

MAKERERE UNIVERSITY KAMPALA
INNOVATIONS AROUND THE WORLD ON HARMFUL
SOCIO-CULTURAL PRACTICES

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INTRODUCTION

1.1 A Brief Background

It cannot be denied that the global feminist movement has made considerable progress in increasing the visibility of women and the fact that their rights are an integral part of globally accepted human rights. Chen has in that vein noted that

*“the efforts of women advocates have forced the international community to understand that not only do women have human rights, but these rights are not beyond the reach of the growing number of human rights mechanisms and programs set up by international and national institutions”.*¹

Indeed human rights of women at the international and global level has attracted considerable interest to the extent that non discrimination is the single theme characterizing all major post World War II human rights instruments. Unfortunately, this has not necessarily resulted into better lives for women and years on, the reality of most categories of women is more likely to be characterized by the continued existence of deep rooted systems that support their subordination and oppression across the globe.

In some parts of the world, women's subordination has taken the form of a host of oppressive and inhumane practices, that do violence to women's bodily integrity, and human dignity. Many of these have been dressed and justified in cultural and religious terms and include female genital mutilation (FGM), widowhood rites (usually wife inheritance), child marriages, polygamy and the payment of bride price.

The degenerating situation of women has heightened the concerted effort of the feminist movement and a host of other international human rights personalities and bodies to devise ways of combating harmful socio-cultural practices in order to improve the lives of women. Such innovations have come in the form of both legal, quasi-legal and extra-legal mechanisms, mostly developed to suit existing and emerging social and geo-political frameworks in different parts of the globe.

For reasons of time and space, this paper cannot comprehensively exhaust all innovations around the world. It instead discusses international innovations with emphasis on regional efforts in Africa. The latter is chosen because it is within Africa (and Asia) that the discussed practices are most prevalent. The researcher also believes that a discussion of the problem in Africa will be the most relevant to this conference.

¹ Chen “Engineering World Conferences: the International Women's Movement and the UN” in Weiss & Gordenker (eds) ‘The UN and Global Governance’ (1996) 139.

1.2 Brief Definitions and Extent of the Problem

FGM is the name given to the surgical operation in which part, or all, of the external female genitals are removed; It is also known as female circumcision and may have been in existence in Africa 2000 years ago. Those who denounce FGM say that it is a violent human rights abuse against women, while proponents say that it is an important cultural and religious tradition that must be preserved.²

It is estimated that 80 to 150 million females usually between the ages of four and twelve around the world have undergone FGM, and at present there are some two million girls at risk each year. The practice occurs in Africa, the Middle East, parts of Asia and in immigrant communities in Europe and North America.³ In its mildest form, the clitoris is partially or totally removed. In the most extreme form, called infibulations (pharonic circumcision), the clitoris, labia minora, labia majora, and the urethral and vaginal openings are cut away. The vagina is then stitched or held together, leaving a small opening for menstruation and urination. Cutting and re-stitching may be necessary for childbirth and sexual intercourse.⁴

The operation is commonly performed by untrained practitioners, with no form of aesthetic, and cutting instruments include broken glass, tin lids, scissors, or unsterilised razors. In addition to causing intense pain, the procedure carries with it a number of health risks such as pelvic infections, pain, shock, haemorrhaging, obstructed child labour, and the spread of HIV. Infibulation can have even more serious long-term effects: like chronic urinary tract infections, stones in the bladder and urethra, kidney damage, reproductive tract infections resulting from obstructed menstrual flow, pelvic infections, infertility, excessive scar tissue, keloids (raised, irregularly shaped, progressively enlarging scars) and dermoid cysts.⁵

First sexual intercourse can only take place after gradual and painful dilation of the opening left after mutilation. In some cases, cutting is necessary before intercourse can take place. In one study carried out in Sudan, 15% of women interviewed reported that cutting was necessary before penetration could be achieved. Some new wives are seriously damaged by unskilled cutting carried out by their husbands. A possible additional problem resulting from all types of female genital mutilation is that lasting damage to the genital area can increase the risk of HIV transmission during intercourse.⁶ In addition to the physical scars, women who have undergone FGM suffer serious psychological life long trauma which can be life threatening.

Polygamy, the practice of a man having more than one wife is likewise a deeply entrenched cultural and religious practice in many parts of the world. In certain parts of Africa, polygamy is sanctioned by law as an acceptable cultural practice. Interestingly, polygamous unions in Britain and the United States are not considered a crime (for as long as the marriages are not registered which would amount to bigamy).⁷ Polygamous unions in Islam are allowed by the Qur'an and practiced throughout the Islamic world although only four wives and less are allowed.

Many jurisdictions have set majority age at 18 years meaning that everyone below that age is deemed to be a child. Marriages of children as young as eight years have been reported in Africa and such marriages together with the custom of the payment of bride price or bride wealth are widely practiced in Africa and Asia. For example, a new report by UNICEF documents that millions of children, mostly girls suffer from the practice of child marriages. African children are the most affected with over 70 percent of girls aged 15-

² The fact that FGM is an accepted Islamic ritual is still controversial. Some verses of the Qur'an have contradicted it. FGM was also a practice by Falasha (Ethiopian Jews) as a religious practice.

³ Hosken P 'Female Genital Mutilation' at ><http://www.feminist.com/resources/artspeech/inter/fgm.htm><

⁴ Female Genital Mutilation, UN initiatives at ><http://www.amnesty.org/alilib/incam/femgen/fgm7.htm><

⁵ As in No. 4 above)

⁶ (As in No. 3 above)

⁷ Women in Development Network (WIDNET) at ><http://www.focusintl.com.statrla.htm#006><

19 in Congo Kinshasa and Niger and over 50 percent in Uganda, Mali and Congo Brazzaville. Child marriages are still very popular in India and Sri-Lanka with hundreds of children, some as young as three years old being married off by their parents during Hindu religious festivals.⁸

Widow inheritance is still prevalent in Africa. For example it is still well followed by the Luo of Western Kenya, the Bakiga in Uganda, and many tribes in Western Africa.

