

Determining Whether Female Circumcision is a Human Rights Violation

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Introduction

Female Circumcision (FC), also known as Female Genital Mutilation (FGM), is a heavily debated practice in many countries all over the world. The name people use to refer to this practice alone holds plenty of weight in the way it is perceived. The term FGM is typically used in the West, which is where the practice is strongly criticized. The use of the word mutilation holds a heavy connotation of judgement towards the practice (Fedorak 2014). Even when using the term female circumcision, the term circumcision will be surrounded with quotation marks invalidating the practice while male circumcision, a practice accepted in the West, is not discussed in the same manner (Fedorak 2014). FC is “a traditional harmful practice that involves the partial or total removal of external female genitalia or other injury to female genital organs for non-medical reasons,” (World Health Organization 2021). Midwives, barbers, or traditional healers all have the authority to perform the surgery (Banchoff and Wuthnow 2011), which is most commonly performed in Africa, Asia and the Middle East (Klein et al. 2018). It is a tradition that roughly 100 – 130 million currently living females have undergone (Banchoff and Wuthnow 2011; WHO 2021).

According to WHO (2021) there are four different types of circumcision that a female can undergo. Type I is referred to as *clitoridectomy*, Type II as *excision*, Type III as *infibulation* and Type IV as other (WHO 2021). A *clitoridectomy* refers to the removal of the clitoris either partially or fully and is the least aggressive and most common type of FC (Fedorak 2014; WHO 2021). *Excision* refers to a *clitoridectomy* with the additional removal of the inner labia and sometimes the removal of the labia majora (WHO 2021). The most severe type of FC is *infibulation* which is defined as the “narrowing of the vaginal opening through the creation of a covering seal, the seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoral prepuce/clitoral hood,” (WHO 2021). Finally, Type IV includes other procedures such as pricking, scraping, and piercing (WHO 2021). Female circumcision is a complex practice that will be addressed from both an outside and inside perspective with a focus on Tanzania. Within its explanation, the positive and negative aspects will mutually be discussed to determine whether this practice is justified or if it is a human rights violation. Lastly, some recommendations such as the use of authority figures, higher education and women’s advocacy will be explored to raise awareness of this cultural practice in its entirety.

Literature Review

FC is practiced in at least 28 countries across Africa alone. Africa has one of the highest rates of cultural and religious diversity, making it difficult to identify the origins of this practice (Banchoff and Wuthnow 2011). It also has pluralistic belief systems, including Christianity, Islam and Indigenous roots where many traditions and cultures of each are shared amongst one another (Banchoff and Wuthnow 2011). In Tanzania, it was previously estimated that 7.9 million women had undergone female circumcision (Bavel et al. 2017). FC is regarded as “an essential coming-of-age ritual that ensures chastity, promotes cleanliness and fertility, and enhances the beauty of the woman’s body” (Banchoff and Wuthnow 2011, 132). Female circumcision is associated with tradition, religion, dignity, cultural identity and more (Fedorak 2014). FC is usually part of a greater celebration with music, dancing and food (Klein et al. 2018). However, the reasons of practice vary from group to group, as does the execution, the type of circumcision and even the age it is done (Banchoff and Wuthnow 2011). Although culture is mainly positive, there are always negative aspects that are carried down and it is no different with the practice of female circumcision. While those that undergo FC are viewed as respectable, families that do not participate in this ritual are belittled and ostracized within society (Banchoff and Wuthnow 2011; Bavel et al. 2017). In these circumstances, it is difficult for uncircumcised women to get married as they are shamed and are unable to fully participate in the community. In ethnic groups such as the Maasai located within Kenya and Tanzania, marriage is an important traditional value that can only occur after the circumcision has already been performed. Marriage increases a woman’s status providing her with economic safety regarding benefits from her husband’s land and livestock that she would never receive individually. With one’s social and economic wellbeing linked to circumcision, young girls face pressure to participate in this ritual (Fedorak 2014).

