpret the existing rights in manner which would offer strong protection to women; arising trend of recognizing the need to promote women's rights in the region, particularly from the point of view of the African Commission on Human and People's Rights, at least on the normative level since Art.4(1) of the Constitutive Act of AU defines promotion of gender equality as one of the principles of AU; in Banda, see *supra* note 147, p.442-445

¹⁵⁰ In a 1995 seminar organized by WILDAF in Togo; in Murray, see *supra* note 148, p.261

¹⁵¹ Adopted by the Second African Union Summit, July 2003, came in force after the 15th ratification in November 2005, so far (until January 2009) 26 members of the AU have ratified it, information retrieved from http://www.achpr.org/english/ratifications/ratification_women%20protocol.pdf on 27 January 2009.

¹⁵² Banda, see *supra* note 147, p.446

undisputable that various international instruments including CEDAW were referenced during the drafting.¹⁵³

In light of FGC, it is essential to note that the Protocol contains an explicit and well-elaborated provision on Elimination of Harmful Practices which calls on States to eliminate those practices that conflict with the recognized international standards.¹⁵⁴ The Protocol is unique in explicitly identifying and naming the practice of FGC as harmful practice. Its immense significance lies in the fact that it resolves the universalist-relativist debate in the case of FGC on the domestic level and by the domestic actors in favor of women's human rights. Yet, it is important to keep in mind that FGC is only one of the provisions contained in the instrument which serves as all-encompassing indicator of a range of human rights problems with which

¹⁵³ Murray, see *supra* note 148, p.264; Additionally, the Preamble itself draws attention to the international "soft law": "(...)FURTHER NOTING that the African Platform for Action and the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all Member States of the United Nations, which have made a solemn commitment to implement them, to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women(...)"

¹⁵⁴ Art.5:

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

But also Art.2(2):

States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education 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 the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

And additionally Art.17:

1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

female population in the region is faced.¹⁵⁵ The Protocol also has a symbolic relevance from the international perspective. It sends out a message that Africans realize that some of their cultural traditions are in conflict with international human rights norms and have been receiving unjustified protection. Another instrument of significance on regional level is African Charter on the Rights and Welfare of the Child (African Child Charter).¹⁵⁶ While not expressly naming the practice of FGC, the African Child Charter contains a provision on Protection against Harmful Social and Cultural Practices.¹⁵⁷

3.1.2. Legal framework on national level

In Chapter 1, it has been asserted that 28 countries on the African continent have recorded some degree of occurrence of the practice of FGC within at least one of their populations. The official standpoint of governments of all these countries towards the practice has been analyzed by Rahman and Toubia.¹⁵⁸ The official standpoint can be visible through enactment, interpretation and enforcement of laws, creation of policy and support to national organizations or NGOs working on the issue.

Beforehand, attention should be drawn to the process in 1990s through which several African states amended their constitutions or enacted new constitutions in order to strengthen

¹⁵⁵ Other provisions speak about: marriage (Art.6), separation, divorce and annulment of marriage (Art.7), access to justice and equal protection before the law (Art.8), participation in political and decision-making process (Art.9), right to peace (Art.10), protection in armed conflicts (Art.11), education (Art.12), economic and social welfare (Art.13), health and reproductive (Art.14), food security (Art.15), adequate housing (Art.16), positive cultural context (Art.17), healthy and sustainable environment (Art.18), sustainable development (Art.19), widows' rights (Art.20), inheritance (Art.21)

¹⁵⁶ Adopted in 1990, entered into force after the 15th ratification in November 1999, so far (until October 2009) 45 members of the AU have ratified it, information retrieved from <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf> on 10 October 2009.

¹⁵⁷ Art.21(1): States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) those customs and practices prejudicial to the health or life of the child; and
(b) those customs and practices discriminatory to the child on the grounds of sex or other status.

¹⁵⁸ Center for Reproductive Rights and RAINBO, see *supra* note 25. Despite the efforts invested in obtaining comprehensive data on legal statuses in all concerned African states, more recent data was not found. Hence, unless otherwise noted, this section will use and analyze the factual findings of these authors' comprehensive work.

their Bill of Rights and non-discriminatory provisions towards women.¹⁵⁹ While constitutions of several countries appear to be problematic in affording equal treatment and freedom from discrimination based on sex,¹⁶⁰ all of them without exception afford some form of protection which can be interpreted as protection from FGC. Aside from principles of equality and non-discrimination, the most frequent principles enshrined in the constitutions are: the right to life, special protection to women and children, and limitation of cultural and religious practices so that they conform to the constitutional protection of individual human rights. Constitutions of several countries even explicitly state freedom from harmful practices.¹⁶¹

Whereas only nine countries up until 2001 have enacted a law or amendment to the law specifically banning FGC and imposing criminal sanctions, all countries contain provisions in their Criminal laws which can be interpreted to encompass ban on FGC. Out of the nine countries mentioned, old colonial laws referring to the criminalization of practice were found in two countries,¹⁶² while seven were recent in origin.

The enforcement of either specific anti-FGC laws or provisions in criminal laws which can be interpreted to apply to FGC is extremely weak. While generally, adequate information regarding enforcement in specific countries is missing, in a number of African states authorities have been occasionally willing to make arrests and courts willing to prosecute and punish according to the law. However, the consistency of enforcement is unlikely to be the case in any

¹⁵⁹ Banda, see *supra* note 147, p.443

¹⁶⁰ The Constitution of Egypt limits the equality and non-discrimination in affording supremacy to Sharia law, while for example constitutions of Kenya, The Gambia and Sierra Leone offer limited equality and/or non-discrimination since these principles do not apply in the customary law.

¹⁶¹ Namely, Ethiopia, Ghana and Uganda.

