

The Human Rights Discourse in Perspective: Cultural Relativism and Women's Vulnerability to HIV/AIDS

Mizane Abate*

Introduction

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution)¹ is unparalleled by its predecessors in terms of recognizing the right of ethnic groups (nations, nationalities and peoples) to develop their cultures. The position taken by the Constitution is highly laudable in view of the past history of assimilation that threatened the very identity of different cultural groups. Not only does the FDRE Constitution recognize cultural rights, it also incorporates provisions on the rights of women that are instrumental to emancipate them from their historical subordinate position in society. The rights of women is also given an important place in international and African regional human rights treaties which Ethiopia has ratified and which are made part and parcel of the law of the country.

While no one can legitimately challenge the necessity of the commitment of the Ethiopian Government to protect and promote the rights of ethnic groups to develop their cultures and the rights of women, human rights activists fear that cultural rights may undermine the rights of women, if not judiciously exercised. This article shares the same concern. Relying on empirical and quantitative researches undertaken by other authors, this article critically examines how subscription to cultural relativism (giving precedence to cultural practices over human rights) may exacerbate women's vulnerability to HIV/AIDS.

The article consists of five sections. The first section gives an overview of the position of universalists and cultural relativists in the human rights debate. Section two highlights the downsides of cultural relativism. Chapter three, then, identifies the different gender specific factors that put women in higher risks of HIV infection in Sub-Saharan African including Ethiopia. The Fourth section, drawing data from different sources, shows how the different

* LL.B, LL.M, PhD Candidate, Lecturer, Faculty of Law, Bahir Dar University, lawmizane@yahoo.com,

¹ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, *Federal Negarit Gazeta*, 1st Year, No.1.(Herein after referred to as the FDRE Constitution).

cultural practices whose continuous existence is defended by cultural relativism aggravate women's vulnerability to HIV/AIDS. Finally, the fifth section figures out the conflict between Ethiopian commitment to the protection of the rights of women and rights of ethnic groups to develop of their culture. The article concludes by unfolding that cultural rights in Ethiopia have, to some extent, been abused to promote cultural relativism stances at different levels.

I. The Universalism vs. Cultural Relativism Discourse: An Overview

The old debate between those who advocate for the universality of human rights (universalists) and those of who promote cultural relativism (cultural relativists) continue even today in politics and academic world. Universalists argue that human rights apply to everyone and, therefore, that the norms contained in various international and regional human rights instruments must be applied consistently despite cultural, religious, or other differences across countries. Cultural relativists reject the universal application of human rights and posit that since human rights are based on Western political tradition, they are extraneous to other societies. The rationales for each position are discussed below.

A. Universalism

Universalists claim that human rights have universal significance and are the equal property of all human beings. This claim rests on the premise that human nature is universal. From this premise, Universalists go on to argue that since human rights belong to individuals by virtue of simply being human and since humanity or human nature is universal, then logically so should human rights.² From this, it follows that birth into a particular, religious, cultural and social group is tonally immaterial to his or her entitlement to fundamental rights and freedoms. Every human being is entitled to the equal enjoyment of human rights. Another aspect of the universality of human rights is that 'since being human cannot be renounced, lost, forfeited or impaired, human rights are inalienable'.³

² J Donnelly, *International Human Rights*, Westview Press, Boulder, 1998, P.18. See also B G Ramcharan *Contemporary Human Rights Ideas* (2008) 54; F Spagnoli, *Making Human Rights Real*, Algora Publishing, New York, 2007, p. 11; and R Pannikar, *Is the Notion of Human Rights a Western Concept?*, Diogenes, Vol.120, 1982, P. 75; and B Ibhawoh, *Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State*, Human Rights Quarterly, Vol.22, 2002, p. 839.

³ Ibid.

Universalists do not purport to deny the West as an origin of human rights. Although they originated in the West, they are still relevant to other parts of the world because, they argue, the human rights regime is developed as a response to experiences of gross human rights violations by modern states that in way or another affected all human beings.⁴

The universality of human rights is nowadays accepted by a great majority of states of the world albeit ideological and levels of economic development.⁵ This is evident from two facts. Firstly, the international human rights instruments themselves unequivocally stipulate the universality of human rights norms. For example, the Vienna Declaration and Programme of Action (Vienna Declaration) in no uncertain terms declares that '[t]he universal nature of these rights and freedoms is beyond question'.⁶ The Universal Declaration of Human Rights (UDHR), on its part, states that the Declaration is 'a common standard of achievement for all peoples and all nations'.⁷

Secondly, the universal acceptance of human rights can be deduced from the nearly universal ratification that the major international human rights treaties enjoyed.⁸ While the wide ratification of international human rights treaties may be a plain evidence of the universality of human rights, their actual effective implementation, in some cases, has been greatly hindered by the sweeping reservations entered by states.⁹ To take the Convention on the Elimination of

⁴ R Afshari, *Human Rights in Iran*, University of Pennsylvania Press, Philadelphia, 2001, p.10.

⁵ J Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2002, p. 1.

⁶ The Vienna Declaration and Programme of Action (1993) para.1. The Vienna Declaration was the products of the 1993 Second World Conference on Human Rights which was attended by 171 states.

⁷ Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, preamble. A considerable number of government and scholars nowadays contend that many of the provisions of the Universal Declaration of Human Rights has attained the status of *jus cogens*, norms which secured universal acceptance and from which derogation is not allowed. See M Sepulveda, *Human Rights Reference Handbook*, University for Peace, 2004, P.14.

⁸ For example, United Nations Convention on the Rights of Child, the International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights are ratified by 193, 165 and 160 states respectively. For ratification status of international human rights instruments, visit <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

⁹ L A Hoq, *The Women's Convention and Its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights*, Columbia Human Rights Law Review, Vol.32, 2001, p. 689. A reservation is 'a unilateral statement... made by a State, when signing, ratifying... or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.' Vienna Convention on the Law of Treaties of 1969, entered into force on 27 January 1980, art.2 (d).