A leading cause for circumcision is the belief that it is a religious requirement according to certain groups of Muslims and Christians (El-Damanhoury 2013; Fedorak 2014). In Somalia, where religion plays a significant role in the participation of female circumcision, it is believed that 98% of women have undergone some form of circumcision (Banchoff and Wuthnow 2011). The reality is that female circumcision deriving from religious teachings is a misconception that people face due to the blending of religion and culture and how heavily one is influenced by the other. FC is not supported by either Islam or Christianity making it a practice carried out as a result of misguidance rather than an act of devotion (Banchoff and Wuthnow 2011). In fact, the act of FC had been practiced thousands of years before the existence of Islam and Christianity (El-Damanhoury 2013; Fedorak 2014). Both religions stress the importance placed on the purity of one’s body and discourage any sort of body mutilation (Banchoff and

Wuthnow 2011; El-Damanhoury 2013). Additionally, The Banjul Declaration of 1998, a regional declaration within Africa condemns the practice of female circumcision, stating that female circumcision has no religious roots in Islam or Christianity. This declaration further prohibits the use of religion to encourage the practice of FC and encourages religious leaders to be proactive in spreading awareness regarding the lack of religious justification used to continue this practice (Banchoff and Wuthnow 2011).

The health risks associated with female circumcision is the primary reason that it is universally condemned by “outsiders” specifically. One of the main flaws, as pointed out by practitioners, is that the circumciser is usually not a trained professional but an elder or healer within the community (Klein et al. 2018). FC is especially a popular practice in rural areas of Tanzania meaning practicing groups might not always have the proper tools nor a sanitary environment to ensure the safest performance, particularly when the practice is underground.

When done in groups, the same tools consisting of knives, scissors, hot objects and more can be used on multiple individuals (Klein et al. 2018). This painful ritual can have many health implications from instant health risks to long-term difficulties regarding the physical, psychological, and sexual wellbeing of females (WHO 2021). The health consequences at stake usually relate to the type and environment of the circumcision. Physical health implications include an immense amount of pain, bleeding, infections, trouble with proper healing, limited sexual satisfaction, menstrual struggles, difficulties during childbirth and occasionally death (Bavel et al. 2017; Klein et al. 2018; WHO 2021). Psychological effects may consist of mental health struggles such as depression, Posttraumatic Stress Disorder and anxiety (Klein et al. 2018). Research has revealed that birth complications from FC include increased hospitalization, extended labour time, blocked labour and an increase in caesarean sections (Klein et al. 2018). The ramifications of FC relating to the process of childbirth costs around \$3.7 million annually (Klein et al. 2018). Overall, there are many unnecessary health risks at stake to continue this tradition. Essentially, the fact that female circumcision is not practiced for medical reasons and has not been proven to have health benefits is enough for practitioners to find this practice to be unjustified (Klein et al. 2018).

In contrasting opinion, some critics believe that the health repercussions mentioned are not validated by more recent experiences of women who have been circumcised (Fedorak 2014). Most information in terms of associated health risks has been carried down from the time of British colonial rule in the 1930s and

1940s (Fedorak 2014). Most health consequences usually occur as a result of botched infibulation rather than the less harmful types of circumcisions that are more commonly practiced (Fedorak 2014). For some groups, the inevitable pain caused by circumcision is viewed as part of the ritual of transitioning into adulthood and proving one's strength and courage (Fedorak 2014). Moreover, it has been observed that certain aspects of female circumcision have been changing as some ethnic groups have started using anaesthetics, antibiotics, as well as opting for more appropriate tools compared to before (Fedorak 2014). After extensive research, one study found that health complications did not occur as regularly as claimed by Western advocates but rather were the exception to the practice (Fedorak 2014). Regarding the sexual wellbeing of women, it was found that up to 90% of women who had undergone infibulation were still able to enjoy sex and experience orgasms similar to those who had not undergone circumcision (Fedorak 2014). However, another study found that up to 50% of participants found that they felt less sexual enjoyment compared to before (Fedorak 2014). These inconsistent figures prove the difficulty of understanding and examining information concerning such a complex practice from an external perspective (Fedorak 2014).

Female circumcision is also internationally condemned due to the lack of choice associated with the practice. Generally, a female cannot simply refuse this procedure as a female's bodily rights are not individual rights but are engrained within the patriarchal system and focused on the familial structure (Banchoff and Wuthnow 2011). The international community claims that since this practice does not require the consent of young girls that go through this ritual, it is a violation of the rights of the individual (WHO 2021). This further creates problems regarding bodily autonomy and gender equality, in turn violating international human rights law.

