8

RE-TELLING THE EXPERIENCES OF AFRICAN WOMEN WITH FEMALE GENITAL MUTILATION THROUGH AN AFRICAN FEMINIST LENS

*Agnes Meroka-Mutua**

Abstract

Female genital mutilation/cutting (FGM/C) is a contested issue in Africa because, although there is overwhelming evidence to show how it is harmful to women and girls, there also has been resistance to efforts aimed at its abandonment, and especially its criminalisation. Some of this resistance has come from women in communities that practise FGM/C. As a theoretical paradigm that uses an African centered methodology, African feminism is grounded in the history and experiences of African women. To this extent, it provides tools that are useful in analysing the way in which African women have responded to efforts aimed at promoting their rights through the abandonment of FGM/C. This chapter analyses the experiences of African women with regard to FGM/C through an African feminist lens and looks specifically at the tensions that exist in the way in which African women have responded to anti-FGM interventions. It finds that at different points in time, African women have led and supported abandonment efforts and at other times, they have resisted abandonment efforts. Through the stories of African women, we see that both the cultural practice of FGM and the efforts aimed at its abandonment curtail women's autonomy over their bodies. In responding to both FGM and abandonment efforts, African women are primarily concerned with questions of autonomy and agency.

* PhD (Warwick); Senior Lecturer, Faculty of Law, University of Nairobi; agi.meroka@gmail.com

1 Introduction

Female genital mutilation/cutting (FGM/C) refers to a set of practices that result in the total or partial removal of the external female genitalia. There are different types of FGM/C, which vary in terms of severity, and these are classified by World Health Organisation (WHO) as type one which entails clitoridectomy; type two which entails the total or partial removal of the labia; and type three which entails the removal and appositioning of the labia as a way of narrowing the vaginal canal.[1] WHO also lists type four, which includes all other procedures that result in the alteration of the external female genitalia and can include pulling, pricking, piercing or cauterisation, among other practices. It should be noted, however, that the term 'female genital mutilation' is contested, hence the practice is also sometimes referred to as female genital cutting (FGC). This is because the term 'mutilation' is seen as connoting malice and ill-intent.[2] However, in the African context, the women who subject their daughters, granddaughters and nieces to the practice do so out of love and positive motivations. The drivers of the practice include marriageability, hygiene, religion, and rites of passage into womanhood.[3] Thus, when women and girls are subjected to the practice, it is not motivated by ill-intent, but rather by the need to have the women and girls conform to a given culture, so that they are socially acceptable and marriageable. Nonetheless, the more commonly used terminology is female genital mutilation (FGM).

FGM is prevalent in 28 African countries.[4] Article 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) calls on state parties to pass legislative and other measures towards the elimination of harmful cultural practices. It therefore is generally accepted that FGM/C is a harmful cultural practice. Because FGM is classified as a harmful

1 World Health Organisation 'Female genital mutilation' www.who.int, 3 February 2020, https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation#:~:text=Female%20genital%20mutilation%20(FGM)%20involves,benefits%20for%20girls%20and%20women (accessed 16 June 2022).

2 MC Barbera *Multicentered feminism: Revisiting the "female genital mutilation" discourse* (2009).

3 As above.

4 28 Too Many 'The law and FGM: An overview of 28 African countries' (*28 Too Many* 2018).

cultural practice, and because much evidence exists to show that it has negative impacts on women's and girls' sexual and reproductive health, states where FGM is prevalent have put in place anti-FGM interventions. Such interventions include the use of law to prohibit and deter the practice and other related practices, such as early and forced marriage; the adoption of alternative rites of passage, which recognise the importance of the transition from childhood to adulthood, but encourage that this transition should happen without causing harm; the adoption of strategies other than community-based approaches, such as male engagement, community dialogues and training.[5] These anti-FGM interventions are primarily based on the need to protect, promote and guarantee the rights of women and girls.[6]

The aim of this chapter is to address the ways in which African feminist thought has responded to the question of FGM, given the challenges it poses for the rights of women and girls. The first part of the chapter is a general introduction of what FGM is. The next part discusses various approaches to anti-FGM interventions, and distinguishes between the African feminist approach to FGM, on the one hand, and the human rights approach to FGM, on the other. This part highlights the importance of distinguishing between these two approaches, given that the human rights approach to FGM is the most dominant one that has been used in providing definitions and explanations of FGM. The third part of the chapter discusses what African feminism is in the context of FGM, and highlights that it is both a theoretical paradigm and a collection of practical strategies that are indigenous to the continent, and based on the lived experiences of African women, and provides key highlights of how FGM fits into African feminist discourses. The fourth part of the chapter discusses the various perspectives of African feminism to FGM. It examines the way in which African women have understood, influenced and challenged interventions aimed at addressing FGM as a harmful cultural practice. The part also maps out the strategic efforts by African women to influence initiatives to end FGM, such as the inclusion

5 UNICEF 'A decade of action to achieve gender equality: The UNICEF approach to the elimination of female genital mutilation' (2020).

6 B Shell-Duncan 'Social and structural factors influencing women's agency regarding female genital mutilation/cutting: An intersectional analysis – a reply to "The prosecution of Dawoodi Bohra women" by Richard Shweder' (2022) 12 *Global Discourse* 167.

of FGM as a harmful cultural practice in article 5 of the African Women's Protocol, and the local application of this article by African states. The part also analyses the response of African feminism to key questions that form the contestations around FGM, which include the issue of choice and autonomy over one's body, the cultural imperatives for FGM/C, racism and FGM.

2 Key approaches to anti-FGM interventions

As we have already seen, FGM has implications for the rights of women and girls and, therefore, human rights approaches have been used to promote anti-FGM interventions in most countries where the practice is prevalent. Thus, the more dominant approach to FGM is the human rights approach. Within this approach, we can situate key human rights documents on the rights of women and girls, such as the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Women's Protocol. These human rights documents are the foundational basis upon which FGM is classified as a harmful cultural practice, and one that threatens several other fundamental rights that women and girls should enjoy.[7] Within the human rights approach, FGM is problematised and the specific ways in which it violates the rights of women and girls are highlighted. In addition, the human rights approach has informed most anti-FGM interventions, so that such interventions are guided by human rights standard and principles.[8]

This human rights approach can be distinguished from an African feminist approach. From an African feminist lens, the aim is not necessarily to highlight the ways in which FGM is a violation of the rights of African women and girls, but rather to describe, tell and re-tell the lived experiences of women with regard to FGM. This includes telling stories that might not necessarily be in consonance with the human rights approach. Thus, the African feminist perspective is one that allows for space to problematise the dominant human rights approach

African feminist thought on FGM is informed by the experiences of African women with FGM. This is because African feminism is a

7 AK Meroka and others 'When the law fails to regulate culture: The case of FGM in Kenya' (2016) 2 *Journal of Law and Ethics* 137.

8 A Meroka-Mutua and others 'Coercion versus facilitation: Context and the implementation of anti-FGM/C law' (2021) 55 *Law and Society Review* 1.

paradigm that is concerned with putting the experiences and concerns of African women at the center of analysis of any given issue. Informed by the specific ways in which African women have been at the margins of both gender analyses and also analyses on race, ethnicity, religion as well as other axes of identity, African feminism deliberately prioritises the African woman and uses her experiences to theorise about specific issues that are germane to the continent. Hellum and Stewart argue that while scant attention has been paid to the experiences of (African) women, hence the need for a grounded theory approach, which places African women at the center of analysis.[9] This is understood as the primary motivation for African feminist approaches. Consequently, African feminist thought on FGM is not necessarily informed by the human rights paradigm which seeks to protect, promote and guarantee the rights of women and girls. This distinction is important as it helps us understand that there can be divergent viewpoints between a human rights approach to FGM and African feminist thought on FGM.