Discrimination Against Women (CEDAW) as an example, more than 90 percent of the world's states, one hundred eighty six states, have ratified the Convention.¹⁰ This is nearly a universal ratification. It is achieved, however, at a great cost. More than half of the States Parties to the Convention have entered reservations which limit the scope of the application of the Convention.¹¹ What is more worrying is not just the number or scope of the reservations that states entered, rather the reasons states have given for their reservations. Many states enter reservations to protect religious and cultural beliefs and practices of their communities.¹² As will be discussed later, religious and cultural practices are the major impediments to the universal application of human rights.

Even in states that do not enter reservations, recognition and giving effect to autonomy to cultural groups in multicultural and multiethnic states is increasingly challenging the universal application of human rights norms.¹³ These countries, on the one hand, enter into obligations to prompt and protect human rights within their jurisdiction, but legalize, or at least condone, in their domestic laws, practices and customary laws that infringe human rights under the cover of respecting cultural rights of different ethnic groups, on the other hand. In Ethiopia, for example, the FDRE Constitution approves the adjudication of disputes relating to personal or family matters in accordance with customary and religious laws.¹⁴

B. Cultural Relativism

The main challenge against the universal relevancy of human rights comes from cultural relativists. While cultural relativists have variants, Brems identified their typical line of argument

¹⁰ Convention on the Elimination of All Forms of Discrimination against Women, adopted and open for signature, ratification, and accession by General Assembly resolution 34/180 of 18 December 1979, entered into force on 3 September 1981. For ratification status of CEDAW, visit http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

¹¹ For specific reservations, visit <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement>.

¹² For example, the following countries made reservation invoking the Shari'ah either directly or indirectly: Bangladesh, Egypt; Iraq, Kuwait, Libya, Malaysia, Maldives, Mauritania, Morocco, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Pakistan, Tunisia, and Niger. Other countries enter reservations invoking cultural and other beliefs of distinct communities. See, for example, the reservations entered by Singapore and India. The whole reservation is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement>.

¹³ D O Sullivan, *Is the Declaration of Human Rights Universal?*, Journal of Human Rights, Vol.4, 2000, P. 25.

¹⁴ FDRE Constitution, supra note 1, art.34 (5).

as follows.¹⁵ In a first step, cultural relativists put a premise that shows how human rights historically and conceptually reflect western values.¹⁶ At this step, they venture to explain the fact that an autonomous individual is at the heart of the Western conception of human rights with minimal or no attention to group rights. From historical perspective, they claim that human rights were crafted by the victorious states, mainly Western states, at the conclusion of World War II. In the second step, cultural relativists highlight and compare some particulars of a non-Western culture with those Western concepts. The conclusion from these two premises is rejection of human rights.¹⁷ For example, African cultural relativists posit that rights as conceived in the west have no significance in Africa precisely because their philosophical basis is not only different but indeed opposite. They contend that autonomous and rational individual on the basis of which the Western constructed human rights rests is unknown in Africa. Pollis argues that:¹⁸

Traditional cultures [in Africa] did not view the individual as an autonomous and possessed of rights above and prior to the society. The basic unit of traditional society has varied the kinship system, the clan, the tribe, the local community-but not the individual. Who and what an individual has been conceptualized in terms of the kinship system, the clan, the tribe, the village, whatever the specific cultural manifestations of the underlying prevailing worldview.

Although cultural relativists take the same stance in terms of rejecting human rights, they exhibit variations with respect to their level of rejections.¹⁹ Some cultural relativists reject human rights in their totality as foreign to and unsuited with a certain non-Western Culture. This position has very few proponents. In most cases, cultural relativists either refuse the specific content or interpretation of human rights.²⁰ For instance, members of a certain culture might object to its

¹⁵Eva Brems, *Enemies or Allies: Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse*, 19 Human Rights Quarterly, Vol.19, 1997, P.142.

¹⁶ Eva Brems, supra note 15, p.143. See also, C M Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*, Human Rights Quarterly, Vol.16, 1994, p.741.

¹⁷ Ibid.

¹⁸ A Pollis 'Liberal, Socialist and Third World Perspectives of Human Rights', In P Schwab and A Pollis (eds.) *Toward a Human Rights Framework*, Praeger Publishers, New York, 1982, p.1.

¹⁹ Eva Brems, supra note 15, P.143. Similar sub-divisions are made by: J Donnelly, *Cultural Relativism and Universal Human Rights*, Human Rights Quarterly, Vol.6, 1984, pp.400-401; and D L Donoho, *Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards*, Stanford Journal of International Law, Vol.27, 1991, p.345.

²⁰ Eva Brems, supra note 15, pp.143-144.

encompassing the freedom to change one's religion.²¹ For example, when the General Assembly of the United Nations had to decide on the UDHR, in 1948, the Saudi Arabian representative rejected religious liberty, particularly to the right to change one's religion, a right explicitly stipulated under article 18 of the UDHR.²² Finally, while cultural relativists accept a certain right with all its elements, they might insist arguing a particular cultural practice does not amount to a violation of human rights.²³ To take an example, cultural relativists might argue that female genital mutilation (FGM) does not violate the right to be free from torture.

C. Is Cultural Relativism Plausible?

Basically, cultural relativists reject human rights on the ground that human rights are the reflection of Western culture and, hence, they are alien to non-Western cultures. Is this argument sustainable?

As I have pointed out earlier on, although human rights are the construct of the West, their emergence and development was a response to abuses of the modern state in treating its nationals and aliens. In particular in the aftermath of World War II, human rights came out as a 'revulsion against Nazism and the horrors that could emanate from a positivist system in which the individual counted for nothing'.²⁴ One can say that the United Nations Charter, the UDHR and other human rights documents have been put in place with a view to 'search for immutable principles to protect human dignity and worth of human person against such brutality'.²⁵ In other words, human rights aim at protecting human dignity and worth of human person. In Africa, 'the concept of human rights as it is used today has strong roots in the struggle against colonialism and the vestiges of colonialism'.²⁶ The acceptance of the African Charter on Human and Peoples' Rights (ACHPR) in 1981 by the Organization of African Unity (OAU) was partly a reaction specifically to the abuses of human rights in Uganda, Equatorial Guinea and the Central African Republic.²⁷ If human rights were invented as reaction to abuse of power by states and

²¹ Ibid.