However, according to social scientists, cultural groups should have their own authority regarding their own unique lifestyles, but this opinion fails to address power relations within these collective societies (Fedorak 2014). Not all people within a community have the ability to make individual decisions regarding their bodily autonomy. Societal expectations are a heavy burden that many people adhere to irrespective of their personal beliefs to ensure that their families are not rejected within the group. Furthermore, there is the problem of determining the person or group in charge of making this decision for the community (Fedorak 2014). Whether it be certain individuals, the elders, the men, the women, or other groups, every community has their own procedures to follow. All community members have certain responsibilities they must uphold and roles they must carry out to support the success of their community dynamic. As such

cultural norms are rooted in tradition, those in charge might not make decisions that deviate from their customs. Due to the complexity of cultural traditions, leaving the decision of whether the practice of FC to continue to practicing groups might not necessarily help those who are expected to undergo this ritual.

Relationship to International Human Rights

Female circumcision is internationally outlawed as a human rights violation as well as throughout most of Africa. The African Charter on Human Rights and Peoples' Rights, established in 1981 and put into force October 21, 1986, has been ratified by 53 African countries to protect human rights within the African continent (Banchoff and Wuthnow 2011). According to Article 18 of the African Charter, "the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions" (African Union 2021). Under Article 66 of the African Charter, special protocols may be put in place to strengthen the obligations of the Charter (African Union 2021). One of these protocols includes The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol, which was adopted in July 2003 by the African Union (Banchoff and Wuthnow 2011). Article 5 of the Maputo Protocol clearly bans FC, encourages protecting those at risk and promotes nations to provide systems of support to women who have undergone this practice (African Union 2021). Additionally, the African Charter on the Rights and Welfare of the Child introduced by the African Union was put into action in 1999. In this document, all members of the African Union were to take steps to decrease the rate of infant mortality under Article 14 and to eradicate cultural practices that affect the health and development of children under Article 21 (African Union 2021).

FC is a violation under many UN declarations which most African countries, including Tanzania, have ratified, including the following: Convention on the Rights of a Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). Article 24 of the CRC clearly directs all states to take reasonable action to eradicate conventional practices that are detrimental to the health of children (United Nations Human Rights Office of the High Commissioner 2021). Additionally, Article 19 contends that every nation must take social, executive, legal, and educational steps to prevent any sort of violence and exploitation to children by their parents (United Nations 2021). Article 5 of CEDAW emphasizes that all states must eradicate traditional practices based on

gender stereotypes (United Nations 2021). In its 14th recommendation, CEDAW also encourages states to take appropriate actions to reach this goal by strengthening their relationships with national and local organizations, urging political and religious leaders to get involved, and delivering educational programs about the negative consequences of FC (UN Women 2021). Under Article 12(2) of the International Covenant on Economic, Social and Cultural Rights, states must take necessary measures to ensure the “healthy development of the child” (United Nations 2021). This includes reproductive and sexual health, which is at risk due to the many consequences of FC. Finally, Article 5 of the UDHR ensures that no living being shall be harmed or mistreated (United Nations 2021).

Despite these international documents which are only a few examples of the many UN treaties that declare female circumcision a human rights violation, locals who practice FC do not have the same perspective as outsiders. One of the primary critiques of these international declarations is that they are a westernized and imperialistic construct that claims universality without taking the diversity of religious and cultural groups into account. They enforce the western ideas of human rights resulting in the social, legal and ethical compliance of third world countries as a universal norm. The universalism versus cultural relativism debate is ongoing regarding many cultural practices around the world that violate international human rights law. Those against female circumcision are often considered supporters of cultural imperialism (Fedorak 2014). Regarding practices such as FC, some people believe that supporting those who do not consent to the practice is valid. However, they believe involving the international community in forcefully stopping this long tradition participated by millions of people is unacceptable (Fedorak 2014). The question remains of whether it is appropriate for outside forces to intervene on certain traditional practices and if so, where do the boundaries lie?

Why the Practice Occurs

Although the origin of FC is unclear, one thing is certain, this is a practice that many groups want to continue and view as an essential part of their culture. While many perceive female circumcision as a human rights violation, ethnic groups such as the Maasai view this ritual as a happy and celebratory event. In the Western world, female circumcision is recognized as violence against women, while to those who practice, it is not a malicious act but a ritual that parents abide by for the future wellbeing of their children (Fedorak 2014). The Maasai community within the Arusha region of Tanzania engages in this practice as a rite of passage for girls transitioning into adulthood (Bavel et al. 2017).