¹⁶² Namely, Central African Republic and Guinea. Sudan had a colonial law also but it is not in force anymore. Recent laws and their content will be discussed more in the next chapter when interplay of local and global actors is analyzed.

of those states since the information that is known speaks only about a handful of cases.¹⁶³

Moreover, given that most of the information is known through media reports, no complete finding or comprehensive record is available. In any case, there can be no mention of systematic legal enforcement in the region.

One of the problems of enforcement of criminal anti-FGC laws might be seen in the domination of customary law in the African states. As seen in the above analysis of the constitutions, customary law is often discriminatory against women and ascribes great importance to religion. While this is a complex issue,¹⁶⁴ it is sufficient to note for the purposes of further discussion in this paper that specificity of legal system in most African states indeed complicates the enforcement issue. Another problem related to the enforcement is a commonly held concern related to the criminalization of the practice, that it would drive FGC practitioners to operate in secrecy. Yet, from the activists' perspective this is not a sufficient argument against criminalization as they realize the importance and role of law as an advocacy tool. The importance of legal prohibition is illustrated by an example from Sierra Leone where local activists complain that parents in practicing communities invoke non-existence of such laws as an excuse to continue the practice.¹⁶⁵ In essence, this speaks to the notion that people do tend to look for ideological guidance from their government or religious leaders.

¹⁶³ For example, a country with the highest number of reported cases is Burkina Faso – at least 40 prosecutions, but Burkina Faso also has a complete system in place (system of reporting, notifying the police and educating through the National Committee). The rest of countries for which any information exists, such as Djibouti, Egypt, Ghana, Liberia, Senegal, Sudan and Uganda number only one, two or “several” cases.

¹⁶⁴ Full analysis on origin, colonial influence, characteristics and consequences of customary law in Africa can be found in Naa-Adjeley Adjetey, F.: Religious and cultural rights: reclaiming the African woman's individuality: the struggle between women's reproductive autonomy and African society and culture, 44 *American University Law Review* (1995), p.1351-1381

¹⁶⁵ Bowers, E.: *FGM Practitioners Sway Elections in Sierra Leone*, Women'sENews.org, (7 September 2007) retrieved 5 October 2009 from <http://www.womensenews.org/story/the-world/070907/fgm-practitioners-sway-elections-sierra-leone>

From the above, it is evident that while national legal systems are for the most part insufficiently addressing the FGC issue directly, all of the systems indeed contain some legal basis on which the practice can be considered illegal. Furthermore, in cases when this normative basis is lacking, regional system mainly the Charter and the Women's Protocol come into play. Since the Charter besides universal individual rights, entrenches the idea of specificity of African context and importance of culture,¹⁶⁶ it might be said that it was created by the local proponents of relativism. In this sense, it can be a useful tool for local women's rights activists confronting the resistance of national authorities towards acceptance of "imported ideas" of women's rights. The Women's Protocol could be a useful tool as well, following the same rationale.

There are another two important thoughts that should be taken from the above discussion. Firstly, the disconnection exists between the normative protection and the enforcement.¹⁶⁷ Generally, a strong normative framework exists on both regional and national levels in regards to protection of women's rights. From the data on legal enforcement of FGC violations, it is evident that the normative protection is also not being used in order to advance protection of women from the practice. Secondly, it is strikingly obvious that FGC is in African normative frameworks integrated with all other women's issues, suggestive of the reality in which it is only one out of an array of problems which women encounter.

3.2. Domestic Action Framework

In the beginning, the involvement of domestic actors in the FGC abandonment movement was mostly in the form of a strong backlash to the involvement of other international actors. Over time, local advocacy for abandonment became strong, firstly on the regional level with the

¹⁶⁶ Naa-Adjeley Adjetey, see *supra* note 164, p.1374

¹⁶⁷ Banda, see *supra* note 147, p.442

establishment of the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children and with various regional forums organized for discussion on this and other women's rights topics. Later on, changes were evident also at the national levels in a grassroots advocacy of local NGOs, number of projects being implemented in cooperation with international donors and in governments' declaratory and/or practical support for the abandonment.

3.2.1. Regional level of action

As established in Chapter 1 and Chapter 2 during the time which was marked as the early eradication movement, African actors opposing the practice have existed, yet their quantity, power, and organization were insufficient to achieve any notable impact. As it can be visible from the discussion on the international actors' involvement, the movement of African feminists was given impetus in the late 1970s and 1980s, motivated by the lack of cultural sensitivity of the individual Western feminists who were criticizing the practice. At that time, local activists were voicing their opposition to the practice through women who expressed the feelings of pain, anger and degradation they had after undergoing FGC.¹⁶⁸

The previously mentioned WHO-organized Conference in Khartoum in 1979, even though taking place in the region and with an aim to assist people in addressing own issues, was not truly representative of the locals' perspectives. But, it was representative of the conflicting views taking place at the time between both sides of the feminist world. However, during the UN's Decade of Women (1975-1985), the whole African region was engaged in the promotion of women's rights.¹⁶⁹ An attitudinal change observed in the position of African states' authorities

¹⁶⁸ "*Black Sisters, Speak Out*" in Brennan see *supra* note 96, p.377, fn 52

¹⁶⁹ The final in the series of conferences was held in Nairobi, Kenya. The commitment of governments to participation in advancement and promotion of women's rights is particularly significant as it marks a change in the

towards women's rights, at least at the declaratory level, opened the opportunity for the issue of FGC to be discussed more freely and probably more constructively. But, the officials' acceptance of women's agenda meant much more. It created an opportunity for local actors to look for constructive solutions which would now engage governments' resources and cooperation.

