

Western Discourse in Legal Approaches: A History of Female Circumcision in Kenya

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Abstract

Since 2008, the UNFPA and UNICEF have carried out a joint campaign to agitate against female circumcision on the African continent, where 3 million girls are estimated to be at risk of undergoing the practice. These efforts reflect an ongoing involvement of Western countries in eliminating the cultural practice in African countries. In Kenya, these efforts began in the colonial period and continue on to the present day. In this paper, I illustrate how these efforts reflect shifting Western feminist discourses on female circumcision, which have in turn influenced the formulation of local Kenyan laws against the practice. These discourses range from the civilizing mission of the colonial period, to the current human rights debates. Indeed, as Western views on Africa change, so do the feminist views that influence the efforts against female circumcision. However, I emphasize the paradoxical effect of these feminist debates on female circumcision in Kenya, showing how Kenyan women activists do not internalize these feminist discourses, namely, the *civilizing mission*, the *human rights* debate and the use of the term *female genital mutilation (FGM)*. Instead, I argue that Kenyan activists use these frameworks to spearhead their own brand of advocacy against female circumcision in the country.

Throughout Kenya's colonial and post-colonial history, the practice of female circumcision has elicited varied reactions from both community and state actors. Today, an anti-FGM bill passed into law by Kenya's parliament in 2011 classifies female circumcision as a criminal offence. This bill is the culmination of Kenya's long history of attempting to end female circumcision through legal channels. Throughout the country's history, an interplay of Western and local discourses about the practice has influenced the formulation of these laws. Beginning with a 1956¹ ban on female circumcision in the Meru² community, the legal efforts to end female circumcision stretched into the post-colonial era through the Children Act of 2001, and finally culminated with the Prohibition of Female Genital Mutilation Act of 2011. In Kenya, these legal approaches have been instituted to complement the efforts to end female circumcision. Nevertheless, Western feminist discourses on female circumcision

¹ Anne King, in the book, *Biographical Essays on Imperialism and Collaboration in Colonial Kenya*, notes a 1931 ordinance to make severe forms of female circumcision illegal (King 110). I chose to focus on the 1956 ban because most of the works on female circumcision in the colonial period focus on this ban. Nevertheless, my discussion will look at reactions to female circumcision in the colonial period in general, as this gives a more holistic view of the dialogues surrounding the practice at the time.

² The Meru is one of the ethnic groups in Kenya that practices female circumcision. This paper will also refer to other Kenyan ethnic groups that practice female circumcision i.e. Gikuyu, Gusii, and Marakwet.

ultimately underpin the legal directives. These directives show how Kenyan lawmakers have internalized Western rhetoric in their attempts to curb female circumcision. By using Western framings to foster their fight against the practice, Kenyan stakeholders rearticulate Western discourses to fit the Kenyan context. While these discourses underpin the legal approaches to end female circumcision, the country's situation suggests that they are only used to promote the efforts to end the practice. Because Kenyans who are either for or against female circumcision do not accept Western discourses as a definitive matrix for Kenyan women, Kenya's legal approaches, though influenced by Western feminist discourses, do not succeed in misrepresenting the circumcised Kenyan woman.

In order to see how Kenya uses Western discourses to fight against female circumcision, and yet not misrepresent circumcised Kenyan women, we must first link Western feminist discourses to the respective laws on female circumcision formulated in the course of the country's history. To begin with, the first legal approach to end female circumcision — the 1956 Meru ban — reflects the first Western discourse — the civilization debate. In their attempts to address female circumcision, Western feminist discourses on the practice often attempt to civilize African women. Of this phenomenon, scholar Obioma Nnaemeka writes that the current efforts to end female circumcision cause African women to be “exhibited, gazed at, and silenced” in a process fuelled by the desire to civilize African women from their backwardness and barbarism (28, 29, 33). Fellow scholar Amede Obiora, also writes that Western feminist discourses “transpos[e] [female circumcision] to alien rational categories” (294). In Kenya, this desire and transposition fuelled debates on female circumcision beginning in the early decades of the 1900s. (Mwaniki 15; Gachiri 40; King 106). According to historian Lynn Thomas, an official by law against the practice came decades later, after missionaries in the area had called for female circumcision to be outlawed (Thomas 83). Kenyan cleric Rev. Canon Ephantus Josiah Mwaniki, and biographer Anne King corroborate this observation, noting that missionaries at the time viewed female circumcision as sinful (King 109; Mwaniki 14). Similarly, this situation calls to mind the events described by Ngugi wa Thiong'o in his novel *The River Between*. Describing the debates around female circumcision among the Gikuyu, Ngugi wa Thiong'o fictionalized the efforts to end female circumcision in colonial times through the work of missionaries (wa Thiong'o). Hence, this first ban on female circumcision reflected the first spread of Christianized ideas on female circumcision in Kenya. Based on its Christianized nature, and following the European roots of Christianity, the earlier missionary efforts that culminated in this ban reflect the first entry of Western discourses in the local consciousness.