1.3 Harmful Socio-Cultural Practices as a Human Rights Issue

The prevalence of these practices and the fact that women and not men are the victims of these horrendous practices signify the discriminatory institutions in which they are entrenched. Further, the full range of these horrendous practices are meant to enhance the dominant position of men (over women), and exemplify the unequal power relations between the sexes prevalent in partial societies around the world, especially in Africa and Asia.

For example some of the reasons advanced in favour of FGM are that it will reduce a women's desire for sex and thereby reduce her chances of sex before or during the marriage and thereby extend honour to her family and husband. Others believe that if the clitoris touches a man's penis he will die, yet to others, an un-mutilated female cannot conceive.⁹ FGM thus achieves an effective control of women's sexuality and reproductive rights by men.

Some reasons extended for polygamy are that it enhances a man's self-esteem and is a sign of wealth.¹⁰ Proponents of widow inheritance argue that it will keep the wealth within the deceased husband's family, continue his lineage and safe guard against widow promiscuity. In return, the widow should expect the company of a responsible partner and limited material support.¹¹ Child marriages are now on the increase in Africa because they are believed to be more fertile as well as the widely held myth that having sex with young girls cures AIDS.¹²

There is growing concern that the stated practices have seriously compromised health and reproductive rights of women and girls around the world. FGM, polygamy, widow inheritance and child marriages have in particular exacerbated the spread of AIDS in Africa. The practices make it difficult for women and girls to control their sexuality or make a case for self-protection, yet they have very limited access to adequate medical facilities. This troubling situation is reflected in the present statistics whereby an estimated 25% of the people living in sub-Saharan Africa are infected with the AIDS virus, with women and girls being exceptionally vulnerable.¹³

In addition, the named practices are a clear violation of a wide range of rights of women. In particular are the rights to human dignity, life, privacy and the right to protection from all types of torture, inhuman and degrading treatment and violence. The latter is of particular interest since the stated practices invariably result into physical and psychological violence on women. In fact, most innovations around the world that have been devised over time have addressed these practices as a type of gender violence as it is understood in contemporary international human rights discourse.

Further, forcing children into early marriages can have profound physical, intellectual, psychological and emotional consequences. It will result into restriction of personal freedom, and have a negative impact on

⁸ Nikki Katz "Women's Issues at ><http://womenissues.about.com/is/childrenmarriages>

⁹ Rhonda Heitman 'Female Genital Mutilation' 104/00.

¹⁰ "Should polygamy stay?" New Vision Newspaper 3/2/04 at page 17

¹¹ Nancy Luke "Widows and Professional Inheritors – Understanding AIDS Risk Perceptions in Kenya" at >http://www.ssc.upenn.edu/social_networks/level:2003/papers<

¹² Global Fund for Women Report at ><http://www.globalfundforwomen.org/4news/Africa-report/08-Guinea.html><

¹³ Global Fund for Women Report at ><http://www.globalfundforwomen.org/4news/Africa-report/08-Guinea.html><

their health and education. For girls, it will in addition result into premature pregnancy with higher rates of maternal mortality and will likely lead to a life-time of domestic and sexual subservience. Teenage girls are for social and physical reasons more susceptible than mature women to sexually transmitted infections including HIV/AIDS.

1. LEGAL AND QUASI-LEGAL INNOVATIONS TO COMBAT HARMFUL SOCIO-CULTURAL PRACTICES

2.1 Legal Innovations

International efforts to eradicate harmful socio-cultural practices have a long history. As early as the 17th century, there were attempts by Christian missionaries and colonial administrations in Africa to prevent the practice of FGM. Unfortunately, these efforts were perceived as a colonialist attempt to destroy the local culture, and thus strongly resisted.

The years following the end of the Second World War saw the beginning of a process of decolonization and the creation of a universal framework for the protection of human rights in the form of the Universal Declaration of Human Rights (UDHR). It is in this context that FGM first appeared on the agenda of the United Nations (UN) in 1958. However, it was not until after twenty years that serious innovations to combat FGM and other harmful practices begun.

The period immediately following World War II saw the creation of a universal framework for the protection of human rights in the form of legislation and international UN bodies with specific mandates some of which are concerned with protection against harmful socio-cultural practices. The more major ones will be discussed briefly.

i) The Universal Declaration of Human Rights (UDHR)

The UDHR proclaims a broad catalogue of rights, some of which address the issue of violence against women. Article 1 of the Declaration states that “human beings are born free and equal in dignity and rights.” Article 2 proclaims that all human beings are entitled to enjoy the full range of rights and freedoms set forth in the Declaration without distinctions of any kind, such as sex, thereby prohibiting all forms of gender-based violence, such as FGM. Article 3, guarantees the right to life, liberty and security of the person. This prohibits all forms of physical and sexual violence, including rape. Since most jurisdictions have now prohibited child marriages with penalty sanctions. Consummating such marriages amounts to statutory rape or defilement. Article 7 prohibits torture, cruel, inhuman or degrading treatment, and thereby prohibits acts of violence against women perpetrated for example through widowhood rites and FGM. Article 16 guarantees to all men and women of full age the right to marry and found families, and provides further that both men and woman are entitled to equal rights to marriage, during marriage and at its dissolution. This provision explicitly prohibits forced marriages as well as early marriages.

ii) The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights was adopted by the UN General Assembly and opened for signature in December, 1966 and entered into force in 1976.¹⁴ Article 6 guarantees the right to life, while Article 7 guarantees the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment. In addition, the right to liberty and security of the person is provided for under article 9. This should address practices like FGM and widowhood inheritance. Article 23 provides for the right to marry and found a family and prohibits forced marriages.