The conference taking place in Dakar, Senegal five years after the one in Khartoum was definitely more constructive as its outcome was a formation of the largest regional network of organizations, the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children which was to launch a campaign in each state. This event was a landmark in the international campaign as it finally placed the African actors in its center.¹⁷⁰

IAC was to work on the sensitization of practicing communities through educational methods and was one of the main contributors to the change which moved the issue of FGC from the list of taboo topics to the forefront of discussions or action, both by state and civil society actors.¹⁷¹

In spite of the existence of legal non-discrimination provisions in different states, the IAC had to face systemic discrimination of women which was present in practice. Hence, it worked mostly at the grassroots level, providing education on harmful practices to community leaders in rural areas, traditional birth attendants, but also to health professionals, state officials and media professionals. The aim of IAC's efforts was to establish the "attitudinal foundation" for further change within the context of various harmful practices identified as: childhood marriage and early pregnancy, nutritional taboos and child spacing and delivery practices.¹⁷² For the successes

attitudes towards importance of women's rights in the region; in Dolphine, F.A.: *The emancipation of women: An African perspective*, Accra: Ghana University Press (1991), p.85

¹⁷⁰ It was jointly organized by the government of Senegal, UNFPA, UNICEF and WHO; in Welch, see *supra* note 103, p.93

¹⁷¹ Welch, see *supra* note 103, p.88

¹⁷² Ibid, p.88-95

of its work on eradication of harmful practices, the IAC even received the UN Population Award in 1995.¹⁷³

More recently, many regional conferences were organized on the issue of FGC. As an illustration, of great importance was Afro-Arab Expert Consultation organized by the Egyptian Society for the Prevention of Harmful Practices, which is a national section of IAC and by No Peace Without Justice, a Western NGO in Cairo in 2003.¹⁷⁴ The Conference discussed the Legal Tools for the Prevention of Female Genital Mutilation and its outcome was the Cairo Declaration for the Elimination of FGM. The Declaration, besides elaborating various recommendations to the concerned governments, has brought the representatives of 28 affected countries to express their support for the international campaign “STOP FGM” which was initiated in December 2002 and for the Declaration on “Zero Tolerance for FGM”.¹⁷⁵ The Day of Zero Tolerance to FGM was pronounced by the first Lady of Nigeria Mrs. Stella Obasanjo who also expressed praise of the IAC’s common agenda which successfully coordinated the activities specific to particular systems.¹⁷⁶ Subsequently, the UN Human Rights Commission has adopted the day of February 6th as the International Day of Zero Tolerance to FGM.

¹⁷³ Boyle, see *supra* note 6, p.72

¹⁷⁴ Other support for the conference came from European Commission, UNDP, Open Society Institute, UNIFEM, ALITALIA and under the auspices of the First Lady of Egypt Mrs. Mubarek; in No Peace without Justice website: Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation Publication (2003), retrieved 27 March 2009 from

http://www.npwj.org/_resources/_documents/attachments/Table%20of%20Contents.pdf

¹⁷⁵ Cairo Declaration for the Elimination of FGM, Afro-Arab Expert Consultation on Legal Tools for the Prevention of Female Genital Mutilation Publication (June 23, 2003) retrieved 27 March 2009 from

http://www.npwj.org/_resources/_documents/Uploaded-Files//Final_Declaration_Cairo+5.pdf

¹⁷⁶ Feldman-Jacobs, C.: *Commemorating International Day of Zero Tolerance to Female Genital Mutilation*, Population Reference Bureau (February 2009) retrieved 27 March 2009 from <http://www.prb.org/Articles/2009/fgmc.aspx>

3.2.2. National level of action

When it comes to human rights, the state level is far more important than international level.¹⁷⁷ This is so because individuals' protection will be realized only when state is able and willing to implement the protection. It is necessary to acknowledge that the lack of formal national laws and the enforcement of the existing legal framework, as established in the previous section, does not necessarily suggest the lack of willingness on a national level. The governments' willingness to pursue FGC eradication can be seen through their involvement in various actions on the national level. While the degree of involvement varies due to internal differences, in all practicing states some form of action can be noticed from both state and non-state actors. When it comes to the governments, it is visible that in all 28 affected states, the government has in some form expressed its commitment to the anti-FGC movement.¹⁷⁸ Frequently, this was visible through an official policy, statement, presidential or ministerial decree, own campaign or through support to local NGOs or international agencies in implementation of specific projects.¹⁷⁹

¹⁷⁷ Welch, see *supra* note 103, p.95

¹⁷⁸ Although sometimes there have been collisions between different factions or change of opinion over time.

¹⁷⁹ Center for Reproductive Rights and RAINBO, see *supra* note 25, p.95-241;

At the time, information on three countries was unavailable: CAR, DRC and Sierra Leone. Further research showed that only in Sierra Leone government has not taken a stand largely because politicians feared losing support from influential practicing communities, in Bowers, see *supra* note 165. Furthermore, *Sierra Leone: The National Report to UN CEDAW Committee* (CEDAW/C/SLE/5) (2006), p.32 confirms that the government has not undertaken any policy or educational measures to tackle the issue.

In Chad, the "The government of Chad has been a facilitator that provides an enabling environment for the non-governmental organization (NGO) community to undertake long-term programs deemed necessary to change people's attitudes about this practice" in United States Department of State, *Chad: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)*, (1 June 2001)

As for the DRC, in 1999 Health Minister acknowledged that FGC constitutes an infringement of individual rights and freedom. The government is working on development of a national action plan; in International Women's Rights Action Watch (IWRAP), "Shadow" *Report to the Committee on the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW) on the Democratic Republic of the Congo* (January 2000)

As far as the civil sector is concerned, national sections of IAC are now established in 28 African countries.¹⁸⁰ The national strategies were generally tailored to specific national and even community contexts and were encompassing a wide variety of programs directed at all stakeholders. Berhane Ras-Work, the executive director of IAC emphasizes that approach of the national educational programs is a holistic, encompassing programs for women attempting to build capacity of women to respect own person and body, programs for youth particularly including young men, programs for community leaders attempting to demystify the practice, programs for media – both traditional and modern and programs for legislators.¹⁸¹