To make sense of this practice within this community, one must understand the social structure that dictates the lifestyle of the Maasai people. The responsibilities given to individuals within this society are based on age for males and the phase of life for females (Bavel et al. 2017). There are four different phases a female can be part of throughout the span of her life. The first phase is entito which refers to a young, uncircumcised girl that has not reached puberty. The second phase is esiankiki which refers to a circumcised woman that is single or married with either no children or young ones. The third phase is entasat which refers to a woman with circumcised children. Lastly, the fourth phase is koko which refers to grandmother (Bavel et al. 2017). It is evident that circumcision is an important factor in determining a woman's roles and responsibilities within the community. Circumcision is a public announcement to the community that a girl is ready to move on to the next stage and all that comes with it including life-altering changes such as marriage and childbirth (Bavel et al. 2017). Some elders of the community think that if an uncircumcised woman gives birth, her child will be physically or intellectually disabled (Bavel et al. 2017). Despite FC being an old traditional practice there have been ceremonial changes throughout time such as girls getting circumcised a couple of weeks/months prior to the ceremony or as newborn children. However, the ceremony is still used to announce initiation into the next stage (Bavel et al. 2017). While not all Maasai communities within the Arusha region have gone through the same changes, there has been evidence that for some groups who have, the public ceremony now holds a greater value than the act of circumcision as a rite of passage (Bavel et al. 2017). The primary reason why these communities have undergone this change is due to the illegality surrounding this act which has caused it to go underground (Bavel et al. 2017). As girls go through the practice beforehand, they are able to heal before the ceremony in case they are visited by the police (Bavel et al. 2017). The fear of getting exposed to the authorities as well as the general attitude against FC is why some parents opt to circumcise their daughters when they are still babies (Bavel et al. 2017). The continuation of this practice despite the secrecy reveals the importance it holds to Maasai identity (Bavel et al. 2017). One positive outcome from the separation of the act of FGM and the ritual is that it has transformed circumcision from a public act to a private one, allowing girls who refuse to pretend to have been circumcised while still participating in the public celebration (Bavel et al. 2017).

What is Being Done About it? Is it Working?

The African Union has made its stance on FC evident by labelling it as a form of gender-based violence and is continuously advocating to eradicate this practice within Africa (Banchoff and Wuthnow 2011). In 2004, the African Union

branded February 6 as International Day of Zero Tolerance of Female Genital Mutilation (Banchoff and Wuthnow 2011). Additionally, they have led many campaigns encouraging countries to implement change through their national laws (Banchoff and Wuthnow 2011). The African Union has brought attention to all the negative aspects of FC, focusing on the trauma it causes females as well as the numerous health issues (Banchoff and Wuthnow 2011). It aims to create change by educating leaders and community members about the reality of FC. In turn, the African Union hopes to change their attitude towards this ritual and foster an environment of support and collaboration between governing bodies and local civil organizations (Banchoff and Wuthnow 2011). While it is unclear whether the work of the African Union has created a drastic change, it has certainly raised awareness on the topic.

Groups such as the Maasai have a long history with cultural imperialism infringing on their self-determination (Koomen 2014). Shiboro village, a community close to Arusha had two-thirds out of 75 women leave a workshop organized by a local NGO due to the negative impact that FGM had after this practice was labelled as barbaric (Koomen 2014). In response, these women protested their right to perform this rite of passage only for church leaders to shame them as ignorant and backward individuals. These terms were used by international organizations that lacked cultural understanding of traditional groups (Koomen 2014). This case presents an example of counter-productive activism that failed to understand the root of the practice within that locality resulting in further resistance rather than the dismantlement of the system (Koomen 2014). The importance of not just understanding the culture around the practice but of having a deeper insight on the different lifestyles of other communities is highly evident. A Western approach that focuses on individual and women's rights is not the best method as these are not individualistic societies but ones that focus on collectivism where every individual has a role to play which allows society to function successfully (Koomen 2014). International campaigns against FC in places like Tanzania are mainly unsuccessful as non-Maasai's are viewed as outsiders trying to impose their views on the community. In fact, it has been proven that such advocating has had an opposite effect and increased FGM between 2005-2010 by 4.1% in the region of Arusha (Bavel et al. 2017).