¹⁴ Adopted and opened for signature by General Assembly resolution 2200 A (XXI) 16 December, 1966. date entry into force: 23 March 1976.

iii) The International Covenants on Economic Social and Cultural Rights (ICESCR).

This covenant was also adopted by the UN General Assembly and opened for signature in December 1966, entering into force in 1976.¹⁵ The focus of the treaty is economic, social and cultural rights. The provisions that address the issues of harmful practices include, prohibition of forced marriages (Article 10), and the right of all to the highest standard of physical and mental health attainable (Article 12)

iv) The Convention on the Rights of the Child (CRC)

Among the rights guaranteed by this convention that relate to violence against the girl-child¹⁶ are the right to life and the right not to be subjected to arbitrary or unlawful interference with her privacy, family, home or correspondence. State Parties are further enjoined to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Under Article 24 which provides for the right to health, State Parties are enjoined to take effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. Such practices would include Female Genital Mutilation (FGM), as well as early marriages, which predispose the girl-child to early pregnancies and all its attendant dangers.

v) Convention on Consent to Marriage, Minimum Age for Marriages and Registration of Marriages

The preamble to this convention mentions the fact that “certain customs, ancient laws and practices relating to marriage and the family are inconsistent with the principles set forth in the UN Charter and in the Universal Declaration of Human Rights”

The preamble further provides that all the contracting States should take appropriate measures, with a view to abolishing such customs, ancient laws and practices by ensuring complete freedom in the choice of a spouse, eliminating, completely child marriages and the betrothal of young girls before the age of puberty, including establishing appropriate penalties.

vi) Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW has been hailed as the most important international legal document that deals with the human rights of women. It contains a comprehensive catalogue of rights dealing specifically with the situation of women around the globe. CEDAW brought together in a single international instrument various International conventions already in existence which define the sphere of human rights and brought into the legislative ambit many of the recommendations that had over the years been adopted by the UN Commission since its inception in 1946. CEDAW is an attractive legal document in that it came as the first international treaty to call for the abolition of all forms of discrimination against women and not just discrimination on the basis of sex.¹⁷ It does not call for gender neutrality but instead prohibits all practices that perpetuate women’s inequality.¹⁸

It is note worthy that CEDAW does not expressly condemn social-cultural practices or even violence against women. The importance of the latter was noted by the CEDAW Committee¹⁹ and resulted into General

¹⁵ General Assembly resolution 2200 A *XXI (of 16 December 1966). Date of entry into force: January 1976.

¹⁶ Although the convention does not relate specifically to the girl child, many of the forms of exploitation and abuse mentioned in the convention affects girls specifically or at least disproportionately.

¹⁷ Article 1.

¹⁸ Article 32.

¹⁹ The body which was set up to implement the convention.

Recommendation No. 19 in which the Committee expressed the view that the definition of discrimination against women includes gender based violence. The Committee further emphasized that gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Accordingly, the CEDAW Committee is of the view that violence against women constitutes a breach, not only of Article 1 which prohibits discrimination against women, but also of Articles 2 and 3 which enjoin State Parties to eliminate discrimination against women in all its forms and in all fields of political, social, economic and cultural life. Article 2(f) requires States Parties to take all appropriate measures, including legislation, to modify and abolish existing laws, regulations, customs and practices that constitute discrimination against women. Therefore, customary practices such as forced marriages, early marriages and FGM, which constitute violence against women, should be outlawed.

The Committee has also observed that violence against women is a breach of Article 14 of the CEDAW. Article 14 requires States Parties to take all appropriate measures to eliminate discrimination against women in rural areas. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women persist more in rural communities and are more widespread than in urban areas.

2.2 QUASI LEGAL INNOVATIONS

Innovations against harmful socio-cultural practices have since CEDAW gone beyond international legal instruments. There has been within the UN itself numerous innovations directed at such practices. The UN has worked closely with international and regional NGOs interested in this area.

A seminar organized in 1979 in Khartoum, Sudan, by the World Health Organization, set the direction for renewed international initiatives. Its recommendations, aimed mainly at the 10 governments from eastern and western Africa represented at the meeting, called for the adoption of clear national policies and the establishment of national commissions to coordinate the activities of various official bodies; the enactment of legislation where appropriate; and the organization of public education and outreach involving health workers and traditional healers.

Interest resurfaced among international non-governmental organizations (NGOs) during the UN Decade for Women (from 1975 to 1985) which highlighted the status of women in developing countries. The Programme of Action of the UN World Conference on Women held in Copenhagen in 1980 called for urgent steps to combat negative traditional practices detrimental to women's health.

This call echoed increasing demands from African women's organizations and others for greater attention to be paid to these practices. These demands led to the creation in 1984 of a UN Working Group on Traditional Practices Affecting the Health of Women and Children and the appointment of one of its members as a Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Rapporteur, Halima Warzazi, undertook field missions to Djibouti and Sudan and produced two reports in 1989 and 1991 which contributed to a better understanding of the phenomenon.²⁰

Two regional seminars were organized by the UN in Burkina Faso (1991) and Sri Lanka (1994) to assess the human rights aspects of FGM and other traditional practices affecting women and children. The seminars - a forum for discussion between national officials, UN specialized agencies and NGOs - led to the 1994 Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children. The plan of action makes a bold statement that:

"FGM "is a human rights violation and not only a moral issue...[It] is an expression of the societal gender subordination of women".