Numerous programs or projects were designed and implemented to tackle the issue in practicing communities in the past two decades. A wealth of this experience has contributed to a better understanding of the practice and understanding of how specific aspects of the context in which it exists affect the success of its abandonment. For example, a study published by the Kenyan branch of the international NGO PATH concludes: the abandonment approaches in order to be sufficient and sustainable must be directed at the very community which is practicing FGC including both men and women; must be implemented within the context of other efforts which support women's empowerment and gender equality; must include several approaches to changing behavior; must encourage the stakeholders to decide on the abandonment themselves through a constructive dialogue and reflection; must additionally focus on building particular skills such as resistance to the community pressure and development of supporting mechanisms

¹⁸⁰ Berhane Ras-Work, current executive director and former president of the IAC; in Zuehlke, E.: *International Day of Zero Tolerance to FGM: Interview With Berhane Ras-Work, Founding President of IAC*, Population Reference Bureau, audio file (February 2009)

The relevant countries are: Djibouti, Egypt, The Gambia, Ghana, Liberia, Mali, Nigeria, Senegal, Sierra Leone, Sudan and Togo since 1985; Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Ethiopia, Guinea, Guinea-Bissau, Kenya, Mauritania, Niger, Tanzania and Uganda since 1994. In Welch, see *supra* note 103, p.96. Remaining four countries remain unidentified due to the inactivity of the IAC website.

¹⁸¹ Zuehlke, *ibid*

in the community; and must also be directed towards government so that it creates a facilitating environment.¹⁸²

An account of actions on national levels would not be complete without mentioning at least one specific example of local NGO efforts in abandonment of FGC. The organization which incorporates all the methods mentioned above and which deservedly received the most attention and praise from scholars and media is Senegalese-based NGO Tostan.¹⁸³ Tostan was founded in the early 1990s by the American Peace Corps volunteer Molly Melching who got introduced to the practice of FGC in Senegal in 1970s. Despite the fact that the origin of Tostan is traced to the idea of a Western activist, it has developed into a “leading model for community development”. Perhaps the greatest reason for the organization’s local acceptance is the genuine participation and perception of ownership over the operations of the locals themselves.¹⁸⁴

In devising a strategy, the founder relied greatly on input from the Senegalese cultural experts and the practicing communities themselves. The methodology they developed was based on the idea that societies should be engaged by approaching them in their own language and using their own traditional methods of learning such as poetry, story-telling, theater, and song. . So far Tostan has developed and implemented programs in 2,600 communities in Burkina Faso, Mali, Sudan, Djibuti, The Gambia, Guinea, Guinea Bissau, Mali, Mauritania, Senegal and Somalia. In October 2009, the implementation of the Tostan Community Empowerment Program

¹⁸² Muteshi, J., Sass, J., see *supra* note 126, p.45-46

¹⁸³ Nnaemeka, see *supra* note 38, p.36, 41-42; Banda, see *supra* note 18, p.239-241; Mackie, G.: *Female Genital Cutting: The Beginning of the End*. In *Female Circumcision in Africa: Culture, Controversy and Change*. Bettina Shell-Duncan and Ylva Hernlund, eds. p.253-281. Lynne Rienner Publishers (2000), p.256-259; Abusharaf, R.M.: Introduction: The Custom in Question, in *Female Circumcision: Multicultural Perspectives*, ed by Rogaia Mustafa Abusharaf, Philadelphia: University of Pennsylvania Press (2006), p.20; Warner, J.: The Shame Game, *The New York Times* (1 October 2009) retrieved 5 October 2009 from <http://warner.blogs.nytimes.com/2009/10/01/polarizing-politics-a-love-story/>

¹⁸⁴ Unless specified otherwise, all information is obtained from Tostan's website www.tostan.org : “Tostan is an international organization that benefits greatly from worldwide support. Yet we remain dedicated to local, grassroots empowerment in both our program and our organization, and **over 99% of Tostan's paid staff is African.**” (emphasis in original)

(CEP) was finalized in the Nugaal region of Puntland, Somalia by a community declaration and marked by a public collective pledge to end the practice.¹⁸⁵ The organization ensured that the program which lasted almost three years will be respectful and participant-driven by engaging local facilitators and village-elected Community Management Committees. It also ensured that the program will be holistic, by including modules on democracy, human rights, problem-solving, hygiene, health, literacy, small business management, and microfinance. The organization provides a precise account that since 1997 until 2009 it has reached 4,627 communities with its methodology and that those communities were successful in accomplishing a real change in attitudes of both male and female members of communities. This change is usually symbolically marked by the villages' public proclamation on the abandonment of FGC.

In conclusion, this chapter has shown that even though domestic and international factors contributed to the creation of African system for women's protection, states are generally not relying on legal tools in eradication. Still, while degree of governmental support to eradication efforts varies greatly among states, the pronounced state support for practice nowadays is not found. While sometimes reluctant to act directly on eradication, states will not impede the actions of human rights actors. A strong civil sector working on abandoning FGC within the framework of other women's rights and consisting of both local and international actors serves to evidence this claim.

¹⁸⁵ Melching, M.: "Historic Step for Somali Women and Girls" as 14 Villages Publicly Declare Abandonment of Female Genital Cutting, *Tostan Newsletter* (14 October 2009)

Chapter 4 – Understanding Relations between Global and Local

This chapter will first discuss and offer the basis for global intervention arising from global and local interplay. Second, it will discuss the appropriateness of using coercion and non-coercion is strategies designed for combating FGC particularly within the context surrounding the practice as discussed in Chapter 1. Thirdly, it will draw conclusions about the appropriateness of responses of particular actors as established in Chapter 2.