3 Understanding African feminism in the context of female genital mutilation

To understand how African feminism addresses the question of FGM, it is first important to explain what African feminism is. This is because, unlike mainstream feminist thought which is comprised of a number of different strands that can clearly be pointed out and explained, African feminism requires a level of constructionism. Although multiple strands of African feminist thought exist that can be pointed out, such as motherism, Stewanism, femalism and nego-feminism, these are not exhaustive of African feminist thought. There is a large body of work developed by African thinkers on questions of women's rights, and although some of the scholars who have developed such works may not identify outrightly as African feminists, the fact that they write about the experiences and concerns of African women enables them to contribute to African feminist thought. The aim of the discussion on African feminism in this chapter is not necessarily to explain what different strands of African feminism say concerning FGM, but rather to highlight the key

9 A Hellum & J Stewart *Pursuing grounded theory in law: South-north experiences in developing women's law* (1998).

tenets of African feminist thought and rely on those tenets in describing and explaining African feminist perspectives of FGM. It should also be noted that African feminism is viewed here as a form of decolonial feminism, because it is necessarily concerned with colonialism and the how women's oppression is understood in the context of the continent's colonial legacy. Decolonial feminism, therefore, may be understood as a broad term, and African feminism as one of the forms and sites for decolonial feminism.

Mama[10] demonstrates that African feminism is primarily concerned with liberating Africa through the liberation of women. Thus, from an African feminist standpoint, women's liberation is an essential precondition for the attainment of justice, democracy, respect for human rights and rule of law in Africa. The struggle for Africa's liberation, therefore, is at the heart of African feminist thought. Thus, African feminist thought can be traced through the different time periods that have characterised the struggle for liberation on the continent. Indeed, we will see later in this chapter that FGM was used strategically by African women who fought against colonialism, and the liberation of their nations.

Methodologically, African feminism is concerned with the lived experiences of the African woman. As a response to mainstream feminist thought that did not place much emphasis on questions of intersectionality, and instead focused primarily on how gender constructions impacted the lived experiences of women, African feminism emphasises the importance of understanding the lived experiences of African women based on gender and other axes of identity, including race, ethnicity, religion, age, disability and economic status. Thus, in order to map out African feminist thought on FGM, it is important to situate the discussion within the different time periods relating to the struggle for liberation on the continent. Further, it is important to adopt an intersectional approach as a methodology aimed at understanding the experiences of African women, based on gender and other key aspects of their identity such as religion and ethnicity. This approach is also useful

10 A Mama 'African feminist thought' *Oxford research encyclopedia of African history* (2019), https://doi.org/10.1093/acrefore/9780190277734.013.504 (accessed 16 June 2022).

in understanding the way in which the drivers of FGM, including culture and religion, impact the decisions that women make concerning FGM.

Mama[11] also cautions against the perception that feminism in general is a Western idea and, thus, African feminists are building upon an originally Western idea. This is problematic to the extent that it presumes that Africans have never had ideas that challenge forms of gender exclusion and marginality. Indeed, this very notion is what has placed African women in the 'margins of marginality' because they have been viewed as a category that lacks the voice and agency to articulate their concerns on their own behalf and in their own words. The problematic assumption here is that African women must borrow a 'Western' vehicle and build up that vehicle for them to articulate their concerns. From this standpoint, what we see is that the way in which mainstream feminism treated the experiences of African women, black women and women of colour as peripheral, and instead purported to give a universal character to the experiences of white women is one of the reasons why feminism is accused of being a Western conception.

To echo Mama, Verges[12] makes the point that if Western feminism is responsible for the development and evolution of feminisms in the Global South, what she calls decolonial feminism, then it is because of the role Western feminism has played in the oppression of women in the Global South. Thus, decolonial feminism is a site through which Western feminism is challenged for its role in capitalist and racial oppression. Tamale[13] further emphasises that while white women were subordinated to white men, they (white men) were always empowered over indigenous men and women. Indeed, during the suffrage struggle, white women felt cheated that black men attained the right to vote before they (white women) did. There was an implicit racism here – with the expectation from white women that they were somehow more human than black men. More significantly, white women were never concerned with the suffering of black women. Thus, the suffrage struggle did not concern itself very much with the sexual objectification and rape of black women slaves. Tamale[14] argues that it is important to understand this history in

11 As above.
12 See F Verges *A decolonial feminism* (2021).
13 S Tamale *Decolonisation and Afro-feminism* (2020).
14 As above.

order to effectively engage in decolonial projects. Thus, gender and race are inextricably intertwined and the struggle for the liberation of black women cannot happen on a single axis of gender alone, yet for Western feminism, the singular analysis of women's inequality based on gender has been the norm.

The point here is that it should never be assumed that feminism in general always is concerned with liberation. This is because history has shown that in fact feminism and the concern for women's rights have been appropriated and used to promote capitalist ideals. For purposes of liberation, one must look to the feminisms that challenge dominant world orders, such as empire and capitalism. Decolonial feminism, which is concerned with women's rights in the context of broader struggles for liberation, is more likely to be emancipatory. However, Tamale[15] points out that a blind spot for decolonial scholarship is its lack of interaction with theorisation on gender. Thus, the task of decolonial feminism is to bring in theorisation on gender, feminism and women's rights into a field that is predominantly masculine.

Thus, there is a need to understand the various feminisms that exist and what their premise is, before concluding that those feminisms are sites for liberation. In this regard, African feminism could be considered a form of decolonial feminism, because it is concerned with understanding and exposing the experiences of African women in the context of the broad issues affecting the continent, including the north-south economic and political relationships. It is also concerned with feminising decolonial projects that which predominantly are masculine. A central tenet of African feminist scholarship is the re-telling of the stories of African women in order to destabilise long-held assumptions and beliefs about African women. For example, Win argues that in development ideology, the image of the African woman as poor, powerless and pregnant is one that sells and one that elicits response from development actors.[16] However, the African woman who does not fit into this image is often forgotten – she is not a priority as far as development ideology goes. From an African feminist perspective, there is a need to break such skewed

15 As above.

16 EJ Win 'Not so poor, powerless or pregnant: The African woman forgotten by development' (2004) 35 *IDS Bulletin,* https://doi.org/10.1111/j.1759-5436.2004.tb00156.x (accessed 16 June 2022).

perceptions of who African women are and what their experiences are by re-telling their stories.[17]

Thus, in this sense, African feminism is a response, and necessarily so to works that have depicted African women in ways that are inaccurate or in ways that silence the voices of African women. In addition, decolonial feminism is concerned with how colonialism altered the way in which men and women related on the continent and, specifically, how colonialism diminished African women and made them invisible. This is why for African feminism, the telling and re-telling of the experiences of African women is critical – it is a strategy for making African women visible and, therefore, decolonising knowledge.

In the context of FGM, this entails the telling of all kinds of narratives, not only those that are against FGM/C, but those that also support the practice. There is a growing body of work that seeks to do this, for example, the works of Njambi, who challenges dominant views about FGM and instead seeks to provide a different lens through which FGM may be viewed as being empowering to the African woman.[18]

Both Tamale[19] and Vegres[20] see that colonialism provided the historical roots for present-day capitalism in post-colonial societies. Thus, an important aspect of decoloniality is to understand the colonial roots of capitalism in order to effectively challenge capitalist dominance and oppression. Regarding FGM, the concern of decolonial feminism with capitalism is an important insight into understanding the commercialisation of FGM, especially in the context of medicalisation, where healthcare providers seek to benefit financially by preforming the 'cultural cut' in modern healthcare facilities. Decoloniality provides a lens through which the role of capitalism in sustaining or altering FGM trends might be examined.

While decolonial feminism is concerned with the experiences of women in the Global South, the actors include feminists in the Global

17 D Lewis 'African feminist studies, 1980-2002: A review essay for the African Gender Institute's Strengthening Gender and Women's Studies for Africa's Social Transformation' Project' (2003), http://www.gwsafrica.org/knowledge/ (accessed 16 June 2022).

18 WN Njambi 'Irua ria atumia and anti-colonial struggles among the Gikuyu of Kenya: A counter narrative on "female genital mutilation"' (2007) 33 *Critical Sociology* 689.