²² H Bielefeldt, *Muslim Voices in the Human Rights Debate*, Human Rights Quarterly, Vol.17, 1995, p. 587.

²³ Eva Brems, *supra* note 15, P.144.

²⁴ JJ Shestack, *Philosophical Foundations of Human Rights*, Human Rights Quarterly, Vol.20, 1998, p.210.

²⁵ Ibid.

²⁶ C Heyns 'A Struggle Approach to Human Rights', In Heyns and Stefiszyn (eds.) *Human Rights, Peace and Justice in Africa: A Reader*, Pretoria University Law Press, Cape Town, 2006, p.19.

²⁷ Id., p.20.

their purpose is to protect human dignity and the worth of human person, the argument that human rights are not relevant for the non-Western world does not hold water.

Moreover, given the fact that the recognition of the basic personal rights, such as the right to life and body integrity of the person; and protections against slavery, arbitrary arrest, detention, and torture, inhumane or degrading treatment are connected to the dignity of every human being alike, it is nearly impossible to raise cultural arguments against them.²⁸

With respect to the claim that human rights are an imposition of the culture of the West on the non-West, this can hold true if human rights are totally strange to other non-Western cultures.²⁹ This is not, however, true. As Spagnoli rightly put it, 'all cultures have values and principles that reflect the values embedded in human rights'.³⁰ In any customary law in Ethiopia and elsewhere, for instance, homicide is forbidden and entails serious penalties, albeit the penalties may vary from one culture to another. This is in recognition of the right to life, one of the rights strongly protected in human rights instruments.

The rejection of human rights as a Western culture seems to be funny in view of the widespread of real Western culture in many parts of the world. I am not here advocating Western culture as the best culture. The point I am trying to make is that while the Western culture has been a dominant culture and set a standard in many respects, why do cultural relativists single out human rights and reject as a Western culture, which actually are not? Culture 'encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs'.³¹ If culture includes the lifestyle of a given community, the Non-West has copied many of the aspects of the Western culture. Traditional African communities, for instance, used domestic animals like donkeys, mules and horses to travel long distances. Nowadays, they use cars that are originally produced in the West at least in urban areas. Not only does the West contribute modern means of transportation to the other parts of the world, it also affects the non-

²⁸ J Donnelly, *supra* note 19, P.417.

²⁹ F Spagnoli, *supra* note 2, p.17.

³⁰ *Ibid.*

³¹ UNESCO's Universal Declaration on Cultural Diversity (2001), Preamble. It is approved by 190 member states. It defines culture as '[t]he set of distinctive spiritual, material, intellectual and emotional features of society or a social group'.

West in dressing style, music, language and other ways life. Thus, it seems absurd to reject human rights while emulating the Western culture in many respects.

Another unfounded claim made against the application of human rights in non-Western societies is that application of human rights means loss of culture of these societies.³² In the first place, it must be clear that the protection and promotion of human rights does not entail the abandonment of the entire culture and identity of a given community. In the second place, why do cultural relativists insist that any aspect of culture including those cultures that demean human rights must not change? The problem with cultural relativists is that they always take for granted that culture is static. This stance is, not, however, supported by the reality. Cultures are undergoing substantial transformation in the case of much of the Third World.³³ If it is inevitable that cultures may change, it is better to guide the change in the direction that benefits human beings more.³⁴

The inescapability of cultural transformation is evident from the way cultures are initially constructed. In most cases, cultures are developed and perpetuated by members of a given society that benefit from it. To take African customary law as an example, Chanock portrayed it as 'a masculinist construct reflective of a masculinist state and protecting male interests'.³⁵ As long as cultures are constructed by the dominant members of a community to their benefit, the other members of the community who are subject to cultural repression will always push towards transforming the oppressive culture.

The argument that human rights threaten cultures becomes more unacceptable when one realizes that cultures benefit from human rights protection than losing therefrom.³⁶ Rights, such as freedom of association, rights of indigenous peoples, freedom of religion, the rights of

³² Hoekema, for example, argues that '[m]atters of polygamy, arranged marriages and dowry, inheritance patterns, adoption practices and such like are often identity-related and figure as central features of a community's way of life. Put in other way, not protecting these features would amount to forcing the community to assimilate and give up part of its cultural identity'. See A J Hoekema, *Aspects of Legal Pluralism in the Federal Set-up of the Ethiopian State*, Ethiopian Journal of Development Research, Vol.24, Number 2, 2002, p.23.

³³ J Donnelly, *supra* note 19, p.418.

³⁴ F Spagnoli, *supra* note 2, p.15.

³⁵ M Chanock, *Neither Customary nor Legal: African Customary Law in an Era of Family Law Reform*, International Journal of Law and Family, Vol.3, 1989, p.72.

³⁶ F Spagnoli, *supra* note 2, p.16.

minorities, the right to non-discrimination, freedom of thought and expression create a conducive environment for the protection and promotion of cultures.

II. Women's Gender-Specific Vulnerability to HIV/AIDS in Sub-Saharan Africa

AIDS continues to be a major global health problem. AIDS-related illnesses remain one of the leading causes of death.³⁷ Its effect is not, however, uniform among the different members of the society. It disproportionately affects Women and girls in sub-Saharan Africa.³⁸ Women's vulnerability to HIV in Sub-Saharan Africa stems from a mix of physiological, social and human rights factors.³⁹

Most African women become infected with HIV through unprotected sexual intercourse. Studies made it clear that male-to-female sexual transmission of HIV is much greater than female-to-male transmission.⁴⁰ The major factors that account for this greater variation in transmission 'are the large mucosal surface area exposed to the virus in women, and the greater viral concentration in semen compared with vaginal secretions'.⁴¹

The biologic realities that expose women more to the virus are surpassed by social and human rights factors that increase women's vulnerability to HIV infection.⁴² These factors include: harmful traditional practices, sexual violence, such as rape, and other socio-economic factors which limit women's capacity to protect themselves.⁴³ Rape and other forms of sexual assault diminish the power of women to control when, with whom, and how they perform sex, which in turn considerably increase their HIV infection.⁴⁴ Lack of economic independence of women also

³⁷ AIDS Epidemic Update, 2009, p.8, available at: http://data.unaids.org/pub/Report/2009/JC1700_Epi_Update_2009_en.pdf.

