

Pending challenges: female genital mutilation.

The European Union as an example



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This article aims to place ourselves in the context of women's rights, especially with an emphasis on women's reproductive rights and how the United Nations has sought to protect and materialize these. Next, we will delve into the practice of **female genital mutilation**, hereafter referred to as FGM, and its relationship with the human rights, reproductive and sexual rights of women and finally, we will analyze **European**

legislation as a case study and how the countries of the Union deal with these practices.

The United Nations has made significant progress in advancing gender equality, including through landmark agreements such as the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of

Discrimination against Women (CEDAW). Furthermore, UN WOMEN, among other issues, works for the elimination of discrimination against women and girls, the empowerment of women; and the achievement of equality between women and men as “*partners and beneficiaries of development, human rights, humanitarian action and peace and security*”[1].

UN Women has been focusing its efforts on fighting for women’s rights and vindicating the need to create equality and equity through various concrete actions. However, **there is still a lot of work to do on the matter**. For instance, women form the majority of the world’s poorest people, and the number of women living in rural poverty has increased by 50% since 1975 (OHCHR, n.d). Moreover, there still exist **multiple forms of discrimination** based on gender and other factors such as race, ethnicity, caste, disability, persons affected by HIV/AIDS; sexual orientation or gender identity “*further compounds the risk of economic hardship, exclusion and violence against women*”[2].

There are some cases in which women’s rights improvement policies contradict the national laws of member countries. For instance, the right to equal access to health or the right to abortion is not always fulfilled in countries that have laws against abortion. That is why there is a need that those policies and national laws go in the same direction, the one that is the best for women.

The Human Rights Treaty, the International Covenant on Economic, Social and Cultural Rights (known as *Economic Covenant*)[3] adopted by the United Nations General Assembly on December 1966, recognized the right of *everyone* to enjoy the benefits of scientific progress and its application, and the right of *everyone* to enjoy the highest standard of physical and mental health. However, in resource-poor settings that access most of the times are not

available due to the lack of technologies or the privatisation of some processes and therefore the restriction to some consumers.

In the same way that the economy or other social spheres have been developing, **human rights have followed the same path**. Like all human rights, sexual and reproductive rights are based on fundamental characteristics of the human being, which have to do with its freedom and ability to decide. Sexual and reproductive rights and the recognition of their universality are still partial in national and international regulations and in society itself.

At the First International Conference on Human Rights (the Tehran Human Rights Conference, 1968) it was noted that the right to reproduction was a right of parents. After Tehran, there were other conferences, such as Bucharest (1974), Mexico (1975), or Amsterdam (1984); but it was not until 1994 in Cairo[4] that reproductive rights were conceptualized in the United Nations Program for Action.

Throughout these last decades, technology and science have progressed, but women’s reproductive rights have not followed the same line of progress. Women, and therefore their reproductive and human rights, **are not fully recognized in society**. A clear example of this is the most basic right that is equal access to health care[5], which is being violated in many societies where women do not have the equal access or even the chance to access basic healthcare.

The World Health Organization Constitution (1946) envisages “... *the highest attainable standard of health as a fundamental right to every human being*”[6]. Understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable health care of appropriate quality, as well as, health-related information and education, and gender and quality, among some. The Beijing Declaration and Platform for Action, in its 89th article, states that “*women’s health involves their emotional, social and physical well-being*”[7]. Despite that, its access is determined

by the social, political, and economic context of their life, as well as by biology.

Inequality is suffered by different groups, such as ethnic or indigenous groups and especially in less developed geographical regions. The inequality of access includes primary health services for the prevention and treatment of childhood diseases, malnutrition. In addition to this, the unequal access is due to the inadequate levels of knowledge about human sexuality and inappropriate or poor-quality reproductive health information[8] and services; the prevalence of high-risk sexual behavior; discriminatory social practices; negative attitudes towards women and girls, or the limited power many women and girls have over their sexual and reproductive lives.

Addressing the second part of this essay, it is worth noting that **Feminine Genital Mutilation**, hereafter referred to as FGM, according to the United Nations is a form of violation of human rights, as well as a *“form of torture and an extreme form of violence and discrimination against girls and women, rooted in harmful gender norms”*[9]. Before the explanation of its connection with human rights, it is worth defining the concept and understanding what is understood for FGM. FGM, according to the World Health Organization, is defined as:

“Female genital mutilation (FGM) involves the partial or total removal of external female genitalia or other injuries to the female genital organs for non-medical reasons”[10]

The World Health Organization argues that this practice, which is often practiced on young girls, has no health benefits and can cause severe consequences, as well as pain. Among the problems that may occur when this practice is done are *“severe bleeding and problems urinating, as well as complications in childbirth and increased risk of newborn deaths”*[11]. It is worth noting, that there are not only adverse consequences that happen to this practice, but also some **long-term adverse and persistent problems**. On the one hand, this can be physical complications, such as urinary or vaginal problems or sexual problems, and on the other hand,

psychological problems among them depression, anxiety, or post-traumatic stress disorder.

