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„Manifestations of Cultural/Ethical Relativism in the Universal
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1. Introduction

You do not need to explain the meaning of human rights to an Asian mother or an African father whose son or daughter has been tortured or killed. They understand it tragically – far better than we ever will.

-Kofi Annan

This powerful statement by Kofi Annan makes, for a moment, the whole controversy around the universality of human rights trivial. But the relativist-universalist debate is still very much alive at international settings.

During my internship at the United Nations Universal Periodic Review of the Human Rights Council, I have witnessed the clash between the two perspectives, however, it seemed that no one discusses the issue more thoroughly. I consider the issue to be of the utmost importance for the effectiveness of an inspiring field of human rights. The selected topic, relativism at the Universal Periodic Review (UPR), will be tackled with an anthropological perspective, due to my academic background and also due to its suitability for the selected topic, since anthropology is a discipline that studies social phenomena universally and subsequently also enables the discovery of shared aspects of humanity. Furthermore, its research often touches upon the issue of universality versus relativism, and cultural/ethical relativism has been one of the discipline's central topics. However, anthropologists have not been sufficiently involved in human rights issues due to various factors, one of them being intentional non-involvement since anthropology is a value-free science.

I consider UPR to be a very appropriate tool to analyze the selected topic. It is a universal and periodic process, where an insight into the state under a review perspective, and of other United Nations (UN) member states, UN treaty bodies and special procedures, as well as civil society, NGOs and national human rights

institutions is provided. It is the first international human rights mechanism to address all countries and potentially all human rights issues, which provides a unique opportunity for an analysis.

For regional focus, I have selected African UN member states since it is assumed that numerous human right issues are being culture related, and because the topic is being widely under-researched.

This thesis aims to offer an up-to-date list of expressions of relativism at the UPR on the example of reviews of African states. The main research question is: what are the manifestations of cultural/ethical relativism at the United Nations Universal Periodic Review on the example of reviews of African States?

In order to answer this rather broad question, the following sub-questions will be addressed: what are the main aspects of cultural/ethical relativism; how is the concept of culture theorized in the anthropology and how in the human rights discourse; how is the theory of cultural/ethical relativism being employed at the UPR; and lastly, how and for which human rights issues are the states challenging the universality?

The answers to these questions will attempt to be obtained through the study of contemporary theory and the ethnographic research on the UPR mechanism. This entails analyzing all the UPR documents of 54 countries that belong to the African Group of Member States of the United Nations. The majority¹ has already undergone 2nd Cycle of the UPR, which includes a timeframe from 1st session in April, 2008 - 22nd session in April/May, 2015.

The following UPR documents will be analyzed: a National Report with information provided by the state under review; a Compilation prepared by the Office of High Commissioner for Human Rights (OHCHR) of the information contained in the reports of the special procedures, human rights treaty bodies, and other UN entities; and a Summary of information from other stakeholders, including national human rights institutions and NGOs. This document is also prepared by the OHCHR.

¹ The following countries have undergone only the 1st Cycle: Mauritania, Moambique, Namibia, Niger, Rwanda, Somalia, Sudan, Togo, Uganda, United Republic of Tanzania, and Zimbabwe.

² Bangkok Declaration, *Final declaration of the regional meeting for Asia of the 1993 United Nations World Conference on Human Rights*, 29 March-April 1993 (A/CONF.157/ASRM/8-

Additionally to these three documents that serve as a basis for the UPR reviews, the data will be obtained by the Addendum, a document drafted by the state under review containing their responses to the Working Group list of recommendations; by a Report of the Working Group, which is an outcome of the review of a particular state and lastly; by the final version of the report, adopted by the Human Rights Council a few months later.

Chapter 1 firstly illustrates an example of challenging the universality of human rights at the World Conference on Human Rights in Vienna in 1993. This will be followed by portraying the theory of relativism. Due to its importance for human rights, a particular focus will be put on cultural/ethical relativism. First, its early theoretical foundations in anthropology will be presented as well as its reflection on the Statement on Human Rights by the American Anthropological Association.

