



# EQUALITY UPDATE

*“Advancing Equality for all”*



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**Editorial: Moeletsi Liphapang**

## Introduction

This month we take a look at a very controversial issue of female initiation schools. This is an ancient tradition that is practiced in many African countries including South Africa. Many studies have been conducted on the “curriculum” of these schools. However, the findings of most of the studies are said to be filled with speculations since these schools are clouded with secrecy. Moreover, those who have attended it or in charge of them are sworn to secrecy. However, some have shed some light into the happenings in the said schools. Their testimonies assists us in understanding the custom and to make up our own minds as to whether it is good or it violates women’s rights. Those who have testified revealed amongst others that:

- Women are psychologically and physically abused in these schools;
- Young girls are forced to attend these schools by their families or community members;
- Those who voluntarily attend these schools often do so because the elders have painted a rosy picture about them;
- Girls who have not attended the school or undergone the

- rituals that are carried out in these schools are not recognized as “real” women even if they are married or have children. Further, they are discriminated against and shunned by their communities;
- Women are subjected to genital mutilation, this process is widely known as Female Genital Mutilation (FGM).

The latter is the most common phenomenon revealed by the testimonies and the studies that have been carried out. Therefore, the gist of this article is on the practice of FGM in relation to human rights.

## Female Genital Mutilation

FGM, often referred to as 'female circumcision', comprises of all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons.<sup>1</sup> There are

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<sup>1</sup> “New study shows female genital mutilation exposes women and babies to significant risk at childbirth”  
[www.who.int/mediacentre/news/releases/2006/pr30/en/index.html](http://www.who.int/mediacentre/news/releases/2006/pr30/en/index.html)

<sup>2</sup> “Female Genital Mutilation”  
[www.who.int/mediacentre/factsheet/fs241/en](http://www.who.int/mediacentre/factsheet/fs241/en).

different types of GM that are practised in Africa; they include:<sup>2</sup>

- Excision of the prepuce, with or without excision of part or the entire clitoris.
- Excision of the clitoris with partial or total excision of the labia minora.
- Excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation).
- Pricking, piercing or incising of the clitoris and/or labia. stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue.
- Scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts).
- Insertion of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it.
- Any other procedure that falls under the definition of FGM given above.

The most common type of FGM is excision of the clitoris and the labia minora, accounting for up to 80% of all cases. The most extreme form is infibulation, which constitutes about 15% of all procedures.<sup>3</sup>

FGM is practiced by the followers of various cultures or religions as well as the animists. This includes those who do not believe in this practice who are often forced by their families or communities to participate in the ritual. The age at which FGM is performed varies from area to area. Research has

revealed that it is performed on infants a few days old, female children, adolescents and occasionally on mature women.

It is usually performed by a traditional practitioner using unsophisticated or unsterilised utensils and without anaesthetic. Among the wealthy in society, it may be performed in a health care facility by a qualified health official. The number of girls and women who have undergone female genital mutilation are estimated at between 100 and 140 million. It is estimated that each year, a further 2 million girls are at risk of undergoing FGM.

The opponents of this practice including the World Health Organisation are against all forms of FGM irrespective of whether it has been conducted in a health institution under the supervision of medical or traditional practitioners. However, the followers of this culture argue that they are exercising their religious or cultural rights and they should be allowed to continue with this practice because:

- It reduces and eliminates the sensitive tissue of the outer genitalia, particularly the clitoris, in order to satisfy sexual desire in the female. However, most women who have participated in FGM practice have testified that they do not enjoy sexual intercourse, as it is often uncomfortable and painful. Peter Kariuki, a 70-year-old elder from Embu in central Kenya, concurred. He stated that circumcised girls are less attracted to sex and as a result

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<sup>3</sup> "Female Genital Mutilation"  
["www.who.int/mediacentre/factsheet/fs241/en"](http://www.who.int/mediacentre/factsheet/fs241/en).