4.1. Importance of International Involvement

The argument that the “outsiders” should leave themselves out of the issue and work on solutions to their own problems does not hold ground. International community has the right and even an obligation to intervene in cases which are concretizations of discrimination where the victims of violations do not receive protection from their own societies. Several facts can serve as justifications for this type of involvement of the international community.

On the normative level, individual states have an obligation under international law to take measures of international assistance and cooperation in regards realizing economic, social and cultural rights where *inter alia* the right to health is included and where scarcity of resources prevents particular states in achieving this by themselves.¹⁸⁶ Additionally, a proper form of

¹⁸⁶ Committee on Economic, Social and Cultural Rights (CESCR): General Comment No.3, 14/12/90 (1990), *The nature of States parties obligations* (Art. 2, par. 1), para 14: “The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. (...)”

Also supported by Paul Hunt in *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* to the Commission on Human Rights, para 62: “In addition to obligations at the domestic level, States have a responsibility deriving from, *inter alia*, ICESCR article 2

international involvement is useful. International norms provide legal guidance and legitimacy to local activists¹⁸⁷. Importantly, international resources put to the cause could motivate governments to provide active support and mobilize local efforts.¹⁸⁸ Moreover, in practical terms, as a result of globalization, increased movement of persons from country to country as well as from continent to continent has turned FGC from an internal issue into an issue that can now have a direct impact on various cultures.¹⁸⁹

The important question that remains open is whether the international community will intervene consistently throughout the societies, regardless of the form in which discrimination is realized and will it do so in the proper manner by motivating the local societies to mobilize own force in order to achieve the necessary change. Therefore a question – to what extent were international actors then successful in formulating a global message on their involvement so that it appeals locally? – will be further examined through examination of the effects of both coercive and non-coercive strategies.

4.2. Effects of Using Coercive Strategies

Coercive efforts were non-deferential to either states or local activists in implementation of change which the outside actors seek to accomplish, were non-consultative in nature, and

(1) and CRC article 4, to take measures of international assistance and cooperation towards realization of economic, social and cultural rights, including the right to health. This responsibility, which is particularly incumbent on developed States, also arises in the context of commitments made at the recent world conferences, including the Millennium Summit and Millennium Development Goal 8 (...)

¹⁸⁷ “International norms and mechanisms are critical to establish global standards, aid in interpretation, and serve as a final resort for those whose claims are not or cannot be vindicated at the national level.”; in Naa-Adjeley in *supra* note 164, p.1373

¹⁸⁸ Where there is a global consensus on an issue, international action can serve as justification to individual states for their action providing their cause with credibility. For example, Tanzanian government used the reasoning of global consensus when attacking FGC in order not to appear biased against any local groups; in Boyle, *supra* note 6, p.107

¹⁸⁹ One obvious example is that medical professionals who perhaps had no knowledge about the practice can now find themselves in the situations of having to communicate with parents wanting to circumcise their daughters or assist young women who are experiencing health-related complications as a result of undergoing the procedure.

contained a punitive element in case of non-compliance. The penalization was either in the form of international shaming or in the form of withdrawal of resources.

4.2.1. Conditioning development aid on criminalization

As seen from Chapter 2, this was employed by major global donors, illustrated by examples of the US government and the EU. In order to evaluate the effect of such conditioning, it is first necessary to analyze whether conditioning led to criminalization of FGC, and second whether criminalization contributed to the eradication of FGC.

As it can be noticed from the analysis of domestic laws, international influence is evident. It is supported by the findings of Boyle and Preves who state that if internal sentiments would have been the drive for enactment of national laws, those would happen sporadically as opposed to the international influence being directed to all countries at the same time.¹⁹⁰ If we look at Chapter 3, we see that the fact that six laws or amendments were introduced within a short span of time¹⁹¹ would serve to support the claim that these laws are a product of international influence. Further argument that the laws were enacted as a result of external rather than internal pressures is that they are substantively the same. For example, all laws prohibit all types of practices, use similar expressions and impose similar punishments – both imprisonment and fines. Additionally, several laws specify that the punishment will be more severe on medical staff who performs the procedure and in cases when the procedure results in death. Several also attach culpability on persons having knowledge about the procedure taking place who failed to prevent or report it. This proves that international efforts have, mostly through conditioning, indeed led to criminalization in certain African countries.

¹⁹⁰ Boyle & Preves, see *supra* note 68, p.724

¹⁹¹ Ghana in 1994, Djibouti in 1995, Burkina Faso in 1997, Côte d'Ivoire, Tanzania and Togo in 1998 and Senegal in 1999.

The second question – whether criminalization contributed to the eradication of FGC, is perhaps best to answer by looking at the enforcement. In Chapter 3 it has been established that the enforcement of either new criminal anti-FGC laws or existent laws which have the potential to criminalize FGC, has been extremely weak and inconsistent. In that sense it might be said that criminalization did not contribute to the eradication of FGC. This has been widely elaborated in literature through discussion about the effects of FGC criminalization. While there are certainly benefits of the legal ban of the practices, the disadvantages of this approach cannot be disregarded.

Firstly, since it is a cultural practice, it is quite debatable that the population that considers it to be positive and in the interest of their children, would simply stop performing it. It is more likely, as already proven in practice, that criminalization would lead to driving the practice underground increasing the dangers for girls.¹⁹² Another significance to be noted is that when criminalization is introduced in countries where majority population is practicing FGC, it will mean that this law has no popular backing and given the specific regional history, it will be considered by the population to be an imperialistic imposition.¹⁹³ On the flip side, where the criminalization is introduced in countries where minorities practice FGC, they could perceive it as a tool for subordination of minorities; hence it might cause further inter-ethnic conflicts.¹⁹⁴

All these shortcomings of legal criminalization speak clearly to the essential need of integrated, holistic efforts which will deal with the causes of FGC, rather than the practice itself. However, conditioning those kinds of efforts is highly difficult and unlikely to be successful. This is so because holistic approaches require genuine commitment from both activists and authorities to the advancement of women's position in society. And that kind of genuine

¹⁹² Banda, see *supra* note 18, p.237. For example, this happened in Egypt and Uganda.