19 Tamale (n 14).

20 Verges (n 13).

North, who align themselves with the struggles of women in the Global South. Thus, here we see that decolonial feminism is a site whereby there is a coming together of women in the south with those in the north, united in the struggle against capitalist and racial oppression. Indeed, in the context of FGM, we will see that actors in the Global North have contributed immensely to the discourse on FGM. For example, the work of Dembour[21] in analysing the legal responses to FGM in the context of African immigrant communities in France is a site where scholarship in the context of the Global North resonates with the experiences of women in the Global South.

The point here is that the struggle by African women against oppression on the basis of sex and gender is not a Western imposition and, in fact, in some ways it is a reaction and a challenge to Western feminism. African women have faced and resisted sex oppression in their own right – they have not been instigated into doing so by mainstream feminism. However, there are also points of convergence between actors in the south and those in the north in the shared struggle against the oppression of women in the Global South. The failure to tell the stories of African women is what has led to an incorrect assumption that they do not challenge sex oppression or other forms of oppression. We will see that, in fact, African women have used FGM to challenge various forms of oppression, including colonialism as well as the oppression resulting from the unfulfilled human rights promises by current political regimes. Thus, African women have used the cultural practice of FGM to align themselves with their own nationalist movements and to resist colonial rule, albeit in the context of a gendered liberation struggle.[22] In contemporary African contexts, women have also used FGM as a means of protest against empty promises made by modern states. Thus, in Uganda, for example, we will see the story of Yeko, the Ugandan woman who underwent FGM as an act of protest against the Ugandan state which, on one hand, has failed to implement basic rights such as

21 MB Dembour 'Following the movement of a pendulum: Between universalism and relativism' in JK Cowan and others (eds) *Culture and rights: Anthropological perspectives* (2001) 56-79.

22 A Meroka-Mutua 'A history without women: The emergence and development of subaltern ideology on land in Kenya' (2021) *Feminist Legal Studies* DOI 10.1007/s10691-022-09488-4.

access to education and health but, on the other hand, uses human rights arguments to ban FGM.[23]

Mikell[24] argues that the main distinguishing factor between African feminism and mainstream feminism is that the former is concerned with the general challenges that the continent faces and is not pre-occupied with the issues that have traditionally been the focus of mainstream Western feminist thought. Mikell[25] suggests that African feminism is evolving and developing even as African women respond to the crises that the continent faces, and as they address the way in which such crises are understood through a gender lens. African feminism thus is emerging from the engagement of women with the issues that affect the continent such as the threats to the stability of states, given that many countries on the continent have experienced political crises such as *coups* and civil wars; there are also issues of power such as the widespread violations of human rights, a lack of respect for the rule of law, dictatorships and authoritarian regimes; economic crises and failing economies; and general threats to life such as food insecurity leading to starvation. African women are constantly engaging with these issues and in that engagement, there has emerged a distinctly African feminist thought, of which the starting point is not gender inequality or sex oppression but, rather, the political, economic, social, and cultural challenges that Africa faces. In the context of FGM, we see that African women have had instances where they approach the question of FGM not as an issue of gender inequality or discrimination, but from a broader perspective of equality between different ethnic and cultural groups.

Nnaemeka also supports the idea that African feminist thought is indigenous to the continent, and argues that for one to understand African feminism, she must not look to Western feminism, but rather, she must refer to the African environment. She further asserts that 'African feminism is not reactive but proactive'.[26] This seems to suggest that rather than Western feminism being the catalyst for the emergence

23 C Byaruhanga 'Uganda FGM ban: "Why I broke the law to be circumcised aged 26"' *BBC News* (Africa) 6 February 2019, https://www.bbc.com/news/world-africa-47133941 (accessed 6 June 2022).

24 G Mikell *African feminism: Towards a new politics of representation* (1995).

25 As above.

26 O Nnaemeka 'Nego-feminism: Theorising, practicing and pruning Africa's way' (2003) 29 *Signs* 357-376.

and development of African feminist thought, it is the circumstances in the continent that have given rise to African feminism. Nnaemeka[27] further emphasises that the emergence of theory in the African context happens in the space where academic work engages with lived realities – as has been espoused by Hellum and Stewart.[28]

The ideas of Mikell and Nnaemeka are evident in the case of the Maasai women in Kenya, who have aligned themselves with the broad questions of equality and non-discrimination of all groups in Kenya and used the argument of ethnic and cultural equality to protest against the prohibition of the practice, which they see as integral to their ethnic and cultural identities. Notably, the broader issues around the issues of equality for the Maasai revolve around historical injustices relating to land, and the impact of colonial and post-colonial land policies on the pastoralist way of life that is practised by the Maasai. Nationalisation approaches have tended to view the Maasai way of life as needing to change in order to allow for the community to become fully 'Kenyan'.[29] The Maasai have generally resisted these types of approaches and have agitated for the respect of diversity in Kenya.[30] We see that in protesting the prohibition of FGM, the Maasai women align themselves with the need to respect diversity and promote inclusivity of all communities in Kenya's economic and political spheres.

What we see, therefore, is that African feminism is a theoretical paradigm that has evolved out of the lived experiences of African women. In addition, African feminism is not simply a theoretical standpoint, but rather it is also a collection of strategies that African women have used in addressing the issues that are of concern to them. African feminist approaches emphasise the lived experiences of women as relevant and central in informing theory but, at the same time, the strategies that African women use to address their concerns are just as relevant as the theoretical positions.

Maathai demonstrates how the Green Belt Movement was both a vehicle for promoting environmental protection as much as addressing

27 As above.
28 Hellum & Stewart (n 10).
29 M Kituyi *Becoming Kenyans: The socio-economic transformation of pastoral Maasai* (1990).
30 P Kantai 'In the grip of the vampire state: Maasai land struggles in Kenyan politics' (2007) 1 *Journal of Eastern African Studies* 107.

gender inequality.[31] By working with women on a general issue such as environmental protection, this provided Maathai with a platform where she could also safely have dialogues with women on issues of gender inequality.[32] Similarly, Kabira demonstrates that strategy is just as important as theory, when she describes the specific ways in which women were able to achieve a number of wins, including the two-thirds gender rule during the making of Kenya's current Constitution.[33] Thus, by women making their voices heard and sharing their experiences with the Constitution of Kenya Review Commission, the few women who were part of the Commission could use the stories of these ordinary women (who later came to be known as Wanjiku) to push for a women's agenda and the inclusion of a raft of provisions promoting gender equality in the Constitution.[34] Hassim demonstrates how the women of South Africa's African National Congress (ANC) are not merely secondary political subjects, but an integral part of the Congress, and this, in turn, has allowed women to have a voice concerning matters that affect them as women, while at the same time agitating in a national liberation struggle that transcends gender concerns.[35] What we see, therefore, is that African women have used practical strategies that simultaneously enable them to address the general issues affecting the nations to which they belong and, at the same time, these strategies have enabled them to have a space in which they are able to address gender concerns.

We have seen so far that FGM could be understood both as experience and strategy. The way in which African women have experienced FGM – both those who view it as empowering and those who view it as disempowering – is important. Further, it is also evident that African women have used FGM strategically to achieve particular ends. We see, therefore, how these lived experiences and the use of FGM as a strategy against oppression have contributed to the development of African feminist thought.

---

31 W Maathai *Unbowed* (2008).
32 As above.
33 W Kabira *A time for harvest: Woman and constitution making in Kenya 1992-2010* (2012).
34 As above.
35 S Hassim 'Nationalism, feminism and autonomy: The ANC in exile and the question of women' (2004) 30 *Journal of South African Studies* 433.