²⁰ For more information see UN initiatives
at <<http://www.amnesty.org/lalilib/intcam/femgen/fgm7/htm>>

It contains 62 measures for governments to take at a national level. Key among these are: giving a clear undertaking to end traditional practices, and in particular FGM; ratifying and implementing relevant international instruments; drafting legislation prohibiting such practices; and creating bodies and mechanisms to ensure that adopted policies are implemented.

At an international level, the Plan of Action recommends the inclusion and integration of FGM in the work of various UN specialized agencies and other UN bodies, including the Commission on the Status of Women and relevant treaty bodies such as the Committee on the Rights of the Child. It also urges NGOs to integrate and reinforce their activities.

In order to follow up the Plan of Action, and to allow more in-depth analysis of the issue to take place, the mandate of the Special Rapporteur was extended. Her July 1997 report examines the status of implementation of the Plan of Action in a number of countries and surveys more recent international efforts to combat the practice.

Her work has been complemented by that of the Special Rapporteur on Violence against Women. The former Rapporteur Radhika Coomaraswamy, filed reports to the Commission which included analysis of FGM as a form of violence against women and concrete recommendations for prevention.

Two recent world conferences have also marked a critical development in the UN's role on FGM. In 1994, the International Conference on Population and Development was held in Cairo. One of the achievements of the Conference was to highlight the intimate interconnections between women's health and women's human rights. The Conference Declaration urged governments to prohibit FGM, and to give support to community organizations and religious institutions working to eliminate the practice²¹.

The Fourth UN World Conference on Women, held in Beijing in 1995, represented a historic attempt to overcome the traditional neglect and indifference surrounding women's human rights. The Beijing Declaration and Platform for Action underscored the obligations of governments to combat violence against women - including FGM - as a priority.

In April 1997, three UN agencies, the World Health Organization, United Nations Children's Fund and United Nations Population Fund, unveiled a Joint Plan to bring about a major decline in FGM within ten years and to completely eradicate the practice within three generations. The plan emphasizes the need for a multi-disciplinary approach, and the importance of teamwork at a national, regional and global level. This teamwork would bring together governments, political and religious institutions, international organizations and funding agencies. The basis for this cooperation at a country level would be national "inter-agency teams" supported by international organizations.

The plan takes a three-pronged approach: educating the public and law makers on the need to eliminate FGM; "de-medicalizing" FGM, tackling it as a violation of human rights as well as a danger to women's health, and working with the entire UN system to encourage every African country to develop a national, culturally specific plan to eradicate FGM. The Joint Plan represents a welcome step towards greater integration and coordination of the activities of UN agencies on FGM.

UNICEF now addresses child marriage as part of its broader approach to gender discrimination, which undermines the right of women and children. UNICEF's Global Girls' Education Programme operates in more than 60 countries to ensure that girls have an equal opportunity at education, which is key in postponing marriage and for the overall development of girls.

In addition to supporting advocacy and communication campaigns in several countries, UNICEF has also helped develop two successful initiatives in South Asia and Sub-Saharan Africa the regions that have

²¹ As above.

recorded the highest rate of child marriage.

User friendly innovations that appeal to the target groups have been devised. For example the 'Meena Initiative' in South Asia is named after the young cartoon heroine of a multi-media package and serves as a catalyst for discussion on gender discrimination in childhood. In Uganda, the cartoon strip *SARA* became a popular character in the New Vision Newspaper (Child Vision). Issues covered include son preference, unfair treatment of girls in the family, their lesser access to health and education services, harmful traditional practices such as dowry and sexual harassment, as well as early marriage.²²

Building on Meena's success, the Sara Adolescent Girl Communication Initiative has been developed in 10 Eastern and Southern African countries. The importance of staying in school is one of the main messages of this radio series. Other issues covered include, HIV/AIDS, domestic workload, FGM and early marriage.

3. REGIONAL INNOVATIONS – THE AFRICAN PERSPECTIVE

Regional initiatives to combat harmful socio-cultural practices through the use of legal instruments in Africa have been very slow and indecisive. This is lamentable especially when these practices are most widely practiced on this continent than anywhere else in the world.

3.1 The African Commission on Human and People's Rights (ACHPR)

Currently, part of the African human rights regime is embodied in the jurisprudence of the African Charter on Human and People's Rights²³ (the Charter) which has created as its principle monitoring organ the African commission on Human and People's Rights (the Commission) and established its procedures.

It must however be noted at the outset that issues of human rights of women have only recently gained prominence in the commission. The Charter itself is woefully deficient on the rights of women. Culture was reinforced in the preamble when State Parties based the foundation of the instrument on 'tradition and values of African civilisation' and, gender only appears in the middle of a lengthy list of grounds on which individual rights may not be distinguished.²⁴ Further, only one out of the sixty-eight articles expressly makes reference to women and as Oloka-Onyango notes, it is placed in an omnibus clause covering family rights and traditional values 'thereby reproducing the essential tension that plagues the realisation of human rights by women.'²⁵ In Welch's view, the end result is that,

[t]he Charter conveys a potentially ambiguous message in its attempt to recognize both deep-seated African values (which arguably include clear differentiation of roles and rights based on gender) and emerging global values (among which non-discrimination on the basis of sex figures prominently).²⁶

It is clear from the above that originally in the African regime, the protection of human rights of women was to be dealt with within the institution of the family, an institution in which most harmful social and cultural

²² For a more comprehensive report see >http://www.afrol.com/categories/women/wom025_child_marriages.htm<.