FGM is often conceived as a practice related to **cultural and social factors** and before its relation with human rights, we need to ask ourselves, *why does FGM originate and where it comes from?* Furthermore, **why** is this practice still present in the year 2021. Answering the first question, Jewel Llamas (2017) argues that is a practice that has been present in countries in the Middle East and Africa, but it originates in Ancient Egypt (according to some scholars) in the **5th Century BC**. Thus, the question *“where it comes from”* has been already answered, but most importantly, *“why does FGM originates”* will be answered in the following paragraph.

The original purposes or functions of FGM are considered two. Firstly, the theories surrounding the fact the *“<<marriageability>> of a woman, emphasizing the ideologies of virginity, purity and sexual restraint”*[12]. Secondly, a widespread but later proved the wrong conception of a supposed *“protection of the health of women and their fetus”*[13]. Despite that initially, this practice was carried out and referring to the second motive, it has been scientifically proven that both short-term and long-term effects precisely increase the risk of childbirth complications and newborn deaths.

Regarding the first reason, Female Genital Mutilation is often carried out by women for the sole purpose of the **benefit of men**. These practices are according to Sharmon Lynnette Monagan, are *“not isolated occurrences or cultural pheromones but rather the invisible hand of patriarchy”*[14]. Thus, despite being practiced by women, one of the main purposes of this practice according to Monagan, is to control the female body and sexuality for man’s benefit. It is worth noting that, not only FGM but other social practices, such as foot-binding or breast ironing, are illegal but socially accepted and maintain their legitimacy in *“the male-dominant sphere of the legal and political systems that should protect all human beings”*[15].

Thus, it is argued that countries where this practice is rooted in *culture*, are often a product of the

fact that women are solely dependent on the man and in the social pressure exerted by the community. Not only the author points that out, but also the World Health Organization acknowledges that the FGM “reflects deep-rooted inequality between sexes and constitutes an extreme form of discrimination against women”[16].

Feminine Genital Mutilation is a violation, a **deep violation of human rights** and to women’s rights, especially to **their reproductive and sexual rights**. In the first place, it violates a person’s right to **security and physical integrity** because it is often practiced in young girls who have no conscience of the practice and with no consent. In the second place, it is a violation of a **person’s right to health** based on the short-term and long-term consequences that this practice carries with. In the third place, it is a direct violation of **the right to be free from torture and cruel or inhuman** degrading treatment, and finally, it directly violates **the right to live** because often these practices can lead to death.

Having acknowledged that these practices are a violation of human rights and have been considered by the United Nations torture, *why is this practice still being practiced?* According to the World Health Organization, it is still present in some societies as a result of a “**mix of sociocultural factors within families and communities**”[17]. These practices are rooted in social and cultural dynamics in communities, especially in the African Continent and the Middle East, and some consider that this practice is needed for a young girl to become part of a community and thus, social pressure is exerted to perpetuate these practices. Another possible interpretation of this is the fact that this practice would increase a young girl’s marriageability or with some “*cultural ideas of femininity and modesty*”[18].

Going beyond the interpretation and in line with the aforementioned, we must make an analysis that goes beyond the culture and acknowledge the invisible structures that legitimize this form of violence. Galtung, a Norwegian sociologist, developed what is known to be the “**triangle of violence**” formed by direct, structural, and cultural violence. This tool of analysis is often used when analyzing conflict, despite

that, we could adapt to Feminine Genital Mutilation. **Structural Violence** often conceived as indirect violence, is impersonal and inherent to the structure of a society and is rooted in the “*unequal distribution of power and resources that give rise to structural violence*”[19]. **Cultural violence** appears as a legitimizing factor often present in norms, values, or ideas that shape and permit that structural and direct violence to continue to be produced. Finally, **Direct violence** is often physical violence and it is the interaction of direct (evident) and indirect (non-evident) violence.

We would argue that direct violence, the tip of the iceberg, would be exercised as forms of **Female Genital Mutilation** or illegal practices that have been previously mentioned. These forms of discrimination against a specific gender are often legitimized by **language**, as one of the main elements of cultural violence, but also by the **violence discourse** often presented in a *highly gendered discourse*. Furthermore, and to finalize **structural violence** is related to situations of asymmetry and in the case of gender, Confortini poses the following argument:

“Since gender is a practice, produced and reproduced through social relations, violence can be seen as a method for the reproduction of the <<gender order>>”[20].