Because African feminism is about praxis – the intersection of theory and practice – it is important to discuss who the actors are. Here, Lewis argues that unlike mainstream Western feminism, where the actors have been organised into feminist movements and organisations, with a clear synergy between the feminist academics and feminist movements and organisations, the same is not necessarily true for African feminists.[36] It is, however, not by deliberate choice that the actors of African feminism have not formed into feminist movements and organisations, but rather the circumstances on the continent, ranging from the difficulties faced in funding the cause, the general differences among African women in terms of their identities and priorities and the challenges this poses to the creation of a unified movement, have been some of the factors that have made the emergence and development of an African feminist movement difficult.[37]

Thus, the actors who theorise about African feminism and those who practise it are known by their stories and by their actions, rather than by how they organise. Kabira empahsises the stories of ordinary women in the making of Kenya's Constitution – as a collective, these women are African feminists, having been involved in such an important moment in the country's history, not simply because of the implications the Constitution would have on the rights of women, but because of the concern these women had about the country in general.[38] Likewise, the Mau Mau women who fought for liberation from colonial oppression are African feminists.[39] The ANC women who fought against apartheid are African feminists.[40] The women have planted trees as a way of protecting the environment for posterity – for their children and future generations are African feminists.[41] The Ugandan women who have stood up against a regime of dictatorship are African feminists.[42] The ordinary women, concerned about general issues affecting their communities and doing something about it, are African feminists.[43] The scholars in different academic fields who tell the stories of these women are African feminists.

36 Lewis (n 18).
37 As above.
38 Kabira (n 34).
39 T Kanogo *Squatters and the roots of Mau Mau 1905-1963* (1987).
40 Hassim (n 36).
41 Maathai (n 32).
42 S Nyanzi *No roses from my mouth* (2020).
43 Mikell (n 25).

The women in leadership who seek to influence policies and laws in response to the concerns raised by women at the grassroots are African feminists.[44] In the context of FGM, the survivors who tell their stories as a way of preventing other women and girls from also suffering the negative impacts of FGM are African feminists. Likewise, the women who support the practice of FGM as an important means for promoting cultural and ethnic inclusivity and equality are also African feminists. In the context of FGM, we see that there is space for opposing voices to all be viewed as African feminists based on the issues that they advocate. Thus, African feminists are known not because they name and identify themselves as such, but rather, they are known because of what they do.

4 African feminist perspectives on female genital mutilation

In the context of FGM, a practice that is prevalent in Africa, we are able to tell the stories of African women, and we can see the tensions that exist in these stories. While it is generally now accepted that FGM has serious and long-term negative effects on the reproductive health of women, on the other hand, African women value their cultural and religious identity, which is one of the key drivers of FGM. FGM raises key issues concerning specific human rights, including the right bodily autonomy and the right to culture (which also includes the right to practise one's religion). In the context of FGM, African women have navigated the tensions between sexual and reproductive health, culture and bodily autonomy in different ways. In this part we look at how African women have responded to these tensions, and what their lived experiences have been even as they have addressed challenges that FGM poses.

4.1 African feminist responses to female genital mutilation: Polemics of resistance and support

It is important to begin the discussion in this part by looking at the ways in which African feminism has historically evolved. Here, we will therefore see that there have been periods in history when African women have been opposed to the prohibition of FGM and periods when they have supported such prohibition. The imagery of a pendulum used by Marie

44 Lewis (n 18).

Benedict-Dembour in demonstrating how approaches to FGM swing between universalist and cultural relativist approaches is also useful in understanding how African feminist thought has responded to FGM.[45] It cautions us against taking one hardline position as being the one that is supported by African feminism. Thus, African feminist thought on FGM has moved between different positions at different points in time. During the colonial period, African women opposed attempts by colonial governments to prohibit FGM. African women stood in solidarity with their cultural and nationalist inclinations, having seen that the colonial interventions to prohibit FGM would have been of great benefit to the colonial governments by serving to weaken nationalist sentiments.[46] Therefore, Njambi argues that the narrative that FGM is a means of oppression of African women is a narrative that misrepresents the experiences of African women, and it overlooks the specific ways in which African women may find empowerment through the cultural practice of female circumcision.[47] It should, however, be noted that the struggle against colonialism was itself gendered and, although women participated in the struggle, their concerns were never central to the nationalist cause. In fact, during the post-independence period, women realised that while their communities might have been free from colonial rule, women themselves continued to experience oppression on the basis of their gender, and this was evident in a number of areas, for example, women could not hold land in their own names. Thus, while women used FGM strategically to oppose colonial rule, the end of colonialism did not result in equality between the sexes.

During the post-independence decade, as the harmful effects of FGM were brought to light, African women increasingly began to support the abandonment of FGM. Informed by factors such as the impact of FGM on the girl child, given that FGM meant that a girl was marriageable and, therefore, her education could be curtailed, and later by the onslaught of the HIV pandemic which meant that the traditional way in which girls were cut could expose them to the virus, African women began to support the prohibition of FGM, and the United Nations Children's Fund (UNICEF) reports that the number of women who are opposed

45 Dembour (n 22).
46 Njambi (n 19).
47 As above.

to FGM in high prevalent countries has been increasing since 2000.[48] In support of the abandonment of FGM, African women have used survivor narratives so as to lower support of the practice in communities where FGM is culturally entrenched.[49] In particular, survivors of FGM have used their own lived experiences to campaign against the practice. These survivors use their impact stories to highlight how FGM affected them with the aim of protecting other girls from undergoing the practice. Survivor testimonies have been used as a powerful tool in empowering girls and women in contexts where FGM is culturally entrenched. In such contexts, survivor testimonies provide an alternative narrative about FGM. Thus, as highlighted by Njambi, FGM may be understood as a site where women are empowered through the practice of their culture,[50] but the alternative narrative is that FGM also poses significant negative effects to a woman's sexual and reproductive health, and for girls, undergoing FGM may also mean that their education is curtailed, because they can then be married off having become marriageable after undergoing FGM. Through survivor testimonies, girls and women are provided information about the various aspects of FGM in order to enable them to make fully-informed choices and, from a human rights approach, survivors' testimonies are useful in promoting social change towards abandonment of the practice.

In some contexts, rather than the complete abandonment of FGM, women have responded to reports of the harmful effects of FGM by embracing medical interventions that make the practice safer by providing pain relief and reducing the risk of immediate complications such as bleeding and sepsis.[51] However, medicalised FGM has been problematised, because it is still performed for non-medical reasons and, further, research has shown that there are no health benefits of FGM.[52] What we see here is that while women are concerned about the harmful

48 UNICEF (n 6).

49 UN Women 'Survivors speak: Women leading the movement to end FGM' 4 February 2019, https://www.unwomen.org/en/news/stories/2019/2/compilation-women-leading-the-movement-to-end-female-genital-mutilation (accessed 16 June 2022).

50 WN Njambi 'Dualisms and female bodies in representations of African female circumcision: A feminist critique' (2004) 5 *Feminist Theory* 281.

51 E Leye and others 'Debating medicalisation of female genital mutilation/cutting (FGM/C): Learning from (policy) experiences across countries' (2019) 16 *Reproductive Health* 158.

52 As above.

effects of FGM, the total abandonment is also a concern for them, because the choice to abandon is perceived as a break from culture, yet culture is an important part of an African woman's identity.[53]

A particularly important moment in the development of African feminism is marked by the adoption of the African Women's Protocol. The Protocol specifically lists FGM as a harmful cultural practice and requires state parties to take measures against it. During the making of the Protocol, African women were involved supporting its adoption.[54] Presently, African women continue to call for the full implementation of the Protocol and, indeed, they view it as an important vehicle for the advancement of women's rights on the continent.[55]

Article 5 of the African Women's Protocol was the first normative provision under international law to specifically require state parties to take measures towards the elimination of harmful cultural practices. Although other instruments, such the Convention on the Rights of the Child (CRC) (article 24 requires state parties to take measures to abolish traditional practices that are prejudicial to the health of children) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (which requires state parties to take measures to eliminate all forms of discrimination against women) contain implicit provisions that may be interpreted as prohibiting FGM, the African Women's Protocol contains an explicit and specific provision. Thus, article 5 of the Women's Protocol is one of the most important provisions under international law, which provides the impetus for the adoption of local legislation by African states that prohibit the practice.