²³ The Charter was adopted on 27/6/1981 and came into force on 21/10/86. OAU.CAB/LEG/67/3 rev.5, 51 out of 53 African countries have ratified the Charter. Therefore it is only Morocco and Somalia that are currently exempt from its provisions.

²⁴ Article 2.

²⁵ Oloka-Onyango J 'Human Rights and sustainable development in contemporary Africa: A new dawn, or retreating Horizons?' *Buffalo Human Rights Law Review* (2000).

²⁶ Welch "Protecting Human Rights in Africa. Roles and Strategies of NON-Governmental Organisations. (1995) 554.

practices continue widespread, unabated and unchecked. The practice of African societies has been to keep issues of the family sacrosanct and private. Meaning that human rights abuses on women (like harmful practices) are hardly reported or dealt with in the former sector.

Fortunately, recent innovations have brought about marked improvement at the regional level. Active NGO input (for example NGOs like Women in Law and Development in Africa (WILDAF), have pushed for improvements in the Commission which as an international body should exhibit a decent catalogue of human rights and effectiveness by setting acceptable international standards with regards to the rights of the Charter and mandate of the commission itself.

3.2 The Special Rapporteur on the Rights of women in Africa.

Perhaps one of the most innovative achievements of the Commission came in October 1998 by the appointment of a Special Reporter on the rights of women in Africa.²⁷ The Commission justified the appointment after its realization that the provisions of the Charter did not ensure protection of fundamental rights of women. It was also reasoned that it was necessary to appoint such a person to assist in the effective implementation of the Commission's mandate.

The mandate has undertaken her duties either in special procedure or in conjunction with the other Commissioners to highlight abuses around the continent and commending particular member states where improvements in the protection of women's rights have been evident. One such visit was to Mauritania in 1997 where she issued a report highlighting violations against women including harmful traditional practices like FGM, early marriages and discriminative marriage and divorce laws.²⁸

Unfortunately, the presence of a Special Rapporteur on the rights of African women has hardly improved the marginalized position of women on the continent or improved their rights as victims of abusive harmful social-cultural practices. This is because the mandate's work has been severally limited due to lack of funds and human resources.²⁹

The post is currently held by Angela Melo, a Mozambican jurist whose terms of reference range from carrying out a study on the situation of human rights of African women, following up implementation by State Parties and encouraging NGO work in the field of promotion and protection of the rights of African women. The Rapporteur also has the mandate to serve as a link between the Commission, intergovernmental and NGOs at regional and international level in order to harmonize the initiatives on the rights of women. Therefore the terms of reference signify that the Special Rapporteur is the principal sword of the Commission to combat harmful social and cultural practices around the continent. Unfortunately, her work has been seriously impaired by logistical and financial constraints and much of her work in the area of women's social and cultural rights is hardly mentioned in the Commission's activity reports. She has managed very few visits to State Parties meaning that her impact is hardly felt by grass root women.

3.3. The Protocol to the African Charter on Human and People's Rights Relating to the Rights of Women (The Protocol).

The Protocol is the most recent innovation in the African Human Rights regime to address rights of women and its history is quite phenomenal.

Despite the presence of CEDAW and its application to Africa, African women felt that they needed an African specific human rights document; one that would directly and more relevantly address their human

²⁷ See 12th Activity Report of the African Commission on Human & People's Rights 1998-99 Annexure IV.

²⁸ Report of the Commissioner's mission to Mauritania Novakchott 19-27 Evans & Muray (2000).

²⁹ The Commission offers very limited logistical and financial support and the mandate has had to rely heavily on NGOs.

rights needs. In fact, CEDAW which had not made any specific provision for harmful socio-cultural practices could not through its provisions address social issues of violations of human rights by these practices. Worse still in Africa, despite its well articulated articles on women's rights, the drafters of the Charter were only minimally influenced by CEDAW's provisions, incorporating it only by reference and not by name.³⁰ Even then, CEDAW has the weakest implementation and enforcement mechanism of any of the international human rights instruments and did not until October 1999 allow for individual petitions.³¹ Further, CEDAW has recorded the highest number of reservations, which further weakened its impact.³² The reservations made by African Islamic governments to CEDAW (on the basis that it violates the teachings of the Shari'a), outnumber all reservations made by such governments to all other human rights instruments.³³

It is important to note that prior to the Protocol, women NGOs and human rights activists had continuously drawn the attention of African governments and regional bodies to the plight of African women and girls suffering from harmful religious and cultural practices. The African Committee on Traditional Practices Affecting the health of Women and Children headed the call. This NGO in cooperation with the OAU drafted the '*OAU Convention on the Elimination of All forms of harmful Practices Affecting the Fundamental Human Rights of Women and Girls*'. The draft was eventually integrated with the Draft Protocol on Women to form the current Protocol in which provisions protecting African women from harmful practices feature prominently.

In particular, Article 5 of the protocol calls upon State Parties to condemn all forms of harmful practices which negatively affect human rights of women and which are contrary to recognized international standards. States are to put into place legislative and other measures to combat these practices, offer support to victims and timely protection to those most vulnerable to these practices. In addition, the Protocol in Article 17 guarantees women to live in a positive cultural context and the right to participate at all levels in determining cultural policies.

Further, the Protocol has made provision for rights ranging from protection from discrimination, rights to dignity and security, family rights, access to justice, economic cultural, health and reproductive rights which are relevant in the fight against harmful socio-cultural practices.

Some of the rights discussed above were introduced in the African regime for the first time, coming as an elaboration of CEDAW, and also expanding existing rights in the Charter, especially Articles 2 and 18. This makes the Protocol 'truly African', and its provisions more women specific and gender responsive.