¹⁹³ Ibid, p.238

¹⁹⁴ Ibid, p.238

commitment required for a social, not only policy reform, is impossible to condition from the outside.

4.2.2. Shaming through sensationalism

Chapter 2 has showed that voices of Western feminists cannot be treated as only individual voices given that they were backed up by many Western NGOs working under the human rights rhetoric. Furthermore, they resonated in media messages which for the most part presented the practice one-dimensionally, which in turn influenced official statements of politicians having immense effect on legal and policy creation. Hence we should not underestimate the influence of initial Western feminist discourse. The statements such as the below one are clear examples of the Western attempts to shame the performers:

The sickening performance of every Somali man of cutting open his bride to satisfy his sexual desires by raping a screaming bleeding girl – wreathing in pain, often hardly more than a child – connotes a depravity and a corruption of values that are hard to fathom, let alone comprehend.¹⁹⁵

Why did the West so wholeheartedly embrace this battle against FGC, while other gender issues which are equally prevalent and harmful to women in the same communities, have not caused significant international mobilization? Sensationalism raised certainly played a role, but its cause can be found in the fact that, norms and ideas surrounding FGC are in stark contrast to everything the West takes for granted.¹⁹⁶ To be more specific, this refers to the existence of those ideas which Westerners uncritically assume in their own societies. Sensationalism seems to emphasize the perceived distance of the practice to the central values of the Western world. Gender equality, best interest of a child, sexual freedom, sexual enjoyment are only some ideas harbored by the West which seem to be in stark opposition to the practice. Additionally, from the

¹⁹⁵ Hosken, see *supra* note 100, p.60

¹⁹⁶ Boyle, see *supra* note 6, p.126

Western perspective, the issue links directly to sexuality which is something that developed world cares about greatly and is never hesitant to disclose discourse on sexuality publicly.

On another level of analysis, a factor that played a major role in shaping the nature of Western discourse is the outsiders' passion arising from the disgust by the practice. This becomes a crucial factor for evaluation of the discourse on FGC, not only because disgust is a powerful emotion, but also because there are at least two strong arguments in support of the claim that a factor of disgust can never be productive in arguing the need for abandonment of these practices.¹⁹⁷ Foremost, disgust is culture-specific – despite some objects of disgust being broadly shared, many of those objects are culturally defined, meaning they are subject to highly variable forms of social instruction and tradition.¹⁹⁸ Secondly, disgust has long been used as a weapon for exclusion of certain groups from participation in societies' affairs.¹⁹⁹ The “imperialistic” discourse of the West might with this realization receive another dimension which would explain a strong backlash reaction of the South²⁰⁰ - fear from exclusion from the discourse as well as from the global scene in general by being stripped down by the outsiders' disgust to the perception of animals, much like the other groups were in the past.

However, the coercion in this discourse does not lie simply in the imposition and exclusion. It also comes from the moralizing high ground the West was unambiguously attempting to establish. This is naturally detrimental to the joint efforts in the global movement because moral superiority seems to implicate the practicing populations' immorality, or at best the immorality of authorities permitting the practice. In this sense, granting asylum on basis of

¹⁹⁷ Disgust should never be a reason to make a practice illegal; in Nussbaum, M. C.: *Secret Sewers of Vice: Disgust, Bodies, and the Law in The passions of Law*, Ed. By Susan A. Bandes, New York and London: New York University Press (2001), p.45

¹⁹⁸ Ibid, p.27

¹⁹⁹ Jews, women, homosexuals etc.; in *ibid*, p.29

²⁰⁰ The open opposition or “a purely negative gesture of identifying with a position” to the dominant ideology happens “*because and only because* it runs against the hegemonic ideological constellation”; in Zizek, S.: *Why Does Law Need an Obscene Supplement?* in *Law and the Postmodern Mind*, ed. by Goodrich, P. & Gray Carlson, D., p.91

fear from FGC ceases to be a solely legal issue when supplemented by strong political advocacy and use of strong language and becomes a statement of one nation's moral superiority over others'. Even though not directly targeted at the practicing nations, it became a direct message to them to either change or remain an inferior, immoral formation.

In conclusion, given the complex nature of FGC practices arising not only from the position of women in patriarchal societies, but also from inability and/or unwillingness of state to embrace the issue depending on national politics and from all implications that the use of sensationalism in the discourse had on the locals; it is important that the international actors realize the limited potential of methods which employ coercion when directed at local actors. The obvious observation is that coerciveness might bring compliance particularly on a declaratory level, but to the detriment of the real commitment and sustainability of local actors.

4.3. Effects of Using Non-Coercive Strategies

Non-coercion in strategies is evident in supportive attitude towards anti-FGC measures undertaken by local authorities and advocates. This kind of attitude provides resources, such as international legal norms, financial resources and technical assistance for fight against the practices, but leaves the ownership over the movement to the local actors. In that, it provides the local actors with both – wide margin of deference in designing own approach²⁰¹ and support in its realization. For example, non-coercive attitude does not impose own projects, rather leaves freedom to these local actors to design projects which would be adjusted to local context. As established by Chapter 2, these strategies were mostly deployed by formal human rights actors,

²⁰¹ For example, from the legal aspect it is left to the state to decide on degree of formality through which the practice will be condemned – by enacting a criminal law or only developing a policy.

but have become accepted also by non-formal human rights actors. The following section examines the effects of non-coercive strategies firstly from the aspect of promotion of international human rights norms, and secondly from the aspect of provision of resources.