Since the adoption of the African Women's Protocol, and the passing of legislation to prohibit FGM in most countries where FGM is prevalent, there have been instances where women have resisted the total prohibition of FGM, as has been witnessed by women from practising communities in Kenya. In 2014 Maasai women in Kenya held protest marches against Kenya's anti-FGM law, with local leaders having

53 Njambi (n 51).

54 F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 11.

55 Equality Now 'The Maputo Protocol: Protecting African women's rights', https://www.equalitynow.org/promoting_african_womens_rights/#:~:text=The%20Maputo%20Protocol%20Advances%20African,Reproductive%20health%20and%20rights (accessed 16 June 2022).

supported these protests.[56] Indeed, in some practising communities in Kenya, local leaders publicly indicated that they would continue to support the practice, regardless of the fact the fact that the state had enacted a law prohibiting it, and no action was taken against the leaders.[57] Similarly, in Cameroon there has been resistance to the prohibition of FGM, which is motivated by economic factors – traditional cutters, who are women, earn a living from the practice and, thus, this has proved a challenge in getting communities to comply with prohibition.[58] Thus, there are multiple factors that inform the decisions women make to continue with the practice, ranging from their strong cultural and ethnic identity, as in the Kenyan case, to economic factors, as in the case of Cameroon.

There have also been instances where women have supported the prohibition and called for the enforcement of laws prohibiting FGM, prompted by various reasons. For instance, in Somalia women activists issued renewed demands for the prohibition of FGM when a girl bled to death as a result of the practice.[59] Similarly, in the context of COVID-19, when schools were closed for extended periods of time, thus exposing the girl child to various forms of violence, there was a push specifically by African women towards calling for the enforcement of already-existing anti-FGM laws, and the putting in place of measures to protect the girl child from further forms of violence.[60] Here, motherism, the strand of African feminism, which argues that for African women, motherhood is an important space, is instructive. African women are concerned about the well-being of their girls, and this has motivated them to oppose the practice and to call for its prohibition.

Given the ways in which African women have responded to FGM at different points in time, we see the image of the Dembour's[61] pendulum.

56 Meroka and others (n 8).
57 As above.
58 N Divine 'Cameroon encounters resistance to female circumcision ban' 12 June 2014, https://www.voanews.com/a/cameroon-encounters-resistance-to-female-circumcision-ban/1935833.html (accessed 16 June 2022).
59 N Bhalla 'Campaigners demand anti-FGM law as girl bleeds to death in Somalia' *Thomson Reuters Foundation* 18 September 2018, https://www.reuters.com/article/us-somalia-women-fgm-idUSKCN1LY1V5 (accessed 16 June 2022).
60 S Johnson 'On a rampage: The African women fighting to end FGM' 9 June 2021, https://www.theguardian.com/global-development/2021/jun/08/on-a-rampage-the-african-women-fighting-to-end-fgm (accessed 16 June 2022).
61 Dembour (n 21).

The responses of African women to FGM have varied, protesting against its prohibition to supporting the same. From the perspective of African feminism, it is important to tell both the story of resistance to anti-FGM interventions and the story of support for such interventions. To tell one side of the story, namely, that of African women supporting abandonment in line with the human rights approach, would be to fall into the danger of the single story.[62]

4.2 African feminism, female genital mutilation and bodily autonomy

Although the control of their bodies is not always in their hands, the bodies of African women tell many stories. Sometimes, African women are able to control the stories that their bodies tell or that are told by other people about their bodies and, sometimes, they cannot control these stories or how they are told. Simply defined, bodily autonomy refers to the ability of a woman to make free and informed decisions concerning her body – not only what should or should not happen to her body, but how and why it ought to happen. Bodily autonomy is an important aspect of equality and non-discrimination, particularly because there are different standards imposed on women and men what they can do with their bodies. For women, there have been greater limitations placed on the decisions they can make concerning their reproductive health. Often, this is rooted in gender and social norms that perceive the women as having the role of reproduction and caring.

Bodily autonomy is a problematic concept in the context of FGM, because there are two divergent positions on the issue of bodily autonomy. The first is that culture has historically impeded the extent to which women are able to exercise autonomy over their bodies, resulting in the subjugation of women, which has informed human rights approaches to FGM and other aspects of sexual and reproductive health rights such as early and forced marriage. The second is that well-meaning human rights approaches have themselves appropriated the ability of women to exercise autonomy over their bodies in a space where culture and human

62 CN Adichie 'The danger of a single story' (2009), https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story?language=en (accessed 16 June 2022).

rights have come into sharp conflict. In this part, we look at both these positions, and demonstrate the ways in which they both have a similar effect in curtailing women's bodily autonomy.

In the context of sexual and reproductive health rights, the concept of bodily autonomy has been understood as fundamental to the enjoyment of these rights. Autonomy, which may be defined as self-rule, and it is the expectation that every African man will have self-rule, is distinct from personhood.[63] Personhood may be defined as the ability of an individual who is endowed with certain rights as a result of which she is able to have a relationship with the state and other semi-autonomous fields such as the clan, kinship group an ethnic community, we see then that personhood really is speaking to questions of citizenship and belonging.[64]

Historically, personhood has not been a right that women have freely enjoyed, but while the gender dimensions of personhood to a large extent have been problematised, thus opening up the space for greater recognition of female personhood,[65] the same is not true for autonomy, so that there still is no expectation that they will enjoy respect for their autonomy or that they will have self-rule.[66] It should not be taken for granted that if women enjoy the rights relating to personhood then they also enjoy autonomy. This may be attributed to the fact that in post-colonial society, formal law, informed by the legal systems of the colonial masters, has generally stayed out of personal matters.[67] This has meant that matters that most affect the bodily autonomy of women, such as domestic and other forms of violence against women, have not been regulated. The public-private distinction apparent in law has meant that while women can indeed enjoy personhood, it is not always the case that they will also enjoy autonomy, and especially bodily autonomy.[68]

In the context of culture, one of the reasons why FGM is practised is the need to control female sexuality. Thus, FGM has been used to curtail

63 C Kithinji and others 'Between autonomy and solidarity: An African woman's autoethnography' (2021) 14 *International Journal of Feminist Approaches to Bioethics* 61.

64 PK Mbote *Contending norms in plural legal systems: The limits of formal law* (2020).

65 N Naffine 'The man of law' in N Naffine (ed) *Law and the sexes: Explorations in feminist jurisprudence* (1990).

66 Kithinji and others (n 64).

67 S Tamale 'The right to culture and the culture of rights: A critical perspective on women's sexual rights in Africa' (2008) 16 *Feminist Legal Studies* 47.

68 As above.

female sexual pleasure and, therefore, ensure that women remain faithful to their husbands, because by curtailing female pleasure, the idea is that women will be less inclined to seek sex outside of marriage, while only persevering it in marriage. The purpose of this was to ensure that the children born by a man's wife were actually his biological children. From very early on, we see that FGM has been used as a way of controlling women's bodies and taking away their ability to make certain choices about their sexuality.[69] There are women who resisted this attempt to control an integral part of who they are as their sexuality. Njoya illustrates how important such a quest for selfhood was for women who refused to undergo FGM, as his own mother did in 1925.[70]

Thus, the argument here is that bodily autonomy and integrity are core aspects of selfhood and, therefore, culture in itself was problematic in denying women the ability to make decisions about their bodies and their sexuality. The denial of that choice has ramifications that affect not only the woman, but her husband and any children that she bears. In this sense, bodily autonomy goes beyond the individual woman and her ability to make decisions concerning her own body, but it also involves the implications that those choices have for those around her. Bodily autonomy has implications for families and, by extension, communities. Indeed, Njoya does ponder upon what his own existence would have been like had his mother undergone FGM, and been dowrised, instead of continuing with her education and eventually marrying his father on her own terms.[71] In addition to the cultural entrenchment of FGM being viewed as a denial of women's bodily autonomy, it is also seen as a site for the profiteering of men because, while it is women who subjected girls to the cut, it is men who have profited by collecting dowry once the girls were cut and became marriageable.[72]

In the context of human rights approaches to sexual and reproductive health in post-colonial Africa, the decisions and choices concerning the bodies of women are not fully in the hands of women. In many African nations, there are abortion laws that determine whether or not some of the choices that women make with regard to pregnancy are legal or illegal.