As Christianity permeated the local consciousness and defined the first efforts to end female circumcision, the religion only served to hide the underlying mission of the European to civilize the African. As Kenyan historian Peter Ndege notes, Christian missionaries in colonial Kenya preached against local cultures, arguing that the salvation of the African would “be gauged on the extent to which cultural practices were abandoned” (Ndege 6). Hence, it comes as no surprise that the Embu and Meru councils respectively worded the 1956 ban as follows:

“This council prohibits the *uncivilized* practice of female circumcision in Embu District and declares it henceforth to be an offence against Native law and custom.” (quoted in Mwaniki 14; emphasis added)

“No female person within the jurisdiction of the African District Council of Meru shall perform or assist in performing an operation of circumcision upon any female member of the Meru tribe, and no Meru female shall allow herself to be circumcised, and no parents or guardians of young females shall allow them to be circumcised.” (quoted in Mwaniki 14, 15).

Although missionaries had long denounced female circumcision in their churches, this ban legally affirmed female circumcision as a barbaric act. In framing female circumcision as an “uncivilized practice”, the ban calls to mind the colonizing mission of the Europeans, which involved civilizing the African. This mission was the highlight of imperialist tendencies, which, in viewing African cultures as barbaric and inferior to the Westernized ideal, fail to pay attention the desires of Africans (Obiora 329). In her essay, Nnaemeka describes how the fight to end female circumcision is reflective of a “raj revival” that pits African traditions as backward and uncivilized (Nnaemeka 28). In Kenya, this revival in local female circumcision discourse seems to have begun with the 1956 ban. Formulated by the district commissioner, J.A. Cumber, and *educated* members of the *Njuri Ncheke*³ and the African District Council (ADC), the ban aptly illustrates how the imperial endeavor to civilize Africans weaved itself into the legal approach to eradicate female circumcision (Thomas 83; emphasis added). As a precursor to the legal approaches in later years of post-colonial Kenya, this ban only set the stage for the future interaction of Western discourses, and the local legal approaches to end female circumcision.

The second of these interactions culminated in the Children Act of 2001, which reframed female circumcision as a human rights issue, and hence reflecting a second element of Western feminist discourse. Indeed, Western feminist discourses on female circumcision often displace the cultural contexts of the practice, while reframing it as a human rights issue (Robertson 55). In articulating this tendency, anthropologist Richard Shweder argues that Western feminists decontextualize and reframe the practice for women who “do not think about circumcision in human-rights terms” (Shweder 216, 217, 220). Nnaemeka concurs with Shweder, contending that African women lead much more complex lives than is often put forward by Western feminist discourses (Nnaemeka 40). However, the Western construct of human rights re-describes female circumcision as a practice that fundamentally violates the rights of African women (Shell-Duncan 227).

In reflecting this discourse, Kenya's parliament ratified the UN Convention on the Child by passing the Children Act of 2001 into law. As an international framework reflecting universal perceptions on children, the UN Convention on the Child stipulated that children had inherent and inalienable rights to live dignified lives characterized by “special care and assistance” (UN Convention). In mandating children the right to an “atmosphere of peace, dignity, tolerance, freedom, equality and solidarity”, the 1990 Convention reiterated that, “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” (UN Convention). Upon ratifying this convention into law, Kenyan lawmakers outlawed female circumcision as a practice that denied children their rights. With this

³ *Njuri Ncheke* refers to the Meru council of elders, which formed the ruling body for the Meru community.

parliamentary act, the Kenyan lawmakers legally introduced the concept of human rights into the local discourse on female circumcision. The section pertaining to female circumcision read as follows:

“No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development” (Section 14, Children Act 2001)

As a product of the international furor on human rights, this second legal approach to end female circumcision shows how Kenya was not averse to the existing Western discourses on human rights. Even as Western feminists reframed female circumcision from a health issue into a human rights issue beginning in the 1990s (Nnaemeka 29; Shell-Duncan 227; Obiora 284), the reframing reared its head decades later as Kenyan policy makers voted for a law that legally viewed female circumcision through a human rights lens.