there are less early pregnancies among teenagers in his community.<sup>4</sup> He also said that FGM makes it difficult or impossible for women to enjoy sex and it ensures that a circumcised woman will choose a partner for love and not for sex.<sup>5</sup>

- It maintains chastity and virginity before marriage. Since instruments or foreign objects are sometimes inserted into the vagina, there is likelihood for the hymen to rupture. Therefore, there is no guarantee that the practice would ensure that women would remain virgins before marriage.
- It reduces and eliminates fidelity during marriage and increases male sexual pleasure. This view is patriarchal, it presumes that women are the ones that promote promiscuity and sexual intercourse is intended to please men.
- It prepares girls for womanhood. This may be rebutted because FGM is also performed on infants; realistically infants do not have the intellectual capacity to comprehend the alleged purpose of the custom.
- The external female genitalia are considered dirty and unsightly. Therefore, they ought to be removed in order to promote hygiene and provide aesthetic appeal. This illustrates that the practice is not intended to benefit women but men in that it is said (by the elders) a woman's genitals should look appealing especially to men.

- It enhances fertility and promotes child survival. Research<sup>6</sup> has proven otherwise; women who have undergone the ritual or the extreme form of genital cutting their infants are more likely to die during pregnancy or soon after birth than women who have not undergone FGM.
- The Islamic faith requires women to participate in the FGM practice. However, this is not necessarily accurate since the practice existed before Islam.

## HEALTH CONSEQUENCES OF FGM

FGM has immediate and long-term health consequences on women and girl children, these may vary according to the type and severity of the procedure performed. Immediate complications include severe pain, shock, haemorrhage, urine retention, ulceration of the genital region and injury to adjacent tissue. In worse cases, FGM results in death due to haemorrhage and infection.

More recently, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations, but this has not been the subject of a detailed research.

Long-term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse), sexual dysfunction

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<sup>4</sup> "Renewed efforts to outlaw Female Genital Mutilation" [www.irinnews.org](http://www.irinnews.org).

<sup>5</sup>Ibid

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<sup>6</sup> Liz Dartnamm "FGM and Childbirth Complications" [www.who.int/en/](http://www.who.int/en/).

and difficulties with childbirth. An 18-year-old young woman in Burkina Faso has testified that she was circumcised at the age of five. She said the lips of her vagina were cut and sown again and a little whole was left for urine and menstrual blood. Consequently, her growth has been hampered and she does not have her periods (menstruations).<sup>7</sup> The latter illustrates a permanent or a lasting negative mark that the FGM may leave on the life or mind of women who have undergone it. These women may suffer feelings of incompleteness, anxiety and depression. These are often referred to as psychosexual and psychological effects.

The reasons provided by its followers and the consequences of this practice on women raises questions, amongst others, whether:

- The practice is relevant in this era.
- It is in line with the culture of human rights in particular women's rights.

In answering the above questions, guideline should be sought from the International and regional instruments that have been implemented to promote gender equality and to protect women against any form of human rights violation.

### **International Instruments**

Most of the countries including South Africa have ratified a number of international instruments that

compels them to protect women and promote the achievement of gender equality. It must be borne in mind that these instruments are not legally binding once a state party has ratified them. They also serve as a guideline for state parties to promote the culture of human rights in their respective countries.

In dealing with the issue of FGM the following instruments may be used to serve as guidelines. The *Universal Declaration of Human Rights* of 1948 (UDHR), the *Convention on the Rights of the Child* of 1989 (CRC), the *Declaration of the Elimination of Violence Against Women* of 1993 (DEVAW), the *African Charter on Human and Peoples' Rights* of 1981 (ACHPR), the African Charter on the Rights and Welfare of the Child (ACRWC), the *Convention on the Elimination of All Forms of Discrimination Against Women* of 1979 (CEDAW) and *International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights* of 1966 (ICESCR). These instruments provide amongst others that women and girl children are:

- Protected against invasion of their privacy, torture, inhuman, degrading and cruel treatment.
- Entitled to freedom of thought, religion or conscience and this includes the right to change their belief or religion.
- Protected against sexual, psychological and physical abuse.
- Have the right to health.