4.3.1. Promotion of international human rights norms

Countries that chose to ratify international instruments have a binding obligation to endorse the rights enshrined in those documents. While legal obligation in itself seems to imply some form of coerciveness, the non-coercive nature of international instruments speaks to the contrary. Firstly, the decision on ratification of a human rights instrument, even though it might include certain factors which would connote political pressure, is ultimately a free decision of a sovereign state. Secondly, the enforcement mechanisms of international human rights instruments are inherently weak, meaning they serve to provide guidance to the states rather than to coerce them into action through punitive approach. While the common mechanism of state reporting to the committee body of the particular instrument does involve a degree of coerciveness through an element of shame by public disclosure of state practices, the state still reserves a high degree of autonomy in how it will present own affairs in the report. Furthermore, the feedback of the official body is delivered in the form of conclusions and recommendations only and has no binding force on the state.

Moreover, it is not only the inherent nature of the international human rights instruments that makes them non-coercive to the local actors in the FGC abandonment movement. Analysis of the relevant instruments in Chapter 2 showed that all major UN human rights treaties that can be related to the practice of FGC did not name it a rights violation explicitly. At the same time, the interpretation leaves no doubt that the international community meant for the provisions to apply to the practice. Beyond judging whether this lack of clarity was positive or negative factor

for the abandonment efforts, it might be important to ask why the international human rights community left more space than necessary to the interpretation whether the FGC practice constitutes violation of international standards.

One reason might be that awareness of a huge number of cultural practices detrimental to individuals in particular societies exists, and especially cultural practices detrimental to females. With this in mind, it might be argued that the international community was avoiding the accusations of being prejudicial or unfair in pronouncing some culturally defended practices as unacceptable while other ones would be left to interpretation and perhaps implicitly acceptable.²⁰² Another argument would be that the international formal human rights community was intentional in allowing the domestic actors to take initiative. This argument can find confirmation in the fact that international legal policies became more specific and explicit after the African community included FGC in the Women's Protocol, which remains the only binding instrument specifying that the practice is a women's rights violation.

If the international human rights community would have actually included the practice in the major binding instruments, it would have sent a strong message that the practices are unjustifiable. However, it would have sent two other implicit, yet strong messages: that this practice is in a way worse than other culturally justified practices and that its lead in abandonment movement is justified regardless of the existence of domestic support to abandonment. Both messages would involve a degree of coerciveness and would most likely produce a domestic backlash similarly to the past efforts of similar nature.

²⁰² For example, while Art.16 of CEDAW asserts equal rights and obligations of both women and men in regards to the choice of spouse, parenthood and property rights, the prohibition of practice of polygamy is not mentioned expressly. Additionally, while there is more than strong and sufficient basis in the instrument for national prohibitions of bride burning, honor killings, compulsory dress or hiding from male views, neither of those culturally justifying practices is explicitly prohibited by CEDAW.

4.3.2. Provision of resource support

Resource support is most visible in organizing of various international and regional conferences as well as in participation in implementation of various projects. As it became evident from the Chapter 2 and Chapter 3, numerous conferences were organized by the UN bodies and agencies with a goal of advancing women's rights in general or of discussing FGC specifically. While some of the conferences, particularly the ones held at the early stages of the movement, were marked by sharp disagreements between local and Western participants, the goal of all of them was to facilitate discussion and cooperation. Eventually, such strategies proved successful as it can be seen from the more recent examples of Afro Arab Consultation in Cairo, discussed in Chapter 3. These events became more than platforms for facilitation of discussion and cooperation – they are now forums where both local and international efforts are recognized and awarded, local networks are strengthened and future cooperative actions are jointly identified. The key to success in achieving cooperation seemed to be handing over the lead role to the African actors and retaining supportive role, which was done for the first time at the Dakar conference. Noteworthy fact is that in the same year when the UN through co-organizing it, supported the formation of IAC, it also made an official stand towards the practice.

As for the participation in particular local projects with the goal of FGC eradication, it also became evident that many IGOs and INGOs are actively involved. The initial failures of international actors' participation in these projects in terms of achieving substantive change in practicing communities was due to lack of appropriate donors' understanding about the motives of those engaging in the practice.²⁰³ This problem is nowadays mitigated by donors' finding partners among local NGOs and/or government who are better placed to evaluate locally-specific

²⁰³ Rogo, Subayi, Toubia, see *supra* note 125, p.10

risks and challenges and therefore the best approaches to the eradication. However, the international actors may still provide suggestions for methodological framework as previous attempts resulted in many learned lessons about the best project approaches. Therefore, the effective role of international actors in this sense was seen in provision of financial resources and technical assistance for anti-FGC campaigns which are run by local partners who can relate more easily to affected communities.

In conclusion, this chapter has established not only that international community must involve itself in the fight against FGC, because there is a legal obligation for such action, but also because the effects of the practice are becoming global. Moreover, the appropriate involvement is absolutely valuable. The chapter has further established that FGC cannot be effectively fought through use of coercion. Firstly, conditioning aid might have resulted in criminalization of FGC in certain countries, but this was clearly insufficient for achievement of notable results in actual decrease of practice prevalence for a number of reasons. Secondly, strategies of shaming practicing communities and relevant authorities have produced backlash among local actors to any involvement of the international community, again for a number of reasons. Additionally, the chapter has established that non-coercive strategies such as promotion of international norms and provision of resources have much more positive effects as they allow local actors substantial degree of freedom in designing own approaches. This primarily shows the international actors' understanding that local contexts vary and that local support is crucial for achievement of results.

Chapter 5 – Conclusion and Recommendations

5.1. Conclusion

Generally, the paper has accomplished greater understanding of international involvement in the movement against FGC as well as added to existent knowledge about the efficacy of approaches undertaken to fight FGC. Hopefully its findings may be found relevant for future initiatives in fight against the FGC, particularly by the international advocates, but also for the local actors to realize the benefits and need for international activism.