Finally, the latest legal approach — the Prohibition of Female Genital Mutilation Act 2011 — reflects a third Western feminist element that surrounds discourses on female circumcision: the renaming issue; calling female circumcision “female genital mutilation”. In arguing against this renaming, Kenyan scholar Mary Wangila notes that the term “female genital mutilation” is offensive to the cultures that practice female circumcision, as it “connotes intentional harm and implies an evil intent” (Wangila 47). Nnaemeka concurs with Wangila, writing that the renaming to misname game “obfuscates the real issues”, and pits African cultures as “mutilating cultures” — an approach that is inherently insensitive and imperialistic towards African cultures (Nnaemeka 34). Nevertheless, Kenya’s third legal approach to end female circumcision uses this wording. By using the phrase “female genital mutilation” to describe the practice, Kenyan lawmakers acquiesced to using the umbrella term put forward by international organizations fighting against female circumcision such as WHO, and FORWARD.⁴ The description of the Act reads as follows:

“An Act of Parliament to prohibit the practice of female genital mutilation, to safeguard against violation of a person’s mental or physical integrity through the practice of female genital mutilation and for connected purposes” (Prohibition of Female Genital Mutilation Act 2011)

Indeed, in using the Western renaming of the practice, this legal approach shows how Western discourses have been further entrenched in the Kenyan psyche.

Based on the discussion above, we can summarize the three characteristics of Western feminist discourses that underpin Kenya’s legal approaches to end female circumcision as the civilization debate, the human rights debate, and the renaming debate. As Western feminists churn out discourses concerning the practice, Kenyan stakeholders revise their legal approaches in tandem with the existing international views of the practice.

⁴ These organizations use “female genital mutilation” in lieu of other terms to describe female circumcision: <http://www.forwarduk.org.uk/key-issues/fgm>; <http://www.who.int/mediacentre/factsheets/fs241/en/>

African Renaissance and Australia

In view of this fact, we might question whether Kenyan lawmakers have been part and parcel of reducing circumcised Kenyan women to their vaginas. However, as I have mentioned before, the Kenyan situation proves otherwise. Because Kenyan communities react to the legal approaches in complex ways, the Western discourses tied to these legal approaches fail to reframe circumcised Kenyan women along Western feminist lines. Indeed, these legal approaches only reflect how Kenyan stakeholders have internalized Western discourses without necessarily displacing cultural sensitivity towards the Kenyan communities that practice female circumcision.

In order to further understand how this situation remains complex in the Kenyan context, we can take a closer look at the varied reactions to the laws on female circumcision from Kenyan communities who practice female circumcision, and from Kenyans who fight against the practice. Among circumcising communities, the first ban of 1956 led to a rise in the incidences of circumcisions. According to historical records, the 1956 ban caused Meru girls to defy the ban and begin circumcising themselves. Earning the name *Ngaitana*, “I will circumcise myself”, these girls used razor blades to circumcise each other, leading to a wave of mass circumcisions across the Meru community (Thomas 90). For these Meru girls, circumcision was a cultural prerequisite to adulthood; a channel through which they could “gain respect and become young women” (Thomas 95). Hence, by defying the ban, these girls showed their allegiance with their culture, and a rejection of the Western feminist discourse that viewed female circumcision as an uncivilized practice. Indeed, various scholars write that the rise in self-circumcisions and general defense of the practice occurred within the context of the *Mau Mau* liberation struggles in Kenya, hence adding a political dimension to the cultural issue (Thomas 94; Obiora 330; King 110). Female circumcision was drawn into the ensuing societal fight for freedom and the right to self-determination; the right to self-circumcise mirrored the right to self-rule, and showed how Kenyans who advocated for female circumcision rejected the Western mission of civilizing.