However, the passing of this instrument will not necessarily result into immediate emancipation of African women. This is because it shall come into force only after 30 days of the 15th ratification³⁴ and for African states that have so far shown much reluctance in championing human rights in general, this may take several years. So far, only the Gambia has ratified the Protocol (in September 2003).³⁵

Significant omissions in the Protocol itself have weakened its impact. For example, no mention was made of bride price yet it is one cultural institution practiced across the continent that has cemented women's

³⁰ Article 60 of the Charter.

³¹ Additional Protocol to CEDAW, which came into force on 22 December 2000.

³² Oloka-Onyango & Tamale "The Personal is Political" or Why Women's Rights are Indeed Human Rights" an African Perspective on International Feminism' Vol. 17 Human Rights Quarterly.

³³ Zeid 'Equality, discrimination and constitutionalism in Muslim Africa' in Oloka-Onyango (ed) Constitutionalism in Africa: Creating Opportunities, Facing Challenges. (2001) 171.

³⁴ Article 29 of the Protocol.

³⁵ Information obtained from a Legal officer at the Commission Secretariat (Banjul) in October 2003.

subordinate position in the family.

It should however be appreciated that the drafting process was carried out within a restrictive environment and therefore the need to compromise. For example, the debate over the retention or prohibition of polygamy was long and heated. The drafters had to strike a balance between providing for monogamous unions (that in theory represent equality of sexes in marriage) and at the same time accommodate for Islam and culture where the practice is accepted. The result was Article 6 (c), which accommodates both factions and calls for equal protection of women in both types of union. Moreover, it is highly unlikely that the conservative AU Assembly consisting entirely of men would agree to abolish polygamy entirely.

3.4 Communications to the African Commission on Human and People's Rights

Another important innovation in the Commission has been communication by member states, NGOs and individuals to the commission.³⁶ The Commission is open to communications from NGOs and individuals and throughout its history, NGOs have been at the forefront of presenting communications. However, NGOs have not been diligent in bringing cases that augment women's rights and even when they do present communications, their areas of interest have mainly been political and civil rights.³⁷ In particular, no report has yet been made of a communication specifically targeting any one of the discussed harmful practices. The reason could be that the number of NGOs concerned with women's rights is still small,³⁸ lack effective funding, logistical and technical support to feature prominently at the regional level. It has also been observed that most NGOs are focusing on development than rights, reasoning that the sheer struggle for survival occupies the attention of most African women.³⁹

This state of events is very discouraging, basing on the fact that the abuse of social and cultural rights, through harmful practices of African women are prominent and widespread on the continent.

4. EXTRA LEGAL INNOVATIONS

It is becoming increasingly evident that social-cultural practices are too deeply entrenched into the societies in which they are practiced to be eradicated through legal means alone. Women and men alike have continued to promote and respect these practices unabated in spite of existence of both international and national legislation outlawing them. There has therefore been a shift towards merging legal, quasi and extra legal innovations to eradicate such practices.

For example, the Africa News Service reported in November 1997 the emergence of a new rite known as "*Ntanira na Mugambo*" or "*Circumcision Through Words*". In Kenya the rite takes the form of a week-long program of counselling, capped by community celebration and affirmation, in place of the widely criticized practice of FGM. During December, 1997 residents of some 13 villages in central Kenya celebrated the fourth installation of this increasing popular alternative rite of passage for young females.

The first circumcision through words occurred in August 1996, when 30 families in the tiny village of Gatunga, not far from Mount Kenya, ushered their daughters through the new program. Some 50 families participated in the programme in December followed by 70 families in August 1999.

Circumcision through words grew out of collaborations between rural families and the Kenyan national women's group, *Meandele'o ya Wanawake Organization* (MYWO), which is committed to ending FGM in

³⁶ A commission is a legal case instituted by anyone legally competent to do so before the Commission. It assumes an adversarial procedure in which a state, NGO or individual is pitied against a State which is a signatory to the Charter.

³⁷ This is the case even for countries like Nigeria whose NGOs have constantly featured in the Commission.

³⁸ For example by 2001 there were only 16 NGOs specialising in women's rights with observer status

before the Commission out of the total of 236. See Welch (No 26 above) 208.

³⁹ Welch as in (No 26 above) 557.

Kenya. It follows years of research and discussion with villagers by MYWO field workers with the close cooperation of the Programme for Appropriate Technology in Health (PATH), a non profit, non governmental, international organization which seeks to improve the health of women and children. Headquartered in Seattle, PATH has served as technical facilitator for MYWO's FGM program, providing the methodologies and other inputs to help carry it forward.

Undeniably, it seems the central defining achievement of 'circumcision through words' is not necessarily that it saves young women from the dangers of FGM, but, that it captures the cultural significance of female circumcision while doing away with the dangerous practice itself.

"People think of the traditions as themselves" related Leah Muuya of MYWO "they see themselves in their traditions. They see they are being themselves because they have been able to fulfil some of the initiations" said Muuya in " Secret and Sacred" a MYWO- produced videotape, distributed by PATH, which explores the personal dangers and harmful social results of FGM. The tape explains that female circumcision has traditionally signalled when a young woman is ready for the responsibilities of adulthood.

In response, circumcision through words brings the young candidates together for a week of seclusion during which they learn traditional teachings about their coming roles as women, parents and adults in the community, as well as more modern messages about personal health, reproductive issues, hygiene, communication skills, self-esteem, and dealing with peer pressure.

The week is capped by a community celebration of song, dancing and feasting which affirms the girls and their new place in the community. It has been very well received by the community showing that it was a critical achievement in their efforts to eradicate FGM.