By separating participation of human rights actors from that of other actors such as political and economic ones in this movement, the paper has placed emphasis on the human rights aspect of the movement. It stressed that not all actions undertaken in the name of the fight against FGC can be attributed to the human rights movement. Further, on the basis of previous works of particular authors, the paper has established significant fragmentation that existed already within the international human rights movement against FGC. In this sense, the first part of the paper's statement - *the formal human rights system deployed non-coercive strategies in the movement to end female genital cutting* has improved understanding of the movement itself, as it refuted frequent generalizing claims that global campaign on eradication is led by Western cultural insensitivity, non-understanding and imperialistic attitudes. The chronological dimension of the paper which showed that throughout the time, approaches of both formal and non-formal human rights actors have changed in response to African reactions signified that they learned not only from the local actors, but from each other as well. This finding that both formal and non-formal international human rights actors are now working together with local advocates against

the practice serves to refute claims of cultural relativists who see the global campaign as a Western product which unjustifiably disrupts local values.

The second part of the statement - *as opposed to the coercive ones, non-coercive strategies are appropriate ones because they are culturally sensitive* has added to the existent knowledge on practical approaches to the problem. By establishing that complexities surrounding FGC demand strategies which decisively place it in human rights agenda, but play supportive role to local advocacy and leadership, the paper has added to the practical list of lessons learned. As for its content, the message formulated by the international community was accepted by local actors when communicated in discourse devoid of passion and sensationalism, and when it came within a comprehensive women's rights approach.

The limitations of this research can be found in the fact that it could not deliver a truly comprehensive analysis of all relevant actors²⁰⁴ and events which marked the movement. It instead focused on only some representative actors and illustrative examples of events. Additionally, while the purpose of the paper was to create a general picture of the movement, it must be noted that certain conclusions are generalizing statements. Mainly, this refers to the "inappropriateness" of coercion applied by the mainstream and early non-formal human rights actors as well as on "appropriateness" of non-coercion applied by formal human rights actors. While this generalization served to stress the general idea, it is important to note that deficiencies in each approach existed. Mainly, formal actors were undeniably overdue in taking a stand towards the practice, as well as in placing African forces in the center of the campaign. Similarly, it cannot be said that all coercive approaches were detrimental or useless. Even those have played a role since initial Western involvement made locals start contemplating the effective approaches

²⁰⁴ i.e. all academia, media, financial institutions etc.

to the topic by realizing how detrimental patronizing attitude can be. These might be observations which could guide future research in this field.

Nonetheless, findings contained in this work could perhaps be relevant even within a greater human rights perspective. On a larger scale, these findings prove that even a major theoretical conflict of the human rights principles in practice can be solved through the use of appropriate strategic approach. Therefore, cultural relativism does not necessarily need to be a stumbling stone to the acceptance of universal values and international involvement. Rather, full understanding of the context of the problem and understanding of different perspectives surrounding it will yield the answer on the appropriate and effective role of the international community.

5.2. Recommendations

In practical terms, relevant findings of this paper call for cultural sensitivity of those international actors which expect success in reaching the populations practicing FGC. But, cultural sensitivity in this case is not necessary simply because political correctness calls for it. Rather, it is necessary because the message coming from the outside needs to resonate and gain credibility within the societies which are being reached. It has been shown that in spite of all good intentions, imperialist approach to the affected population does not work.

Hence, the right approach would be persuasion to accept arguments, but in a manner which would give the arguments validity in the local setting. Specifically, gaining credibility requires a rational approach, not sensational. Foremost, understanding what causes FGC and makes it positive in the eyes of those who practice is basis for any action directed against it. Additionally, understanding the social context of FGC would drive the focus from the practice

itself to its causes. This would consequently ensure that the comprehensive approach to eradication is used addressing different problems women face.

Tostan, whose founder and director is a woman of Western background, is particularly interesting example of how the involvement of “outsiders” does not necessarily need to be culturally prejudiced and counterproductive. The key seems to be to listen to the local people and not merely engage them, but provide them with necessary resources to drive the process of change. By learning about the past of the practicing cultures, but also their own, more anti-FGC advocates of the Western backgrounds need to recognize the challenges of speaking directly to the target populations. It is strongly suggested that when staging any initiatives, Tostan’s model is followed by seeking partnerships with local advocates.

The above said can however be applied beyond FGC, to a wider range of issues which cause cultural clashes and controversies. Interesting example can be found in the *New York Times* article’s praise of Tostan. The articles’ author realized that the organization’s methodology is seemingly simple, yet so rarely embraced in practice when discussing issues that touch the core of our passions. She further notes that it can be applied in resolution of numerous conflicts. In particular, the author quotes Melching in saying that in order to reach people, it is necessary to respect, acknowledge them and find common ground. It is equally necessary to refrain from shaming and blaming people.²⁰⁵

Particularly when placing the issue in the arena of international politics, a less passionate and certainly more diplomatic approach of the key actors is required. As human rights are definitely an instrument of foreign policy and consequently in the hands of politicians,²⁰⁶ it should be clear that politicians have power to influence every human rights movement.

²⁰⁵ Warner, J.: The Shame Game, see *supra* note 183

²⁰⁶ Ouguergouz, see *supra* note 143, p.37

Therefore, by contributing to policy and action within a human rights movement, they should ensure that their approaches are non-ethnocentric, culturally sensitive and in compliance with international human rights. In this way application of coercion in issues where it is not appropriate, but is rather detrimental to the human rights efforts, would be prevented. In this respect, there is a huge role to be played by the formal human rights movement. IGOs must ensure and be more active in educating not only the political and economic actors, but also NGO community, media and general population about culturally sensitive approaches to controversial human rights issues.

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