³⁸ *Id.*, p.21.

³⁹ Amnesty International, *Women, HIV/AIDS and human rights*, 2004, available at: <http://www.amnesty.org/en/library/asset/ACT77/084/2004/en/dom-ACT770842004en.pdf>.

⁴⁰ *Ibid.*

⁴¹ S D Tlou 'Gender and HIV/AIDS', In Max Essex *et al* (eds.) *AIDS in Africa*, : Kluwer Academic Publishers, New York, Boston, Dordrecht, London, & Moscow, 2002, p.654.

⁴² *Ibid.*

⁴³ Amnesty International, *supra* note 39. See also S D Tlou, *supra* note 41, p.655.

⁴⁴ World Health Organization, *Violence against Women and HIV/AIDS: Setting the Research Agenda*, World Health Organization, Geneva, 2000, p. 6.

fuels their susceptibility to HIV/AIDS. It is an obvious fact that women are generally economically dependent than men particularly in Sub-Saharan Africa. Consequently, economically dependent women will be more submissive to their spouses' sexual request even in risky situations; for fear that they will be abandoned by their spouses.⁴⁵ Moreover, poverty may compel women to change sex for food or other needs.⁴⁶

Cultural practices that fuel women's special vulnerability to HIV, which is the main concern of this article, are intensely and separately treated in the next section.

A. Cultural Practices that fuel Women's Vulnerability to HIV/AIDS

There are several cultural practices that abuse the rights of women and significantly increase their vulnerability to HIV/AIDS. These practices, whose never-ending prevalence is upheld by cultural relativism, are briefly discussed in the following sub-sections.⁴⁷

1. Polygamy

Polygamy, a practice that has existed for ages, allows a man to marry more than one wife. It is widely practiced in many countries, particularly in Africa.⁴⁸ In Ethiopia, around 15 percent of Proportion of women aged 15–49 live in polygamous unions.⁴⁹

⁴⁵ J L Andreeff, *The Power Imbalance between Men and Women and its Effects on the Rampant Spread of HIV/AIDS among Women*, Human Rights Brief, Vol.9, 2001, p. 24. See also, Human Rights Watch, *Just Die Quietly: Domestic Violence and Women's Vulnerability to HIV in Uganda*, 2003, available at: <http://www.hrw.org/reports/2003/uganda0803/index.htm>.

⁴⁶ Facing the Future Together, *Report of the United Nation Secretary General's Taskforce on Women, Girls and HIV/AIDS in Southern Africa*, 2004, p.9.

⁴⁷ The subsequent discussion does not make an exhaustive analysis of all traditional practices that exposes women to HIV/AIDS. It only explores those practices that are practiced in Ethiopia as well. Traditional practices that are not covered include the following. "Dry sex", which also increases the likelihood of abrasion and thereby of HIV infection and virginity testing. See, Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya*, 2003, available at: http://www.sarpn.org.za/documents/d0000333/P313_Kenya_Report.pdf.

⁴⁸ United Nations Children's Fund, *Early Marriage: a Harmful Traditional Practice: a Statistical Exploration*, 2005, p.18.

⁴⁹ Id., p.19. Polygamous marriages still exist in Oromia, Somali and other regions of Ethiopia. During community conversation in Yabello, Boorana Oromo, polygamy was one some of the risky cultural practices identified in the area along with -Lover- Mistress relationships (*Jaala-Jaalto*) and Widow inheritance (*Dhaala*). The Boorana Oromo, one of the pastoral communities in Ethiopia and are still largely governed by their traditional institutions, uses an innovative tool to enable traditional communities to reflect on their socio-cultural dynamics and social capital formation to deal with issues of HIV/AIDS and other community needs driven agendas. See I A Elemo, *HIV/AIDS, Gender and Reproductive Health Promotion: The Role of Traditional Institutions Among the Borana Oromo, Southern Ethiopia*, Artistic Printing Enterprise, Finfinne, 2005, p. 81.

In old times, polygamy was justified by ‘sexual abstinence during pregnancy in societies where sexual intercourse’ was a ‘taboo during periods of pregnancy, menses, lactation, mourning, and ritual ceremony periods’;⁵⁰ and giving ‘security to childless women’.⁵¹ It served as an instrument of sexual abstinence during the said times as the husband would have sex with one of his other wives. It also gives sterile women some sort of security because their husbands can marry additional wife instead of divorcing them.⁵²

Polygamous marriages are, nevertheless, less acceptable these days. This is because as compared to monogamous marriages, they are more risky from HIV/AIDS transmission perspective. Women are subservient in such kind of marriage than monogamous marriage.⁵³ Since the husband may have several wives, he can divorce one of them in case of refusal to blindly obey him. The inferior position of the women in this relationship will decrease her bargaining power over when and how to have sex.⁵⁴

2. Female Genital Mutilation (FGM)

FGM is ‘an umbrella term for a number of culturally motivated practices that involve partial or complete cutting of female genitals, usually performed in childhood or adolescence’.⁵⁵ Studies disclosed that FGM is practiced by approximately 73 percent of Ethiopians.⁵⁶ The Ethiopian Demographic and Health Survey 2005⁵⁷ indicate that 74 percent of girls and women nationwide have been subjected to FGM. The Survey also indicated that the practice is almost universal in Somali and Affar regions and Dire Dawa City Administration. More than 80 percent of girls and women in Oromo and Harari are victims of FGM.

⁵⁰ G Mwale *et al*, *Women and AIDS in Rural Africa: Rural Women's Views of AIDS in Zambia*, Avebury,1992, pp.39-40

⁵¹ Ibid.

⁵² Id., p.39.

⁵³ See Human Rights Watch, *supra* note 45, p.32.

⁵⁴ G Mwale, *supra* note 50, pp.39-40. See also J L Andreeff, *supra* note 45, p.24.

⁵⁵ Center for Reproductive Rights, *Female Genital Mutilation (FGM): Legal prohibitions worldwide*, Fact Sheet, 2009, available at: <http://reproductiverights.org/en/document/female-genital-mutilation-fgm-legal-prohibitions-worldwide>.