According to the United Nations Population Fund, this practice is present in twenty-nine countries that mainly are localized in Africa and the Middle East, *but what about the European Union?* One of the aims of this article is to investigate on the one hand, how the **European Union** and its Member States address these practices through legislation and on the other hand, to take a deeper look and see if these practices, despite being illegal, are practiced in these countries.

The European Union and its **institutions**, being relevant to the European Parliament, the European Commission, the European Institute for Gender Equality (EIGE), and the European Council have been, especially during 2009 – 2014, advocated for a common strategy to end FGM in Europe. Several directives that will not be extensively presented in this

paper have attempted to create a regulatory framework to make these practices illegal among which are relevant the Resolution 12 February 2020 in conditioning the allocation of funds of the EU to this cause and the Resolution February 2018 on “zero-tolerance against FGM”. Furthermore, Resolution February 2014 aims to establish “EU funding to prevent FGM and improve support for victims or strengthen international dialogue”[21] among some. **But, is it enough to make regulations at the EU level?**

According to the European Commission, there is a five-step course of action in regards to the Female Genital Mutilation that the EU uses. Firstly, **knowledge** is defined as gathering information where these practices are carried out, the estimated number of victims often through the European Institute for Gender Equality (EIGE) and research. Secondly, **prevention** is embodied in the action of the Union in focusing on “health education, children’s rights and development and implementation of laws and prohibiting FGM”[22], among some measures. Thirdly, **prosecution**, in the sense that FGM is considered a crime in all EUMS[23] and its criminalization is not only carried out in the territory in the Union’s territory but also extra-territorially. Fourthly, **protection** that is materialized in the asylum provided by the Union to victims or girls that are at risk of FGM in their home countries. Fifthly, external actions that are in line with the core values of the Union materialized in the “EU Action Plan for Human Rights and Democracy 2020-2024”[24] and the “Gender Action Plan III <<An ambitious agenda for Gender Equality and Women’s Empowerment in EU External Action 2021-2025>>”[25].

What about the European Union Member States? There are **national-level instruments** against FGM, mainly the prosecution of these practices under national laws in the Member states, as well as national action plans. Furthermore, its Member States have signed and ratified, thus creating juridic effects and legally binding. Among these treaties, it is worth mentioning that the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** is in most of the EU countries, signed and ratified. Furthermore, the **Convention on the Rights of the**

Child is considered the “most rapidly and widely ratified human rights treaty in history”[26], has been signed and ratified by all EUMS.

Having seen that the European Union, as well as its Member States, are deeply engaged in the prosecution, prevention, and protection of these practices, we would have to ask ourselves, *is this practice undertaken in the European Union countries?* According to the EIGE, there is

“no ongoing, systematic, representative survey that use a harmonized approach to gather data on FGM prevalence”[27]

Despite that, the EIGE, in its report issued in 2013 presents the Parliament Resolution of 24 March 2009 where among its main conclusions are that

“an estimated 500,000 women living in the EU have been subjected to FGM, and that 180,000 girls and women are at risk of undergoing FGM every year”[28]

FGM is not practiced in the European Union, concludes the EIGE in its report of 2013, but the fact that **many women and young girls coming from countries where FGM is practiced**, these data appear in the Union.

The main idea, after having carried out extensive research on the issues initially presented, is that **there is still much to do**. The United Nations, especially UN Women, has done an enormous job in the implementation, prevention, and action to advocate for the rights of women and girls, but a great commitment is required by States to implement preventive measures in what refers to these practices. Likewise, and considering the case of the European Union, a **multidimensional approach** both in the criminalization of this practice, prevention and protection of the victims, should serve as an example for other countries in which these practices are still carried out in 2021.

Finally, and thus concluding, we want to emphasize that it is not only up to the States to eradicate this form of torture and violation of human

rights, but that educational and economic measures must also be implemented to prevent the structures that constitute violence, disappear. **Patriarchy**, which is intrinsically connected with cultural violence associated, in turn, based in language and discourse as the main legitimizing tool for these forms of direct violence, must be dealt with measures that tackle the root of the problem.

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[2] OHCHRa (n.d).

[3] OHCHRb (n.d).

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Published by:



Via Laietana, 51, entlo.3ª. 08003 Barcelona
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With the support of:



Generalitat de Catalunya
Institut Català de les Dones