69 T Njoya *Selfhood: The divinity of the clitoris* (2017).
70 As above.
71 As above.
72 As above.

In the context of marital rape, many African countries do not recognise the ability of a married woman to say no to sex with her husband, hence the failure to recognise marital rape as a crime. However, unlike questions of abortion and marital rape, where many African states have neither passed laws to liberalise abortion nor to criminalise marital rape, human rights approaches have been very successful in making a case for the prohibition of FGM and, thus, many of the countries where FGM is prevalent have passed laws that prohibit the practice. 28 Too Many highlights that out of 28 countries where FGM is prevalent, only six countries have not passed laws that specifically prohibit the practice. Out of these six countries without local laws that prohibit FGM, five have signed international human rights instruments that require them to take action to end FGM. Thus, it is only one country out of the 28 practising countries that has no laws in place for the prohibition of FGM.[73] While anti-FGM laws in various countries on the continent have different levels of severity, the basic principle is clear – FGM is considered a harmful cultural practice and it is prohibited. In 2019, the African Union (AU) Summit of Heads of States launched the AU Initiative in Elimination FGM (Saleema) with the aim of galvanising political action towards abandonment.[74]

The general prohibition of the practice under international and regional frameworks and legislative measures by individual African states that prohibit FGM shows that there is significant commitment towards abandonment by policy makers. While this is tremendous progress from the point of view of advancing the sexual and reproductive rights of women, it has also had the knock-on effect of limiting the extent to which African women can exercise bodily autonomy, because they are prohibited by law from making the choice to undergo FGM. Yet, there are adult women who would voluntarily make the choice to undergo FGM.

As already illustrated in the previous part, there have been instances where African women have protested the enactment of laws that prohibit FGM, with various factors, such as strong cultural identity and economic factors, driving such protests. There are also other examples of women who undergo FGM for different reasons. Take, for instance, the case of

73 As above.
74 https://au.int/fr/node/35892.

a Ugandan woman, Sylvia Yeko, who chose to undergo FGM at the age of 26, risking a jail term of up to five years.[75] Hers was an act of protest against a state which she sees as paying nothing more than lip service and making empty promises about promoting the rights of women and girls. Yeko argues that the ban on FGM in Uganda in 2010 was aimed at protecting the rights of girls, and one such right is the right to education. However, even after the ban on FGM, education remains prohibitively expensive for most girls, and the state has done little to address the situation.[76] By choosing to undergo FGM and allowing her story to be told in the media, Yeko's act of rebellion is one that resonates with the strategies that African women have used to make their voices heard. Tamale argues that aside from simply outlawing cultural practices that are seen as violating the rights of women, a culture of rights, one that is actually committed to attaining human rights standards and ideals ought also to be established.[77] Law does not operate in a cultural vacuum, thus if a cultural practice is prohibited due to its harmful effects, for such a law to be effective, then the harmful cultural practice ought to be replaced by another, which is more oriented towards the respect for human rights. The point here is that the prohibition of FGM, which necessarily has implications on women's bodily autonomy, must not be seen simply as an end in itself. It must be understood as meeting other broader human rights goals, otherwise it is no more than a right on paper. The effect of a community viewing a human rights law as nothing more than a right on paper might be resistance to the law.[78]

4.3 Anti-FGM laws, culture and African feminism: From demonised cultures to well-meaning laws

In prohibiting FGM, the law seeks to protect women from cultural practices that exploit the bodies of women for the sake of patriarchal interests. With specific regard to the use of legal sanctions to prohibit FGM, the practice is to encourage the passing of strong laws, which provide for stiff penalties for the practice of FGM, and the thinking here is that such strong laws are more likely to have a strong deterrent effect

75 Byaruhanga (n 24).
76 As above.
77 Tamale (n 68).
78 Meroka-Mutua and others (n 9).

and they will encourage greater obedience.[79] There also is an assumption that women will make choices about their bodies that are in line with human rights standards, because these standards seek to protect them from abusive cultural practices, hence it is not expected that the very women who are meant to be protected by such well-meaning laws would also be perpetrators of prohibited actions under the same laws. Thus, for FGM, it is assumed that in exercising bodily autonomy, women will make decisions that support the abandonment of the practice. In Kenya, this is illustrated by the *Tatu Kamau* case,[80] which was a constitutional petition challenging the constitutionality of a law that prohibits adult women from making the choice to undergo FGM. Before this case was filed in court, there had been protests against Kenya's anti-FGM law by women from practising communities, particularly the Maasai community.[81] By arguing in the petition that the total prohibition of FGM was a violation the constitutionally enshrined right to culture, Tatu Kamau was seen as speaking for the women in FGM-practising communities, who felt that they were being denied the right to freely practise their culture.

In that case, the Court held that adult women who consent to FGM actually are not acting out of their free will, but rather, they are pressured by prevailing social and cultural norms into making a decision that ultimately has negative impacts on their health. In this case, we see that the Court's position was that with regard to FGM, women cannot be said to be making free and informed decisions to undergo the practice. Hence, the reasoning is that with regard to a practice that is so culturally entrenched, it is not possible for women to exercise autonomy in choosing to conform with that practice. Tamale has argued that there is a perception of African cultures as being sites in which women's rights are violated.[82] African cultures have been demonised as being the basis for the forms of gender and sex oppression that women on the continent face. It therefore is not surprising that a court that sees itself as being progressive would make a determination to the extent that adult women from FGM-practising communities are not capable of making free and informed decisions to undergo FGM.

79 As above.
80 *Tatu Kamau v Attorney General & 14 Others* (2018) Kenya Law Reports.
81 Meroka and others (n 8).
82 As above.

This position that African cultures as inherently discriminatory of women has been problematised through an African feminist lens.[83] Amadiume, for example, has demonstrated that pre-colonial African cultures to a large extent were inclusionary of women and provided great space for women to participate in decision making, but this was changed by the gendered nature of colonial regimes, informed by Western notions of gender discriminatory nature of Victorian society, and this thinking was introduced in the way in which colonial regimes interacted with their subjects.[84] The arguments surrounding African's women's rights to culture may be extended by appreciating the fact, as highlighted by Shweder, that wherever there is FGM, there also is male circumcision, thus culturally, the practice is gender inclusive.[85] Generally, male circumcision is encouraged because of its apparent health benefits, and it has also been medicalised in some communities. This can be taken to mean that men have a greater right to their cultural identity and to engage in practices that promote that cultural identity, while women cannot enjoy a similar right, on the basis that it is likely to violate their fundamental rights.[86]

In addition to taking a rather paternalistic view of the ability by women to exercise autonomy in consenting to FGM, the Court in the *Tatu Kamau* case also failed to consider the question as to whether adult women who consent to FGM are victims or perpetrators of the practice. Hence, it did not provide direction as to whether such women should be charged with aiding and abetting the practice of FGM as is currently the practice or whether they should be viewed as victims of a pervasive culture. This has resulted in some level of incongruence where, on the one hand, the Court perceives women who consent to FGM as doing so under the yoke of cultural pressure but, on the other hand, the Court remained silent as to whether the continued arrest and prosecution of these women for the offence of aiding and abetting is in consonance with the idea that they are victims of such a pervasive culture. These women therefore are simultaneously victims and perpetrators. What the *Tatu Kamau* case demonstrates is that the experiences of women destabilise

83 I Amadiume *Male daughter, female husbands* (1987).
84 As above.
85 RA Shweder 'The prosecution of Dawoodi Bohra women: Some reasonable doubts' (2022) 12 *Global Discourse* 9.
86 As above.

the assumption that in exercising bodily autonomy, women will make decisions that support the abandonment of the practice.