⁵⁶ M Ashenafi, *Harmful Traditional Practices Affecting the Health and Rights of Women-Law Reform as a Strategy for Change*, A Report Sponsored by the National Committee on Harmful Traditional Practices, 2000, p. 27, as cited in Kumsa Mekonnen, *Women’s Vulnerability to HIV/AIDS: The Need for Legislation*, Berchi: The Annual Journal of Ethiopian Women Lawyers Association, Vol.5, 2004, p. 61.

⁵⁷ The Ethiopian Demographic and Health Survey, 2005. For similar statistics, see also M Ashenafi, *supra* note 56.

Apart from causing physical and psychological injuries to the women undergoing FGM, 'the use of unsterilized instruments, unhealed or open wounds or other complications arising in the process facilitates entry of the HIV virus into the body'.⁵⁸

3. Early marriage

Early marriage of women, marriage before the age of 18, is prevalent in many countries. Although the reasons for early marriage may vary from one place to another, studies disclose that parents opt for the early marriage of their children hoping 'that the marriage will benefit them both financially and socially, while also relieving financial burdens on the family'.⁵⁹ Protection from HIV/AIDS is another reason for child marriage. However, a survey conducted in India shows that 75 per cent of people living with HIV in India are married.⁶⁰

A study carried out by the United Nations Children Fund (UNICEF) unfolded that child marriage rate is higher in regions and countries that have customary or religious laws that condone the practice which is the case in South Asia, Africa and the Caribbean. Accordingly, among women aged 15–24, 48 percent were married before the age of 18 in South Asia, 42 percent in Africa, and 29 percent in Latin America and the Caribbean.⁶¹ In Ethiopia, 19 percent of girls are married at the age of 15 and, in some regions, such as Amhara Region, the proportion goes as high as 50 percent.⁶²

As mentioned above taking the situation of India as an example, early marriage cannot protect women from HIV infection. To the contrary, it may aggravate their vulnerability. Married girls will not be in a position to implement mechanisms of HIV/AIDS control. They will be in difficulty to apply 'abstinence, partner change or reduction, condom use (which is not possible for married girls seeking pregnancy), and having mutually monogamous sex with an uninfected

⁵⁸ Human Rights Watch, *supra* note, p.4.

⁵⁹ United Nations Children's Fund, *supra* note 48, p.1.

⁶⁰ G Bhattacharya, *Socio-cultural and Behavioral Contexts of Condom Use in Heterosexual Married Couples in India: Challenges to HIV Prevention Programs*, Health Education & Behavior, Vol.31, 2004, pp.101–117.

⁶¹ United Nations Children's Fund, *supra* note 48, p.4.

⁶² Population Council, *Child Marriage Briefing-Ethiopia*, 2005, available at: http://www.popcouncil.org/pdfs/briefingsheets/ETHIOPIA_2005.pdf.

partner whose HIV status has been discerned'.⁶³ Consequently, in developing countries in particular, 'married adolescents tend to have higher rates of HIV infection than their peers'.⁶⁴

4 . Marriage by Abduction

Marriage by abduction is widely practiced in Ethiopia. It is put in to practice in approximately 70 percent of the country.⁶⁵ According to surveys conducted by the National Committee on Traditional Practices of Ethiopia, marriage by abduction is in its highest rate in Oromia and Southern Nations Nationalities and Peoples regions with 80 percent and 92 percent respectively.⁶⁶

Marriage by abduction involves a wide-range of activities. One common way of doing it is that:

*The girl [is] carried away by a group of which one member is the would-be husband. The girl is taken to a hideout where she is raped and kept hidden. Family members on both sides meet and discuss marriage between the victim girl and the perpetrator man.*⁶⁷

Studies indicated that the rate of marriage by abduction is increasing nowadays than before owing to rising socio-economic problems, such as poverty.⁶⁸ As people are getting financially weak to organize wedding ceremonies and pay dowries, they resort to marriage abduction, particularly in rural areas. While marriage by abduction is currently widely practiced for economic reasons, 'the root causes are still enshrined in the patriarchal attitudes of the community, emphasized by the inferiority of women'.⁶⁹

⁶³ J Bruce, *Child Marriage in the Context of the HIV Epidemic*, 2007, available at: http://www.popcouncil.org/pdfs/TABriefs/PGY_Brief11_ChildMarriageHIV.pdf.

⁶⁴ Population Council, *The Implications of Early Marriage for HIV/AIDS Policy*, 2004, available at: <http://www.popcouncil.org/pdfs/CM.pdf>.

⁶⁵ L Sadiwa *et al*, *Ending Harmful Traditional Practices against Girls and Young Women*, 2007, p. 4.

⁶⁶ UNICEF, *UNICEF Supports Fight to End Marriage by Abduction in Ethiopia*, available at: http://www.unicef.org/ethiopia/ET_real_abduction.pdf.

⁶⁷ L Sadiwa, *supra* note 65, p.19. See also W Z Negash, *Ethiopia: Official License for Abduction and Rape, Equality Now, Vol.22, 2002*, available at: http://www.kulturpolitik.spoe.at/bilder/d27/EQUALITY_NOW1.pdf?PHPSESSID=29ba938add7874e74dc5904f919486c3.

⁶⁸ L Sadiwa, *supra* note 65, pp.19-20.

⁶⁹ *Ibid*.

Marriage by abduction violates the rights of girls to conclude marriage with their free and full consent, the right to body integrity, the right to be free from gender-based violence and the right to education (as the girls subject to abduction will be compelled to drop out of school). Furthermore, as marriage by abduction involves violence and sexual intercourse in a situation where the girl does not know the HIV status of a man with whom she will be forced to have sex, it encourages the transmission of HIV/AIDS.⁷⁰

5. Widow Inheritance

Another tradition, the practice of widow inheritance, commonly requires a woman to marry her husband's brother or another family member after he dies.⁷¹ In the past, the practice was justified by taking care of the widow and the children of the deceased.⁷² In the era of HIV/AIDS, however, 'this practice exposes women both to greater violence and to a greater chance of being infected with HIV/AIDS'.⁷³ Owing to economic necessities, the widow may be forced to remarry several men who may be HIV Positive.⁷⁴

Although its rate is decreasing owing to pressures from the government, widow inheritance is still practiced in some areas in Ethiopia.⁷⁵ Historically, the practice used to be done with out any consent. But nowadays, there is a move towards requiring consent of the women.⁷⁶ According to a research done in Arsi zone, Oromia Regional State, widow inheritance is a key factor in the spread of HIV.⁷⁷ As the practice is performed with out due regard to the HIV status of the 'parties involved and the principles of safe sex', it can cause transmission of HIV virus.⁷⁸

⁷⁰ UNICEF, *supra* note, p. 66.