Alongside this rapturous embrace of the practice, other Kenyans — some women and mission-educated individuals — vehemently condemned the practice. Years preceding the ban, historical records show that a community of Kenyan women had already begun agitating against female circumcision. In a 1931 letter to the Local Native Council of South Nyeri District, three Gikuyu women — Nyambura wa Kihurani, Raheli Warigia wa Johanna, and Alice Murigo wa Meshak — wrote to protest the local council’s willingness to allow circumcision to continue unabated (Kihurani et al. 120). Indeed, their actions show how Western discourse, particularly as framed by Christian missionaries, had spread into Kenyan communities. Starting in the early 20th century, Christian missionaries had preached against the practice, threatening their church members with expulsion if they failed to reject all customs (Mwaniki 13). Therefore, one would expect these women to have been part of the new breed of Kenyans who rejected traditional customs, including female circumcision. However, as African historian Derek Peterson notes, there was no “united Gikuyu perspective on female circumcision”, as both critics and defenders “thought themselves defenders of Gikuyu womanhood” (119).

From these two scenarios — the embrace of female circumcision and the rejection against the practice, we can see how different Kenyans reacted to the Western discourse of civilization pertaining to female circumcision. First rejected by missionaries and the law on the grounds of being an uncivilized and un-Christian practice, the reactions by these two groups showed how the debate on civilization failed to replicate itself within the Kenyan

populace. While educated Kenyans had been part of the council that enforced their ban, the letter by the Gikuyu women showed that such Kenyans still identified with their own cultures, and did not consider themselves as lesser members of their communities. Indeed, in recalling Ngugi wa Thiong'o's novel, the two factions —pro-circumcision and anti-circumcision—still considered themselves Gikuyu, albeit Christianized Gikuyus (wa Thiong'o).

The second ban on female circumcision came almost fifty years after the first legal ban against the practice. Unlike the first ban, which was influenced by the work of missionaries in colonial Kenya, the second ban came into law in 2001 after many controversies over the practice had ensued in the intervening years. Even after introducing the concept of human rights into the Kenyan discourse on female circumcision, the law failed to change perceptions of the practice along these lines. Political professor Makau Mutua foreshadows the failure of such human rights framings in the African context, arguing that human rights discourses are often an extension of the “Eurocentric colonial project” that pits the West as the savior of the backward African, and thereby promotes the “transformation of non-Western cultures by Western cultures” (Mutua 12, 155). Wangila concurs with Mutua, arguing that “modern human rights standards lack international cultural legitimacy” (Wangila 67). By applying this framework to the local discourses on female circumcision in Kenya, one could argue that Kenyans were ultimately selling out to Europeans. Nevertheless, as in the case of the first ban, the Kenyan situation reveals otherwise.

To begin with, Kenyan lawmakers disagreed on the bill before passing it into law. According to a newspaper article on the proceedings at the time, Catharine Nyamato, a female MP from the Gusii community, argued for female circumcision, saying that the “practice reduces women's sexual drive and therefore promiscuity, premarital sex and adultery” (Okoko). In the same article, the author notes how the president of Kenya at the time, Daniel Moi, condemned the practice as “a health risk and an injustice against women” (Okoko). The president reflected the same ideas that underpin the human rights framework — that of ensuring that no human being suffers injustice because he or she is human. Another activist against the practice from the Gikuyu community, scholar and Catholic nun Ephigenia Gachiri, writes that, “female circumcision is totally against the rights of the woman and the girl child” (Gachiri 131). Indeed, her words are also reflective of the human rights discourse of the time, and of the differing Kenyan views on female circumcision as a human rights issue.

Nevertheless, as in the case of the first ban of 1956, the second ban underscores the transformation that the Western discourses on human rights underwent in Kenya. For communities that still hold on to the practice, the ban was simply another conception by the government to end the practice. Indeed, even a Gusii traditional circumciser interviewed in 2008 thought that the 2001 ban was a hoax (Njue and Askew 22). Still, activists and groups against the practice in Kenya used this rhetoric to explain their stand on female circumcision. The Maendeleo ya Wanawake Organization (MYWO) in Kenya stated that female circumcision acted as “a barrier to women's rights, health, and advancement” (quoted in Stanfield 6). Other female activists, including female politicians and female cabinet ministers, also supported the view of female circumcision as a human rights issue (quoted in Stanfield 13, 16).