There is tension between the well-meaning state interventions aimed at abandonment and the lived experiences of women. Practising communities have tended to find ways of circumventing strong laws that prohibit FGM, resulting in the practice going underground and, particularly, hidden from state intervention.[87]

Thus, rather than meet the specific objectives of deterrence, which leads to eventual abandonment of the practice, the response by communities has been to find ways of carrying on with the practice, while minimising the risk of being caught.[88] In a sense, we see women responding to the law that they perceive as unjust in ways that then thwart the objective of the law – which is to protect the rights of these very women, hence the law runs the risk of becoming counter-productive. The perception of the courts that the women who choose to carry on with cultural practice are simply acting under the yoke of patriarchy is rather misplaced, because it assumes that women cannot of their own right feel very strongly about their cultural identity, and that they can only do so if they are motivated by patriarchy. This is a view that, of course, denies female agency. It is likely that African women will rebel against such a position, as they have often done when they have asserted their agency, and challenged perceptions that have purported to minimise their ability to make decisions.[89]

In response to the question of how law ought to respond to women who choose to undergo FGM, Nnaemeka's work on nego-feminism is useful.[90] The premise of nego-feminism is that in African feminism, decisions are arrived at through negotiations. There must be a listening to the different views and a reaching of a compromise between these differing views. Indeed, this is the African way of life in general, as has been espoused by theories of African life and values such ubuntu or *utu*. Rather than take a paternalistic approach that assumes to know what is best for women, especially those women who are make seemingly bad choices such as choosing FGM, there ought to be a space for dialogue and for reaching a workable compromise, where the women feel that they

87 Shell-Duncan (n 7).
88 A Meroka-Mutua and others *Assessing when and how law is effective in reducing the practice of FGM/C in Kenya* (2020).
89 Lewis (n 18).
90 Nnaaemeka (n 26).

have been heard and where also the state feels that the harmful effects of FGM are understood. Wuoango and others demonstrate that in Burkina Faso, the anti-FGM law, which is more conciliatory in nature, seems to be having a better compliance response, thus demonstrating that a nego-feminist position that allows for dialogue may be useful in navigating the delicate space between culture and human rights.[91]

4.4 Double standards in the naming and categorisation of actions that lead to modification of female genitalia

The question here is with regard to the classification of procedures that are categorised specifically as mutilation. Indeed, the definition of FGM by WHO has raised the concern that the target of this definition is that which excludes Western practices. Consequently, the definition of FGM as a number of procedures that result in the total or partial removal of the external female genitalia for non-medical purposes seems to suggest that when it is done for cultural reasons, then it is mutilation. However, when similar procedures, which may generally be referred to as female genital cosmetic surgery, are done as medical procedures but for cosmetic reasons, then this is not mutilation, which suggests that there is an element of racism in the definition of what constitutes FGM.[92] It should, however, be noted that these cosmetic procedures are recognised and accepted within the medical fraternity as being of therapeutic value, unlike FGM, which is seen as not having any therapeutic value.

From a social , however, Boddy argues that traditional FGM and modern labiaplasty are both based on the same ideology – that the normal or natural look of the external female genitalia is deformed and ugly and, therefore, needs fixing.[93] However, while Female Genital Cosmetic Surgery (FGCS) is not prohibited and is considered essential for the mental health and well-being for the women and girls who seek the procedure, FGM is categorised as harmful.

Hehir further demonstrates that migrant communities in the global North have also been subjected to what may be perceived as racism, based

91 J Wouango and others *When and how does law effectively reduce the practice of female genital mutilation/cutting?* (2020).
92 J Boddy 'Re-thinking the zero tolerance approach to FGM/C: The debate around female genital cosmetic surgery' (2020) 12 *Current Sexual Health Reports* 302.
93 As above.

on the history of FGM in their countries of origin.[94] Consequently, as in the case of Kenya, there is an assumption in the United Kingdom that a girl (which also includes adult women) cannot exercise their autonomy and make the choice to undergo FGM. This may be contrasted with teenagers who wish to undergo a sex change or take puberty blockers, and under the law in the UK, such teenagers are viewed as having the autonomy to make such a decision. There generally is a perception about African women as being victims and also as being helpless in addressing the circumstances that lead to their victimhood. African women require protection, and this therefore means, in certain circumstances, limiting the extent to which they can make decisions concerning their bodies, because again the belief is that African women are so entrenched in a pervasive patriarchal culture that they are incapable of making good choices for themselves. The outcome is that among migrant communities in the UK, just as in Kenya, adult women cannot consent to FGM.

From an African feminist perspective, the narrative that African cultures are so oppressive that women who want to conform to those cultures are viewed as acting out of the compulsion and pressure of the same oppressive culture, is one that ought to be confronted. Indeed, patriarchy and the need to conform to patriarchal standards of beauty and pornography are some of the factors that cause women in the Global North to seek FGCS procedures.[95] However, these aspects of cultures in the Global North that cause women to make certain decisions do not seem to be problematic, but African cultures are.

This double standard transcends questions of gender and sex oppression. It goes to the very heart of racist ideology. However, anti-racist discourse itself has been problematised for ignoring the experiences of women. Crenshaw demonstrated that in the context of racism, race is the primary axis of analysis, and because masculinity is generally dominant, the experiences of men with regard to racism tend to take a universalising character, which ignores the experiences women have with regard to racism.[96] FGM is a uniquely feminine experience, and from an

94 B Hehir 'Why we should be concerned about UK female genital mutilation laws and associated monitoring and reporting systems: A reply to "The prosecution of Dawoodi Bohra women" by Richard Shweder' 2022 12 *Global Discourse* 131.

95 Boddy (n 94).

96 K Crenshaw 'Demarginalising the intersection of race and gender: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist

intersectional perspective, analysis of racism with regard to FGM may be limited on one extreme. On the other extreme, from a hardline cultural relativist standpoint, the treatment of FGM versus the treatment of FGCS in international guidelines, particularly the WHO guidelines, may result in a justification for FGM. This means that the treatment of only African cultures as patriarchal and retrogressive, when even cultures in the Global North are equally patriarchal with both resulting in more or less similar perceptions of the female genitalia, could create a space for arguing that the WHO guidelines on FGM ought to be ignored in the African context. This would be a dangerous position, which would threaten the gains that so far have been made in advancing the sexual and reproductive health rights of girls and women.

Recalling the analysis of Njoya on the dangers of FGM on selfhood, it is necessary to stress that, indeed, FGM is a problematic cultural practice, which also has negative impacts on the health and well-being of women.[97] From an African feminist perspective, the point is that while there is a clear double standard in the international treatment of FGM, on the one hand, and FGCS, on the other hand, this should be acknowledged and problematised, without necessarily undoing the gains that have so far been made in protecting women and girls from harmful cultural practices.

In achieving this, it would be important to adopt a position that looks for the possibilities in African cultures and works with those cultures to promote the rights of women. Nyamu-Musembi has demonstrated that African cultures have the possibility to be fences or pathways, that is, they can inhibit the enjoyment of human rights just as they can promote the enjoyment of those rights.[98] Hellum and Stewart also highlight that in plural legal systems, African women seek justice in multiple spaces, depending on the possibilities offered by those spaces.[99] Thus, there are instances where African women will look to culture and custom for justice, and this should not be ignored in favour of the narrative that demonises African cultures and instead privileges of international human

politics' (1989) 1 *University of Chicago Law Forum* 139.

97 Njoya (n 70).

98 C Nyamu-Musembi 'Are local norms and practices fences or pathways? The example of women's property rights' in A An-Naim (ed) *Cultural transformation and human rights in Africa* (2002) 126-150.

99 Hellum & Stewart (n 8).

rights and formal state interventions. Thus, a cultural transformation approach as espoused by An-Naim would be relevant in this context.[100] Such an approach begins from the premise that African cultures indeed are inherently good, and that the right to pursue one's culture is a fundamental right that ought to be respected. However, culture is not ossified and it is in a constant state of evolution. Thus, for cultural transformationists, the question is not whether African cultures indeed are capable of transforming so that they take on aspects of human rights, but rather, the question is how such transformation should occur. This is very much in line with African feminism, because it is at once aligned with and in support of African cultures but, on the other hand, it is concerned with the ways in which problematic gender aspects of such cultures may be addressed.