⁷¹ Human Rights Watch, *supra* note 45, p.34.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ A Aschenaki, *Assessment of Sexual Behavior Related to HIV/AIDS in a Community Practicing Widow Inheritance in Digalu Tijo, Arsi zone, Oromia Regional State, Ethiopia*, A Thesis submitted to the School of Graduate Studies, Addis Ababa University in Partial Fulfillment of The Requirements for the Degree of Master of Public Health, Addis Ababa University, Medical Faculty, Department of Community Health, 2006, p.40.

⁷⁶ *Id.*, p.38.

⁷⁷ *Id.*, p.39.

⁷⁸ *Ibid.*

II. Cultural Diversity Vs. the Rights of Women in Ethiopia

Ethiopia has recognized both the rights of women and cultural diversity in its different laws. Although the recognition of both is not always mutually exclusive, the recognition of one may be at odds with the other in some cases. This section discusses the laws that are put in place with a view to recognizing both cultural diversity and rights of women and put forward recommendations to resolve some areas of conflict between the two, particularly from the view point of reducing women's vulnerability to HIV/AIDS.

A. Legal Recognition of Cultural Diversity in Ethiopia

Ethiopia is home to more than 80 nations, nationalities and peoples with distinct cultures. Unlike other African countries whose culture has been highly contaminated with Western cultures in the aftermath of colonization, the cultures of different groups in Ethiopia is almost untouched by colonization.

Historically, Ethiopia has been a centralized state. As a result, ethnic groups were given little autonomy to develop their culture and language. Their customary laws were suppressed by laws imported from abroad, and were supposed to be applicable in areas where the matters could not be governed by 'modern law'.⁷⁹ In reality, however, many ethnic groups had their cases adjudicated and disputes settled through customary institutions and laws.⁸⁰

The defeat of the Derg Military Regime in 1991, however, was a landmark in terms of ending the unitary state and leveling the foundation of a decentralized federal state that recognizes ethnic diversity in the country. The new regime based its government on principle of self-determination for federated regional units which themselves are based on ethnic lines.⁸¹ With this attitude towards ethnicity, Ethiopia deviates from what is usual in African countries. Most African leaders are reluctant towards the incorporation of the ethnic diversity of their societies in the

⁷⁹ Art. 3347 of the Civil Code Provides that '[u]nless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be replaced by this code and are hereby repealed'.

⁸⁰ G Krzeczunowicz, *Code and Custom in Ethiopia*, Journal of Ethiopian Law, Vol.2, 1965, p. 438.

⁸¹ This is provided in article 46(2) of the FDRE Constitution. It provides that 'States shall be delimited on the basis of the settlement patterns, language, identity and consent of the people concerned.'

state structure. They fear that the constitutional recognition and accommodation of ethnic diversity will lead to endless inter-ethnic clashes that may lead to the failure of the country itself.⁸²

The FDRE Constitution, reflecting the shift in paradigm, has allowed a greater space for self-determination of ethnic groups in its widest manifestations. Article 39 (1) of the FDRE Constitution is an important provision recognizing the rights to self-determination of ethnic groups (nations, nationalities and peoples). Sub-article two of article 39, in particular, entitle each ethnic group 'the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.' As an aspect of the right to develop their cultures, the Constitution permits 'the adjudication of disputes relating to the personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute'.⁸³ The Constitution also allows the federal and regional parliaments to 'establish or give official recognition to religious and customary courts' which adjudicate cases in the basis of religious and customary laws in personal and family matters.⁸⁴ The Constitution, not only recognizes the application of customary law, but also gives the power of enacting family laws and other personal laws to regional states. That is why states have put in place different family laws which, to some extent, reflect the cultures of ethnic groups inhabiting them.

The rights of individuals and ethnic groups to promote their culture is also given due recognition in human rights treaties to which Ethiopia is a party. To begin with, the International Covenant on Civil and Political Rights (ICCPR) gives ethnic groups the right 'to enjoy their own culture, to profess and practice their own religion, or to use their own language'.⁸⁵ The International Covenant on Economic, Social and Cultural Rights (ICESCR), on its part, guarantees everyone's right 'to take part in cultural life'.⁸⁶ The ACHPR imposes on State Parties the obligation to promote and protect the 'morals and traditional values recognized by the community'.⁸⁷ Article

⁸² C V Bekken, 'Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of Territorial Approach, In Tsegaye Regassa (ed.) *Issues of Federalism in Ethiopia*, Towards an Inventory 'Ethiopian Constitutional Law Series, Faculty of Law, Addis Ababa , Vol.2, 2008, p. 218.

⁸³ FDRE Constitution, *supra* note 1, art.34 (5).

⁸⁴ *Id.*, art.78(5).

⁸⁵ Art. 27 of the ICCPR.

⁸⁶ Art.15 of the ICESCR. The same right is guaranteed in art. 17 (2) of the ACHPR.

⁸⁷ Art. 17 (3) of the ACHPR.

22 of the ACHPR also provides that ‘[a]ll peoples shall have the right to their...cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind’.

B. The Legal Framework Proscribing Cultural Practices that Worsens Women’s Vulnerability to HIV/AIDS in Ethiopia

In section 4 of this article, the major cultural traditions that exacerbate women’s vulnerability to HIV/AIDS have been outlined. This section is concerned with discussing the main laws that outlaws those customs.