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<sup>7</sup> "Renewed efforts to outlaw Female Genital Mutilation". Accessed from [www.irinnews.org](http://www.irinnews.org)

- Afforded the right to equality and dignity.<sup>8</sup>

Therefore, FGM violates the rights of women and girl children because most of the women or children are coerced into participating in this ritual and the manner in which it is performed violates their right to privacy, dignity, health and equality.

These instruments also compel state parties to implement positive measures to protect women against all forms of discrimination and more importantly to ensure that they are treated equally, with the dignity that they deserve as human beings.<sup>9</sup>

## National Instruments

### *The Constitution*

South Africa is a democratic state that is founded on the values of human dignity, equality and non-sexism. Section 9 of the Constitution of the Republic of South Africa Act 108 of 1996<sup>10</sup> (Equality Clause) provides amongst others that:

“everyone is equal before the law and has the right to equal

<sup>8</sup> See articles 1, 5, 12 & 18 of the UNDH, 19(1), and 37(a) of the CRC, 4, 5, 16 & 18 (3) of the ACHPR, 5(a) and 2(f) of CEDAW and 12 of the ICESCR.

<sup>9</sup> See amongst others, article 3 (3) and 24 (3) of the CRC. The Beijing Declaration and Platform for Action also calls for national governments’ actions to combat and eliminate violence against women that are incompatible with the dignity and worth of the person.

<sup>10</sup> Hereinafter referred to the “Constitution”

protection and benefit of the law.”

The equality clause further protects everyone *including women and girl children* against unfair discrimination on a number of grounds including gender.<sup>11</sup>

To give effect to section 9, the legislature was mandated to enact a national legislation to promote equality and prevent unfair discrimination. Accordingly, the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000<sup>12</sup> was passed. The Equality Act also protects people *including women and girl children* against unfair discrimination on a number of grounds including gender.<sup>13</sup> Unfair discrimination on the ground of gender includes amongst others, FGM Unfair discrimination on the basis of gender includes, gender based violence, any practice including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well being of the girl child.<sup>14</sup> Women and girl children are therefore protected against unfair discrimination and gender based violence by both the Constitution as well as the Equality Act.

The Constitution further provides that:

“Everyone has the right to use the language and to participate

<sup>11</sup> Section 9 (3) and 9(4) of the Constitution.

<sup>12</sup> Widely known as “PEPUDA” or “the Equality Act”.

<sup>13</sup> Section 8 of PEPUDA.

<sup>14</sup> Section 8 (b) & (d) of PEPUDA.

in the cultural life of their choice, to enjoy as an individual or with other members of the community members their culture, practice or religion and to form, join and maintain cultural, religious and linguistic associations.<sup>15</sup>

Section 12(2) of the Constitution further provides that:

"Everyone has the right to bodily and psychological integrity, which includes the right to security in and control over their body".

Therefore, in applying the Constitution and PEPUDA to FGM, this practice is unconstitutional in that:

- It unfairly discriminates against women and girl children on the basis of gender. Therefore, it violates their right to equality.
- It violates their right to dignity, health, privacy, bodily integrity, their right to choose their own cultural and religious practices, and to be protected against maltreatment and all forms of abuse.

## Conclusion

The FGM practice is horrendous and cruel to women and does not benefit them in any way. It is evident from the testimonies provided above that men are the only ones who stand to benefit from the practice. Instead, women are left with permanent psychological and medical consequences. As it has already been stated, FGM it violates women and girl child's right to equality and it cannot be justified in an open and democratic society. Further, we cannot allow such practices to continue especially since there is a universal pledge towards gender equality.

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<sup>15</sup> Section 30 & 31 of the Constitution.