5 Conclusion

Through the experiences of African women, we see that there are various dimensions to the issue of FGM. At different points in time and for varied reasons, African women have supported anti-FGM interventions, and, at other times, they have protested against those interventions. The cultural entrenchment of FGM may be seen as curtailing women's autonomy over their bodies and, likewise, legal prohibitions of FGM informed by human rights standards may have the same outcome of limiting women's bodily autonomy. The way in which FGM is defined and categorised may also result in intersectional forms of marginalisation, occurring both on the basis of race and gender. Well-meaning anti-FGM interventions can have the outcome of being paternalistic and infantilising African women. Survivors of FGM who have told their stories have been empowered in the process and they have also empowered other women and girls to make fully informed choices about FGM. On the other hand, some women who have undergone FGM and who would choose to undergo FGM have found this to be an empowering experience for them to the extent that it allows women to express their cultural identities.

What we see, therefore, is that there are numerous different and often times conflicting stories about FGM. From an African feminist perspective, all these stories are important, and they must be told. This

100 A An-Naim *Cultural transformation and human rights in Africa* (2002).

chapter has not attempted to provide answers as to how some of the tensions that arise in how African women respond to FGM should be addressed. Such an objective indeed might not be achievable. Rather, the aim of this chapter was to simply tell the many different stories of women's experiences, to explain those stories and through that, to provide greater understanding of what African feminism is about. Thus, African feminism is not primarily a site through which particular positions are taken or particular issues are advanced. Rather, African feminism is about making African women and their concerns visible – because African women and that which concerns them matters.

Bibliography

28 Too Many 'The law and FGM: An overview of 28 African countries' (*28 Too Many* 2018)

Adichie, CN 'The danger of a single story' (2009), https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story?language=en (accessed 16 June 2022)

An-Naim, *Cultural transformation and human rights in Africa* (Zed Books 2002)

Barbera, MC *Multicentered feminism: Revisiting the 'female genital mutilation' discourse* (Marta Amigo 2009)

Bhalla, N 'Campaigners demand anti-FGM law as girl bleeds to death in Somalia' 18 September 2018, https://www.reuters.com/article/us-somalia-women-fgm-idUSKCN1LY1V5 (accessed 16 June 2022)

Boddy, J 'Re-thinking the zero tolerance approach to FGM/C: The debate around female genital cosmetic surgery' (2020) 12 *Current Sexual Health Reports* 302

Byaruhanga, C 'Uganda FGM ban: "Why I broke the law to be circumcised aged 26"' 6 February 2019, https://www.bbc.com/news/world-africa-47133941 (accessed 6 June 2022)

Crenshaw, K 'Demarginalising the intersection of race and gender: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics' (1989) 1 *University of Chicago Law Forum* 139

Dembour, MB 'Following the movement of a pendulum: Between universalism and relativism' in Cowan, JK, Dembour, MB & Wilson, RA (eds) *Culture and rights: Anthropological perspectives* (Cambridge University Press 2001)

Divine, N 'Cameroon encounters resistance to female circumcision ban' 12 June 2014, https://www.voanews.com/a/cameroon-encounters-resistance-to-female-circumcision-ban/1935833.html (accessed 16 June 2022)

Equality Now 'The Maputo Protocol: Protecting African women's rights', https://www.equalitynow.org/promoting_african_womens_rights/#:~:text=The%20Maputo%20Protocol%20Advances%20African,Reproductive%20health%20and%20rights (accessed 16 June 2022)

Hassim, S 'Nationalism, feminism and autonomy: The ANC in exile and the question of women' (2004) 30 *Journal of South African Studies* 433

Hehir, B 'Why we should be concerned about UK female genital mutilation laws and associated monitoring and reporting systems: A reply to "The prosecution of Dawoodi Bohra women" by Richard Shweder' 2022 12 *Global Discourse* 131

Hellum, A & Stewart, J *Pursuing grounded theory in law: South-north experiences in developing women's law* (Mond Books1998)

Johnson, S "'On a rampage": The African women fighting to end FGM' 9 June 2021, https://www.theguardian.com/global-development/2021/jun/08/on-a-rampage-the-african-women-fighting-to-end-fgm (accessed 16 June 2022)

Kabira, W *A time for harvest: Woman and constitution making in Kenya 1992-2010* (University of Nairobi Press 2012)

Kameri-Mbote, P *Contending norms in plural legal systems: The limits of formal law* (University of Nairobi School of Law 2020)

Kanogo, T *Squatters and the roots of Mau Mau 1905-1963* (East African Educational Publishers 1987)

Kithinji, C, Maleche, H, Masiga, A & Masiga, J 'Between autonomy and solidarity: An African woman's autoethnography' (2021) 14 *International Journal of Feminist Approaches to Bioethics* 61

Kituyi, M *Becoming Kenyans: The socio-economic Transformation of Pastoral Maasai* (African Centre for Technology Studies 1990)

Lewis, D 'African feminist studies: 1980-2002' (African Gender Institute 2000)

Leye, E, Eekert NV, Shamu, S, Esho, T, Barret, H & ANSER 'Debating medicalisation of female genital mutilation/cutting (FGM/C): Learning from (policy) experiences across countries' (2019) 16 *Reproductive Health* 158

Maathai, W *Unbowed* (Arrow Books 2008)

Mama A 'African feminist thought' (2019) *African History*, https://doi.org/10.1093/acrefore/9780190277734.013.504 (accessed 16 June 2022)

Meroka, AK, Wambui, J & Kombo, Z 'When the law fails to regulate culture: The case of FGM in Kenya' (2016) 2 *Journal of Law and Ethics* 137

Meroka-Mutua, A, Mwanga, D, Ostermann, S & Wouango J 'Coercion versus facilitation: Context and the implementation of anti-FGM/C law' (2021) 55 *Law and Society Review* 1

Meroka-Mutua, A, Olungah, C & Mwanga, D 'Assessing when and how law is effective in reducing the practice of FGM/C in Kenya' (Population Council 2020)

Meroka-Mutua, A 'A history without women: The emergence and development of subaltern ideology on land in Kenya' *Feminist Legal Studies* DOI 10.1007/s10691-022-09488-4

Mikell, G *African feminism: Towards a new politics of representation* (University of Pennsylvania Press 1995)

Naffine, N 'The man of law' in N Naffine (ed) *Law and the sexes: Explorations in feminist jurisprudence* (Allen and Unwin 1990)

Njambi, WN 'Dualisms and female bodies in representations of African female circumcision: A feminist critique' (2004) 5 *Feminist Theory* 281

Njambi, WN 'Irua ria atumia and anti-colonial struggles among the Gikuyu of Kenya: A counter narrative on "female genital mutilation"' (2007) 33 *Critical Sociology* 689

Nnaemeka, O 'Nego-feminism: Theorising, practicing and pruning Africa's way' (2003) 29 *Signs* 357

Nyamu-Musembi, C 'Are local norms and practices fences or pathways? The example of women's property rights' in An-Naim, A (ed) *Cultural transformation and human rights in Africa* (Zed Book 2002)

Nyanzi, S *No roses from my mouth* (Ubuntu Reading Group 2020)

Shell-Duncan, B 'Social and structural factors influencing women's agency regarding female genital mutilation/cutting: An intersectional analysis – a reply to "The prosecution of Dawoodi Bohra women" by Richard Shweder' (2022) 12 *Global Discourse* 167

Shweder, RA 'The prosecution of Dawoodi Bohra women: Some reasonable doubts' (2022) 12 *Global Discourse* 9

Tamale, S *Decolonisation and Afro-feminism* (Daraja Press 2020)

UN Women 'Survivors speak: Women leading the movement to end FGM' 4 February 2019, https://www.unwomen.org/en/news/stories/2019/2/compilation-women-leading-the-movement-to-end-female-genital-mutilation (accessed 16 June 2022)

UNICEF 'A decade of action to achieve gender equality: The UNICEF approach to the elimination of female genital mutilation' (UNICEF 2020)

Verges, F *A decolonial feminism* (Pluto Press 2021)

Viljoen, F 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 11

Win, EJ 'Not so poor, powerless or pregnant: The African woman forgotten by development' (2004) 35 *IDS Bulletin* https://doi.org/10.1111/j.1759-5436.2004.tb00156.x

Wouango, J, Ostermann, S & Mwanga, D 'When and how does law effectively reduce the practice of female genital mutilation/cutting?' (Population Council 2020)