To begin with the FDRE Constitution, the highest law of the country, although it incorporates several rights of women, article 35(4) is exceedingly pertinent from the perspective of protecting women from customs that expose them to HIV/AIDS, such as polygamy, FGM, early marriage, widow inheritance and marriage by abduction. It states that ‘[t]he State shall enforce the right of women to eliminate the influences of harmful customs’. Thus, this article guarantees women’s rights to be free from customs that are prejudicial to their health and life and imposes obligation on the part of the state to work to that effect. Being a constitutional provision, this article doesn’t, however, specify those harmful customs against women.

Among the laws that are put in place in order to give effect to the aforementioned constitutional provisions, one can take the Family Law and the Criminal Law as an example. Echoing article 34 (2) of the FDRE Constitution, article 6 of the Federal Revised Family Code⁸⁸ denounces marriage concluded without the free and full consent of the prospective spouses and thereby reject marriage by abduction. Moreover, the Family Code prohibits conclusion of marriage: as long as the man is bound by bonds of a preceding marriage;⁸⁹ without the attainment of the full age of eighteen for both sexes (at least in principle);⁹⁰ and between a woman and the brother of her husband.⁹¹ By so doing, the RFC outlaws polygamy, early marriage and widow inheritance respectively. The violation of these legal prohibitions entails civil sanction in the form of

⁸⁸ The Revised Family Code, Proclamation No. 213/2000, *Federal Negarit Gazette*, Extra Ordinary Issue No. 1/2000.

⁸⁹ *Id.*, art.11.

⁹⁰ *Id.*, art.7(1).

⁹¹ *Id.*, art. 9(2).

dissolution of the marriage⁹² and criminal sanctions in the relevant provisions of the Criminal Code of the Federal Democratic Republic of Ethiopia (with the exception of widow inheritance which is not criminally punishable). Harmful traditional practices are criminalized in article 567. Specific types of Harmful traditional practices, such as abduction, FGM, early marriage and bigamy are criminalized under articles 587-590, 565-566, 648 and 650 respectively. Bigamy is not, however, an offence where it 'is committed in conformity with religious or traditional practices recognized by law'.⁹³ This is so where one of the regional family codes legalize bigamy or polygamy. For example, the Family Code of Hareri Region exceptionally permits polygamous marriages where they are authorized by religious rules.⁹⁴

Women's rights to be free from harmful customs that aggravate their vulnerability to HIV/AIDS are also given due recognition in human rights treaties which Ethiopia has ratified including the ICCPR, ICESCR, CEDAW, ACHPR, United Nations Convention On the Rights of the Child (UNCRC), and African Charter on the Rights and Welfare of the Child (ACRWC). Article 9(4) of the FDRE Constitution gives these ratified treaties the status of the law of the land. This means that the beneficiaries of these individuals can invoke these treaties directly before domestic courts to enforce their rights. The human rights treaties which Ethiopia has accepted can also serve as guidelines to interpret fundamental rights and freedoms integrated in chapter three of Constitution.⁹⁵ Given the fact that human rights provisions of the Constitution are hardly interpreted by courts and the House of Federation,⁹⁶ the human rights treaties ratified by Ethiopia and their authoritative interpretation by their treaty monitoring bodies are the only available options to interpret them.

Article 5 (a) of CEDAW obliges State Parties 'to modify the social and cultural patterns of conduct of men and women', with the purpose of eliminating customary practices that are hurtful to women. Likewise, the CRC and ACRWC oblige member states, which include Ethiopia, to take effective measures to abolish traditional practices that are prejudicial to the health and life

⁹² Id., arts. 31-39.

⁹³ The Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, art.651.

⁹⁴ Hareri Region Family Code, Proclamation No. 80/2000, *Hareri People Regional Government Negaret Gezetta*, 13th Year, Special Publication No.1/2000, art.11 (2).

⁹⁵ FDRE Constitution, supra note 1, art.13(2).

⁹⁶ The House of Federation is an organ constitutionally empowered to interpret the Constitution. See, article 62 of the FDRE Constitution.

of the girl child.⁹⁷ The measures that states are supposed to take could be legislative, judicial, administrative or other measures as long as they are effective in terms of eliminating the customary practices that are injurious to women including, polygamy, FGM, early marriage, marriage by abduction and widow inheritance. Apart from requiring states to eliminate harmful traditional practices in more general terms, the treaties make explicit reference to certain customary practices, such as the case of article 35 of the CRC that requires states to ‘take all appropriate measures to prevent the abduction of children for any purposes’; article 23 of the ICCPR that requires free and full consent of parties intending to enter marriage thereby reject marriage by abduction; and article 16 of CEDAW that protects the girl child against child marriage.

C. Areas of Conflict between the Rights of Women and Customary Practices

As I have endeavored to show, on the one hand, the FDRE Constitution, human rights instruments ratified by Ethiopia and other domestic legislation give due recognition to the rights of women including those rights that can be applied to reduce women’s HIV infections. On the other hand, the Constitution confers ethnic groups the right to enjoy their cultures. This is a commendable measure in view of rectifying the hitherto legacy of assimilation policies of the Military Regime and its predecessors which posed a threat against the very identity of cultural groups. The recognition of cultural rights does not necessarily entail a violation of women’s rights. To the contrary, customary rules and practices may reinforce the protection and promotion of the rights of women. To take one example, the codified customary law of the Guraghe (Kicha)⁹⁸ contains provisions that prohibit customary practices that violate women’s rights and expose to HIV/AIDS. It, *inter alia*, prescribes HIV testing a prerequisite to the conclusion of marriage;⁹⁹ makes intentional transmission of HIV/AIDS punishable in the same manner as homicide;¹⁰⁰ prohibits abduction;¹⁰¹ and harmful traditional practices, Such as FGM.¹⁰²

⁹⁷ See, article 24(3) of the CRC and article 21 of the ACRWC.

⁹⁸ Kicha (Guraghe Customary Law), Revised Version, Guraghe People’s Self-Help Development Organization, September 2000 E.C.

⁹⁹ *Id.*, art.4(3).

¹⁰⁰ *Id.*, art.44.

¹⁰¹ *Id.*, art.46.

¹⁰² *Id.*, art.47 (3).