MYCO and PATH have also developed public awareness campaigns that spread information on the harmful effects of female genital mutilation. According to Dr. Asha Mohamud, a PATH Senior Program Officer focusing on FGM, the two organizations agree that information, education and public discussion are more effective tools against FGM than direct, prohibitive action.⁴⁰

Other countries in Africa have also adopted extra-legal methods to eradicate harmful socio-cultural practices. For example, BBC news reported in September 2003 that 250 villages from three rural communities in Senegal pledged to abandon FGM. Further, 350 traditional circumcisers in northern Ethiopia agreed to abandon FGM as a result of intensive sensitization by health officers.⁴¹ The USA has adopted a more victim oriented approach by encouraging the creation of medical practices that address the medical and emotional needs of female immigrants.⁴²

The government of Somalia one of the countries where FGM is prevalent, has overtly intensified and encouraged extra legal efforts to combat it. A ground-breaking international seminar on "Strategies to Bring About Change" was held in June 1988, in Mogadishu, to draw world attention to the Somalian campaign to eradicate infibulation.

The SWDO (Somali Women's Democratic Organization), jointly with ADIoS (The Italian Association for Women in Development) has organized a national campaign, fully supported by the Somalian government, to eradicate damaging traditional practices. Indeed, every department of the Somalia government is involved in this national initiative led by the outspoken president of the SWDO, Muraio Garad Ahmed, who wields considerable political power.

AIDoS, led by Daniela Colombo and with the assistance of the Italian Government, has worked jointly with

⁴⁰ For more information see Africa News on line "Alternative Rite to Female Circumcision Spreading in Kenya at >http://www.africanews.org/specials1.19971119_fgm.htm<

⁴¹ BBC News on line at >http://www.fgmnetwork.org/image/new_header.gif<

⁴² The USA government has taken steps to criminalize FGM and now considers asylum applications in light of FGM practices in the country of origin.

the SWDO in Somalia to develop viable strategies and extensive teaching aids for different kinds of programs addressed to different sectors of the population.

The secrecy surrounding infibulation has only recently begun to be lifted in Somalia. It took considerable courage for the SWDO to take up this issue. Thanks to the perseverance of its leadership, it now has become a national campaign supported not only by the health ministry, but also by all other ministries, especially the education ministry. The campaign to eradicate female child genital mutilation is going on in all schools; it is discussed in the media. Every occasion is used to create awareness among the population about the damage done by infibulation. All families are urged to stop having their daughters “done”.

This international seminar had been preceded by a national meeting, which had developed a program of action for the joint SWDO-AIDS Information Campaign. At the international seminar in Mogadishu, many influential national and international leaders gave speeches at the opening and closing sessions in the great hall Parliament. The speakers included a representative of the President of Somalia, the Minister of Health, AIDS and others.

Delegates from several African countries, including Egypt, Sudan, The Gambia and Nigeria presented outlines about the successful campaigns and strategies to eradicate female child genital mutilations in their countries. Egypt with a program sponsored by the Cairo Family Planning Association, led by Aziza Kamel, has the most extensive experience in conducting a multitude of successful grassroots initiatives. From London, Stella Efua Graham, a native of Ghana and President of FORWARD (The foundation for Women’s Health), outlined her educational work among African immigrants to the UK. A doctor from Indonesia discussed how female circumcision in Indonesia had now been changed into a purely symbolic rite. Berhane Ras Work, the president of the Inter –Africa Committee (IAC) on “Traditional Practices Affecting the Health of Women and Children” foundation in 1984, talked about its work all over Africa.⁴³

FGM has been cited by the World Health Organization (WHO) as a major public health problem. At the WHO seminar in Khartoum on Traditional Practices Affecting the Health of Women and Children (1979), nine African and Middle Eastern countries which participated formulated four ground breaking recommendations for abolishing FGM i.e.

- Adoption of clear national policies for the abolishment of FGM
- Establishment of national commissions to coordinate and follow up the activities of other bodies involved including, where appropriate, the enactment of legislation prohibiting FGM.
- Intensification of general education of the public, including health education at all levels, with special emphasis on the dangers and the undesirability of FGM.
- Intensification of education programs for traditional birth attendants, midwives, healers and other practitioners of traditional medicine, to demonstrate the harmful effects of FGM, with a view to enlisting their support along with general efforts to abolish this practice.

A documentation was made of case histories from most African countries where FGM is practiced, including the South of the Arab Peninsula. It was found out that in Malaysia and Indonesia a less drastic operation is performed by some of the Moslem population.⁴⁴

In 1984 at a conference in Dakar to follow up on the WHO seminar, the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children was organized by African women to prevent and eradicate FGM. The IACa private organization with offices in Addis Ababa and Geneva now has affiliates in more than 24 African countries and sponsors many activities as well as education programmes to

⁴³ For a more detailed report see Hosken P “Female Genital Mutilation: strategies for Eradication. A paper presented at the first International symposium on Circumcision, Anaheim, California, March 1-2, 1989.

⁴⁴ F.Hosken (as in n 43 above).

stop the practice.

WHO has adopted more graphic methods by developing the Universal Childbirth Picture Book (**CBPB**) with Additions to prevent Excision and Infibulations with recommendations by Women's International Network. The **CBPBs** in English, French and Arabic are distributed all over Africa. Recently a Somalia translation was published. More than 70,000 of these graphic teaching materials have been distributed in Africa to explain reproduction in pictures regardless of language or literacy. WIN NEWS, a quarterly journal which has covered women and development around the world since 1975, regularly publishes information and news about FGM. Fran P. Hosken, the editor and publisher, is encouraging open discussion of FGM and urges more support for African women working for eradication of FGM.⁴⁵

5. THE WAY FORWARD

This paper has attempted a discussion of the most common harmful social-cultural practices carried out on women around the globe as a human right issue. Part of the discussion explored the extent of the problem and the reasons for the practice. Efforts to combat the practices have also taken up a large part of this paper.