Legally, Tanzania implemented the Tanzanian Sexual Offence Special Provision Act of 1998, making the performance of FC illegal on girls under the age of 18 (Bavel et al. 2017). Parents and circumcisers could be sentenced to imprisonment for up to 5 years or pay 300 000 shillings as a penalty for breaking this law (Koomen 2014). This was also amended into their Penal Code. However, the law against female circumcision was found to have a negative impact in

certain communities. Not only did the practice continue underground, but also led to an increase of ceremonial circumcision in younger girls while the government focused on acts of circumcision occurring amongst older girls (Koomen 2014). With the practice being underground, it becomes more difficult to ensure safe and hygienic methods are being followed while also decreasing the quality of treatment (Fedorak 2014). Similarly, making female circumcision in Sudan illegal created a negative reaction resulting in the escalation of the practice. Furthermore, the prohibition on Type I within the Meru region in Kenya caused girls to perform this ritual on one another (Fedorak 2014). These examples demonstrate that although banning the practice may appear to be a step in the right direction, it has serious consequences bringing about new problems that require innovative solutions.

Recommendations

After considering all aspects, it is evident that female circumcision cannot be justified, and changes must be made to eradicate this practice. One of the primary battles in eliminating this practice is understanding that it is a socially accepted cultural tradition with high community influence which also secures the future social and financial wellbeing of women (Fedorak 2014). One approach is to recognize a new perspective that females without the surgery are just as marriageable as those with it. Essentially, families who abandon this practice must unify with each other (Banchoff and Wuthnow 2011).

With religion being so rooted within parts of African society, another approach is to use the authority of religious leaders to end this human rights violation (Banchoff and Wuthnow 2011). Using religious leaders is not as invasive in comparison to other methods and is seen as a positive change within the community. This strategy has previously made a positive impact in Senegal. A well-known Imam by the name of Demba Diawara was successful in his attempt to convey the message that female circumcision was not a compulsory act according to the Quran (Banchoff and Wuthnow 2011). This piece of evidence held such high importance to the villagers of Keur Simbara that they were able to put an end to this practice. This 76-year-old Imam walked to different villages hoping to spread awareness that female circumcision was not a religious obligation and in return, was able to publicly eradicate the practice in 10 villages (Banchoff and Wuthnow 2011).

One positive strategy has been the rise of education in newer generations which has caused an increase in the controversy surrounding FC within Maasai communities (Bavel et al. 2017). It was found that Maasai's who went to school

were more likely to be against FC and share their newfound knowledge with others about the negative consequences of this practice (Bavel et al. 2017). There is hope that an increase of individuals furthering their education could bring a positive change towards the perception of female circumcision (Bavel et al. 2017). Higher education is not only a tool used to spread awareness but provides individuals with the opportunity to be self-dependent in ensuring their own economic security if needed. Having additional options to guarantee their well-being will allow women to make informed independent decisions without relying on marriage to provide them with basic necessities. Along with religious leaders, teachers play an essential role in educating the youth about the consequences of FC to not only spread awareness but allow them to make informed decisions.

FC is viewed as a very normal, traditional practice for participating groups. An essential strategy to change the mindset of these communities is by creating a safe space for them to discuss information about FC through local leaders that understand their values and traditions. Furthermore, women empowering women is a worldwide trend that encourages women to advocate and create a positive change for themselves and others. As women are the participants, they share a connection with each other that may not exist in other relationships. This reason alone demonstrates the importance for women to have a leadership role in creating conversations about the controversy surrounding the practice. While there are women against the practice who have been seeking change within these groups, it has been proven that international intervention has been perceived as a cultural attack leading to displeasure in the community and further suppressing the voices of women within (Fedorak 2014). This showcases the importance of creating change from inside rather than outside. Cultures are constantly transforming indicating that if the concept of female circumcision shifts, then the practice will also be altered to match its new value (Fedorak 2014). The greatest change in this tradition will most likely result from practicing communities. Essentially, when a woman's social and financial well-being is no longer culturally tied to marriage but her own independence, she will be able to make her own choices without feeling pressured or in fear of backlash from the community.

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