In Some cases, however, the enjoyment of cultural rights may erode the rights of women that may be used a weapon to reduce their vulnerability to HIV/AIDS. In other words, the tension between universalism and cultural relativism do exist in Ethiopia. The tension may arise at two levels. At one level, the parliament of a certain regional (state) government may decide to put in place a law that recognizes a customary practice that erodes women's rights in the region and expose them to HIV infection on the ground that the legalized practice is an aspect of their rights to self-determination and develop their culture. For example, as I have mentioned earlier on, the Hareri Family Code allows the conclusion of bigamous marriage on religious rationale. At another level, members of a particular ethnic community may exercise a traditional practice despite prohibitions by domestic laws and human rights instruments arguing that they have the rights to exercise their culture as stipulated under the FDRE Constitution.

The question is: how can the Ethiopian Government mediate this tension? To put the question in other words, how can Ethiopia live up to its international human rights obligation while at the same time respecting the customary practices and laws of different ethnic groups?

Article 9(1) of the FDRE Constitution gives us part of the answer to the afore-pondered question. It declares that customary practices that contravene the Constitution shall be invalid. This, in other words, means that in the event of conflict between human rights standards recognized in the Constitution and customary practices, the former has precedence over the latter. It does not matter whether the customary practice is recognized in either state constitution or legislation. This is because the Federal Constitution is supreme over any regional legislation. Article 9(1), thus, sends a message that the different ethnic groups and their members are entitled to enjoy and exercise their customary practices in so far as they do not offend individual or collective human rights that are recognized in the Constitution. If the cultural practices undermine fundamental rights and freedoms, they are denied constitutional approval.

An assessment of the reality can easily show that article 9 (1) is a tiger on paper. Customary practices which are incongruous with human rights of women, such as polygamy, FGM, early marriage, marriage by abduction and widow inheritance are still being practiced. If so, where does the problem lie? What need to be done to resolve the problem?

Three reasons may be cited for lack of full implementation of the rights of women on the ground. Firstly, the resource constraint does not let the state extend human rights in every locality within its jurisdiction, particularly in remote areas.¹⁰³ Secondly, the abstract rules which are supposed to be applicable are mostly simply imposed without raising the awareness of law enforcement local officials and the people on the ground. Such kind of imposition is far from success in communities in which cultures are deeply embedded. Thirdly, some local law enforcement officials, clan elders and even some communities, even if they know state laws, feel that they are more loyal to customary laws than state laws.¹⁰⁴ One possible reason for rejection of state laws, particularly human rights, is that that might take the position that human rights are Western constructs that are an enemy to their culture.¹⁰⁵

In order to improve the implementation of the rights of women in Ethiopia across different cultures, a centralist approach of legal change should be reconsidered. What we see in Ethiopia and elsewhere is that abstract rules including human rights are crafted and approved at national or regional level with little or no consultation the people on the ground. However, the customary practices and the corresponding customary rules that are meant to be changed are widely practiced and obeyed. Given the customary practices and customary rules governing them are embedded in the identity of the people, they are shielded by the communities at local level, most of whom believe that the customs are indispensable to the communities.¹⁰⁶

Thus, to purge harmful practices through legal change, it is a must that community dialogue should be conducted on various practices before or after the law becomes effective.¹⁰⁷ In the discourse, it is important to raise the awareness of communities and leaders about the negative sides of he practices and the indispensability of human rights in eradicating these practices. Such awareness raising scheme will enable communities to decide by themselves to stop the practices.

¹⁰³ D A Donovan and G Assefa, *Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism*, American Journal of Comparative Law, Vol.51, 2003, p. 505.

¹⁰⁴ Id., p. 533.

¹⁰⁵ Ibid.

¹⁰⁶ L Smith 'Is Ethnic Federalism Bad for Ethiopian Women?', In T Regassa (ed.) *Issues of Federalism in Ethiopia Towards an Inventory* 'Ethiopian Constitutional Law Series, Faculty of Law, Addis Ababa Faculty of Law, Addis Ababa, Vol. 2, 2008, p.336.

¹⁰⁷ Ibid.

In default of such community dialogue, human rights will have limited impacts in view of autonomous customs operating in different parts of the country.

Conclusion

The discourse between universalists, who claim that human rights must be universally applicable worldwide regardless of cultural, religious and other differences, and cultural relativists, who argue that human rights are the construct of the West and thus have limited or no relevance to the other parts of the world, still continues. Although, in reality, the vast majority of states accept the universality of human rights, a close look at of the reservation made by states in the ratification of human rights treaties on cultural and religious grounds shows that cultural relativism is not totally devoid of support. The increasing trend of recognizing the rights of minorities and indigenous people to cultural development in multicultural and multiethnic states has also its own contribution towards undermining universalism and encouraging cultural relativism.

At the state level, Ethiopia subscribes neither to universalism nor to cultural relativism. It takes something from both. On the one hand, Ethiopia has accepted a number of international human rights documents that incorporate a host of human rights that must be applicable to everyone without due regard to individual differences. To this extent, Ethiopia subscribes to universalism. It, on the other hand, under its Constitution, respects and commits itself for the protection of the rights of nations, nationalities and peoples to develop their culture. Availing themselves of this constitutional guarantee, regions (states) enact laws on personal and family matters, such as family laws. The family laws of some regions, such Hareri Region, contain provisions that legalize polygamy on religious and/or cultural rationales. Moreover, cultural practices which compromise the rights of women are being exercised in different communities raising, in some cases, the right to exercise one's culture as a defense. Be it by legalization of polygamy or condoning practices that undermine women rights, Ethiopia subscribes, to some extent, to cultural relativism. The problem associated with cultural relativism is that it opens a Pandora's Box for the proliferation of customary practices and laws that increase women's susceptibility to the HIV/AIDS epidemic.

In order to minimize the negative aftermath of cultural relativism on women's susceptibility to HIV/AIDS in Ethiopia, a strict enforcement of article 9(1) of the FDRE Constitution is imperative. Those customary practices and laws that contravene human rights standards need to be reformed. Indeed, it seems that an attempt to change harmful customary practices and laws is a utopian exercise as they are entrenched in to the identity of the people who exercise them. However, it is possible to change cultures by engaging communities in dialogue and by raising their level of awareness.