In conclusion, this researcher extends a few suggestions to charter the way forward in combating the problem. Judging from the complexity and prevalence of these practices, the suggested innovations are not in any way exhaustive or even guaranteed to be successful. However they will at least contribute towards already existing efforts in combating these practices.

- i) It is suggested that legal innovations addressing these practices should be maintained. These have set international, regional and national standards that can 'force' communities to abandon and 'check further spread of the practices. For example, for cases of child marriage, arguments for cultural and religious doctrines notwithstanding the international standard is to put the welfare of the child first. FGM compromises the bodily integrity of women and in many cases has resulted into death. Penal sanctions for such a practice are therefore to commensurate such heinous crimes.

Many human rights scholars have noted that international and national law may be very well drafted and promoted but will lack effectiveness if not well implemented. Mugwanya has aptly noted that the priority facing the human rights revolution especially in Africa is to channel half a century's worth of international norms and standards into national legislation and practice.⁴⁶ Implementation of the fruitful provisions in these instruments by the UN bodies and other special procedures of the UN (e.g. the special Rapporteurs) should be felt. This goes for regional bodies as well. This paper has shown the tremendous progress so far achieved at the international level to address the problem. Such innovations can only be felt by proper implementation. Only then can they be of any meaningful impact on the victims who they are meant to protect.

- ii) Further to the above, it is important to note that despite progress at the international level, human rights are largely about the meeting of international obligations by individual states within their specific contents. Countries faced with the problem are in a better position to devise appropriate legislative policy (etc) to suit their circumstances. Progress around the world in any form should be encouraged and where it has succeeded made an example to other countries. Political and opinion leaders in the most affected countries should come out openly to speak against the practices and governments should not be slow in passing appropriate legislation.

For example, President Daniel Arap Moi of Kenya exemplified good policy when he categorically prohibited genital mutilations in Kenya in 1982.⁴⁷ This was a complete departure from the

⁴⁵ F.Hosken (as in n 43 above).

⁴⁶ Mugwanya F, 'Realizing Universal Human Rights Norms Through Regional Human Rights. Mechanisms: Reinventing the African System (1999). Indiana International and Comparative Law Review.

⁴⁷ Hosken, F As in 43 above.

pronouncements of his predecessor Jomo Kenyatta who had encouraged it. Uganda has by its Constitution set the marriageable age at 18 years⁴⁸ and strictly outlawed child marriages by its penal laws. Although polygamy is set to be acceptable by the law in Uganda's future,⁴⁹ stringent conditions have been placed on it to ensure that women in such unions are fully protected. Legal innovations should be practical flexible and meaningful. For example offering easier legal exits from oppressive marital unions will reduce polygamy.

- iii) Increasing mobility of African and middle Eastern immigrants into the west and Australia have exported FGM to this part of the world. The developed world should therefore also be on guard to curb such practices within the immigrant community. Britain has moved swiftly by passing special legislation to prohibit operations carried out by obliging physicians (for a high fee). In France criminal courts have prosecuted African immigrant families where girls died as a result of FGM. Australia has alerted health services to warn communities of these practices.⁵⁰
- iii) The prevalence of harmful socio-cultural practices has shown the futility of fighting custom with 'legal' and 'punitive' force. Other ways may have to be devised to encourage people to abandon these practices in a manner that will not make them feel that their cultural beliefs and manifestations are being usurped by 'western' ideologies. Innovations like the 'Ntanira na manambo' of Kenya should be given more thought and input.
- i) To some human rights activists, empowerment of women is the key factor of women's total freedom from those practices. Economic, social and political empowerment is essential starting from the individual level and extending to the collective dimension. Women should get to know their rights and social empowerment especially the fact they can freely extract themselves out of the straight jacket of tradition and custom. Political empowerment will teach women to begin congregating for the purpose of agitating for their rights and implementing useful policy. Economic empowerment will amount to sustainability and appropriate decrease in child marriages, wife inheritance and women being forced into polygamous unions.⁵¹ A bottoms up and not top down approach will ensure best results. Working methods of sensitization should perceive that women are not just victims of human rights abuse but also actors who can define and defend human rights from the perspective of their own lives. Boabab a women human rights organization based in Nigeria (focusing on legal literacy) perceives the language of empowerment to be

*'directly assisting grassroots and activist women by providing a better understanding of the multiple forces that define the parameters of their lives, thereby equipping them to strategize for their own empowerment. Hence women can use {women and Laws} derived knowledge to strategize and campaign around defining and pressing for the enforcement of women's rights in the family, as citizens and over their own selves and bodies.'*⁵²

- ii) Countries faced with the problem should invest in sensitization and awareness building. NGO work in areas like popular education, training, inter disciplinary teaching, exchange of ideas and resource development can go a long way in building confidence in women and ensuring actual empowerment.

⁴⁸ Article 31(1).

⁴⁹ The Domestic Relations Bill.

⁵⁰ Hosken, F As in 43 above.

⁵¹ Poverty and oppressive inheritance laws and customs have been the main cause of child marriages and wife inheritance.

⁵² Quoted y Pereirac "Culture, Gender and Constitutional Restructuring in Nigeria in Olaka-Onyango (2001) as in No 33 above) at 162.

- iii) A victim-oriented approach should be encouraged. Support in simple terms can come in the form of basic services e.g. health services, alternative shelter, micro-credit, legal and judicial support, emotional and psychological counselling and economic empowerment for self sustenance. Previous protection for women most susceptible to the harmful practices will be very useful.