After the early beginnings of cultural/ethical relativism in anthropology is outlined, the second sub-chapter will try to reconcile the conflict between cultural/ethical relativism and universal human rights by presenting reinterpretations of the theory. This will be done by merging the arguments of two articles, namely: *Relativism and the Search for Human Rights* by Alison Dundes Renteln and *Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)* by Sally Engle Merry, both being anthropology scholars and active in the field of human rights.

Moreover, due to its importance for relativism, concept of culture is given additional emphasis throughout the chapter by presenting a brief history of the concept of culture, from its occurrence in anthropology to more recent developments. It depicts the changes that it endured during the two paradigm shifts in anthropology, namely the first one criticizing evolutionism and the second one marking the postmodern period in anthropology.

Chapter 2 is divided in two subchapters. The first presents the institutional and legal framework of the Human Rights Council and in the second part the framework of the UPR mechanism is outlined, by presenting its objectives, principles and the different stages of the review process.

In Chapter 3 the manifestations of relativism will be identified and analyzed in the Working Group report, the Compilation, the National Report as well as in the Addendum and the Human Rights Council final report. All UPR reviews of African countries up to the last UPR session will be analyzed. This is a timeframe from 1st session in April, 2008 - 22nd session in April/May, 2015.

With an analysis of the UPR documents human rights issues have been identified where relativist arguments and perspectives are expressed. On this basis, the chapter is divided in three topics. In the first section relativism is being analyzed on the examples of so called “harmful traditional practices”. The numerous social phenomenon that according to the language of current world politics fall under this term, are being presented, with an in-depth analysis of three i.e.: female genital mutilation, persons accused of witchcraft, and people with albinism. The second section focuses on the sexual orientation, and the third on capital punishment. The chapter provides an insight into variety of states perspectives and arguments in respect to the same human rights issue.

2. Relativism and Human Rights

This chapter discusses the theory that has challenged the universality of human rights. Firstly, an example of this challenge at the Second World Conference on Human Rights is being briefly presented. This is followed by presenting the theory of relativism with the focus on ethical/cultural relativism. Secondly, due to its importance for human rights, early theoretical foundations of cultural/ethical relativism in anthropology will be presented as well as its reflection on the Statement on Human Rights. This statement was drafted by the American Anthropological Association with the aim of making a contribution in the drafting of a Universal Declaration on Human Rights.

Thirdly, modifications and misunderstandings of the theory will be discussed. This will be done by firstly, introducing Alison Dundes Renteln arguments made in *Relativism and the Search for Human Rights* and secondly, by Sally Engle Merry in *Human Rights Law and the Demonization of Culture (And Anthropology Along the*

Way). Due to its importance for relativism, culture as a concept is given additional emphasis throughout the chapter.

2.1. Challenging the Universality of Human Rights

That human rights apply to all human beings has been challenged. A well-known example of challenging the universality, an essential characteristic of human rights, has been the Second UN World Conference on Human Rights in Vienna in 1993.

At the Asian preparatory conference in Bangkok, the adopted Bangkok Declaration expressed these particular views. These views were repeated at the Second UN World Conference on Human Rights by the representatives of East Asian governments. The following paragraphs of the Bangkok Declaration² were seen as an attack on the universality principle and were a cause of disagreement among Western states³.

5. ‘Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure’;

7. ‘Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified’; as well as

8. ‘Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds’.⁴

² Bangkok Declaration, *Final declaration of the regional meeting for Asia of the 1993 United Nations World Conference on Human Rights*, 29 March-April 1993 (A/CONF.157/ASRM/8-A/CONF.157/PC/59).

³ Andras Sajó, *Human Rights with Modesty*, Leiden/Boston, Martinus Nijhoff Publishers, 2004, p. 218.

⁴ Ibid.