Indeed, despite the introduction of the discourse in Kenya, the human rights issue fails to have the same effects in Kenya beyond acting as a new rhetoric to be used either in the fight against the practice in Kenya, or to be cast aside by communities that hold on to female circumcision. As highlighted before, scholars who argue against the use of the human rights framework in female circumcision note that the construct promotes a universalism that can have no place among Africans who have a different worldview. However, we can see in the Kenyan case that the use of such a framework seems to have no consequences on Kenyan's view of themselves beyond the reactions to the legal approach by different actors in the local scene. As in the case of the civilization debate, the human rights debate falls apart in its imperialistic tendencies. The reinvention of the African along the human rights path fails to fully transmit the discourses on human rights among Kenyans.

Finally, the latest legal approach to end female circumcision features the use of the latest term used to describe the practice "female genital mutilation". Long before the bill was passed into law, the term female genital mutilation had floated around in local discourses, and had already been employed before by newspapers, scholars, writers, and other activists against female circumcision, including the author's own mother, an activist against the practice. Nevertheless, the Prohibition of Female Genital Mutilation Act 2011 set the terminology in stone for Kenyans. Indeed, we could posit that the law only legally legitimized the use of the term in Kenya to describe the practice. By criminalizing the practice, the law allows activists against the practice to further their efforts to eradicate it. Seemingly, none of these Kenyans, particularly the activists and reporters, think of engaging the Western discourse that led to renaming female circumcision as female genital mutilation. Today, Kenya's media is replete with stories about "female genital mutilation" as the term "female circumcision" is no longer in use.⁵ While African scholars such as Nnaemeka, Wangila, and Mutua find the term problematic, Kenyans on the ground see no problem with the renaming. Everything remains business as usual, only this time round, female genital mutilation can be used in place of female circumcision.

This situation in Kenya seems to lie in the fact that Kenyans, for the most part, recognize the cultural contexts behind the practice (Spronk 500). While Western discourse tends to "totalize Africa as a place in which any women might be subjected to genital cutting", the proliferation of this discourse in Kenya redefines local discourses without changing the understandings of the practice as simply a tradition that for some Kenyans, continues to lose its relevance in modern day (Lehman and Nath 411). As it stands today, some Kenyan women will oppose the practice while others will agree to it (Wangila 33). I observe the same complexity with regard to Western discourses based on the different ways that Kenyan women react to them. Many of the women at the forefront in the campaign against female circumcision come from communities that engage in the practice. Their agitation against the cut, whether framed as female circumcision, or female genital mutilation reflects their acceptance of Western framings of the practice without the attendant discourses that reflect African women as inferior, or as victims of barbaric cultures.

Indeed, while many scholars, both Western and African, decry the effects that Western discourses on female circumcision have on African women, the Kenyan situation

⁵ Daily Nation and East African Standard newspapers: <http://www.nation.co.ke>;
<http://www.standardmedia.co.ke>

shows that such effects are not replicated in the country. Paradoxical as it sounds, Kenya's legal approaches show how Kenyans are using Western framings to fight against the practice, while at the same time, still embracing their culture. Today, this can even be seen in the rise of alternative rites of passages that support the rites of female circumcision without the cutting of the female genitalia.⁶ The continuous introduction of Western framings on the practice punctuates the Kenyan consciousness, and it does not seem to abate. Indeed, the most that Western discourses on female circumcision will accomplish is creating cultural insiders who will use Western framings to fight for the end of a practice that has outlived its time. In a break from Western discourses that punctuate the debates on female circumcision, Kenyan women, on both sides of the divide, seem to have achieved their own unique middle ground through:

the "assertion of [a] [Kenyan] context compensating for an emerging radical feminist consensus that overwhelmingly ignores the incommensurability of cultural motivations and meanings by projecting Western understandings of female circumcision onto African cultures" (Obiora 286).

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⁶ In her book *Female Circumcision: With Reference to the Agikuyu of Kenya*, Ephigenia Gachiri describes the components of an alternative rite of passage to retain positive aspects of the practice. Other communities such as the Marakwet, Gusii, and Kuria are also starting alternative rites of passage programs, although the rate of circumcision remains high.

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