With it the Conference was marked by newly emerged North-South conflict that challenged the universality. Countries of the South expressed fear of a “neo-colonialism” disguised in human rights. Despite the clash, 171 government representatives approved Vienna Declaration and Programme of Action by consensus. This remarkable success was accomplished also due to the pressure of more than 1,500 non-governmental organizations.⁵

Paragraph 5 of Vienna Declaration and Programme of Action states that:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”⁶

The paragraph could be read as supporting either the universalist or relativist position. The relativist-universalist debate lives on and manifests itself in various international settings, as it will be later shown, as well as at the newly UPR mechanism.

2.1. Relativism

Controversial and puzzled theory of relativism is not a single doctrine but a family of views. Despite its complexity there is a central common point: a view that one or more things (e.g., moral principles) is/are relative to something else (e.g., culture). It can be presented with a simple general scheme: *Y (dependent variable) is relative to X*

⁵ M. Nowak, *Introduction to the International Human Rights Regime*, Martinus Nijhoff Publishers, Leiden/Boston, 2002, p. 149.

⁶ OHCHR, *Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights in Vienna on 25 June 1993*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> (accessed 2 August 2015)

(independent variable). *Y* is the thing that is relative and *X* is the thing that influences one or more dependent variables⁷.

Various types of relativism exist. Major *dependent variables* can be: central concepts, central beliefs, perception, epistemic appraisal, ethics, semantics, practice, truth, reality; whereas major *independent variables* would be: language, culture, historical period, innate cognitive architecture, choice, scientific frameworks, religion, gender, 'race' or social status, and the individual. Already this basic list provides 81 different types and since each type can come either in descriptive or normative version, it makes it altogether 162.⁸

Descriptive relativism is a family of *empirical claims* that certain groups have different modes of thought, standards of reasoning, or the like. The claims are to *describe* (but not evaluate) the principles and practices of the two groups. It is not an evaluative or normative view. It is compatible with the claims that both groups are right that only one is, that neither is, or even that there is no such thing as getting things right. It does not say, nor does it imply, anything about how anyone should behave.⁹

Normative relativism 'is a family of non-empirical *normative* or *evaluative claims* to the effect that modes of thought, standards of reasoning, or the like are only right or wrong, correct or incorrect, veridical or non-veridical, *relative to* a framework'¹⁰. Descriptive ethical relativism and normative ethical relativism will be discussed later in the present chapter.

Already, Herodotus (484-425 B.C.) reflected on the essential ingredient of cultural relativism when he wrote: "for if one were to offer men to choose out of all the customs in the world such as seemed to them the best, they would examine the whole

⁷ Stanford Encyclopedia of Philosophy. *Relativism*. <http://plato.stanford.edu/entries/relativism/> (accessed 29 July 2015)

⁸ Ibid.

⁹ Stanford Encyclopedia of Philosophy. *Relativism*, <http://plato.stanford.edu/entries/relativism/> (accessed 29 July 2015)

¹⁰ Ibid.

number, and end by preferring their own; so convinced are they that they own usages far surpass those of all others.¹¹”

This paper’s focus lies on ethical/cultural relativism, the type that is, in general, of particular significance for the field of human rights. In the subsequent sub-chapter, I further elaborate on cultural /ethical relativism in anthropology. The early foundations will be outlined and indicated that, with anthropology, cultural /ethical relativism has reached new dimensions. “It became a theory about the way in which evaluations or judgments are made.¹²” Whereas Herodotus illustrated that everyone thinks his own custom is the best, anthropology, additionally, engaged itself with also *why* this is so. Henceforth, cultural/ethical relativism will be referred simply as relativism.

2.1.1. Cultural/Ethical Relativism in Anthropology

When it comes to relativism in anthropology, Franz Boas (1858-1942), a founding father of American cultural anthropology, would be the first person that crosses the minds of most anthropologists. He has established modern cultural relativism in American anthropology, and his revolutionary contributions have reached far beyond the field of anthropology, also the field of human rights.

Franz Boas brought antievolutionist critique to the discipline. He criticized the leading theory of anthropology in 19th century, cultural evolutionism. This was a stage theory that ranked societies from “primitive” to “modern” and put Western societies at the very top of the scale. In a sense, cultural relativism in its modern form was a reaction to these racist, Eurocentric notions of progress and levels of development¹³. Boas warned against existing ethnocentrism- ‘(from Greek *ethnos*, meaning ‘a people’), an essential constituent of cultural relativism, means “evaluating other

¹¹ Herodotus, *The Persian Wars*, New York, Modern Library, 1947, cited in A.D. Renteln, *Relativism and the Search for Human Rights*. *American Anthropologist* 90. p. 57.

¹² A.D. Renteln, ‘Relativism and the Search for Human Rights’ in *American Anthropologist*, Vol.90, No. 1, 1988, p. 57, Available from Jstor (accessed 13 January 2012).

¹³ Ibid.

people from one's own vantage-point and describing them in one's own terms. One's own 'ethnos', including one's cultural values, is literally placed at the center.'¹⁴

Cultural evolutionists were mostly proponents of the 'humanistic' sense of culture, which was singular and evaluative- culture is what a person has to acquire in order to become a full agent of society. This assumption claims that some people have more culture than others and that they are on their way to achieving the top of the ladder. An example is Tylor's definition of culture of 1871, widely known as the first anthropological definition of culture: 'the complex whole which includes knowledge, belief, art, law, morals, custom and many other capabilities acquired by man as a member of society'.¹⁵

Culture has an extremely complex history and anthropological usage is only a small part. Originally, the English word, culture, comes from the Latin word "cultura" which literally meant cultivation (of plants) and in metaphorical sense referred to cultivation of the self, in terms of self-improvement. In anthropology, though, the concept took a less direct path and entered through the German version of "Kultur".¹⁶

In German, the word was initially spelled, *Cultur*, and only later, *Kultur*. The term was used in works of speculative history from the second half of the 18th century. Crucially, in German, it started to be used in the plural- humanity being divided into a number of separate, distinct cultures.¹⁷ The Germanic conception developed in the nineteenth century in resistance to the claims to civilization made by England and France. While civilization emphasizes what is common to all human beings, *Kultur* places more stress on national differences and particular identities of groups. Therefore, *Kultur* can be used as a tool for a nation to define itself, to create its boundaries, and to emphasize the differences. It thus provided a way of creating a national identity as separate and as a source of pride. The French emphasis on a

¹⁴ T. H. Eriksen, *Small Places, Large Issues. An Introduction to Social and Cultural Anthropology*, Second Edition, London/USA, Pluto Press, p.6.

¹⁵ M. Bloch, R. Grillo, S.Howell, M. Sahlins, *Encyclopedia of Social and Cultural Anthropology*, London, Routledge, pp. 206-208.

¹⁶ *Ibid.*, p.206.

¹⁷ *Ibid.*

transnational civilization was regarded in Germany as a threat to its distinctive national culture, an authentic and achieved culture.¹⁸

Boas brought this Germanic version of "Kultur" into American cultural anthropology. Culture was offered as a pluralistic and relativistic alternative to scientific racism and ethnocentric evolutionism. Culture, defined by Boas, represented an integrated system of symbols, ideas and values. The world is divided into different cultures and the differences are not supposed to be judged and evaluated, but each of them should be viewed as equal and worthwhile. This new conception of culture influenced the emergence of cultural relativism.¹⁹

The majority of anthropologists would agree with two aspects of cultural relativism: "first, that insofar as there are behavioral differences between various populations of people, these differences are the result of cultural (sometimes societal) variation rather than anything else; and, second, that such differences as do exist are deserving of respect and understanding in their own terms." On a surprise of many who often misinterpret anthropologists understand of cultural relativism, the weakest and most popular version of cultural relativism is agnostic towards the question of possibility of universals.²⁰

The main characteristics of an early cultural relativism in anthropology were reflected also in the content of Statement on Human Rights by an American Anthropological Association in 1945, often regarded as the "prototype" statement of American cultural relativism. The statement was written by an American Anthropological Association (AAA) due to the UNESCO invitation to draft a statement on human rights to make a contribution in the drafting of a Universal Declaration on Human Rights. The statement was originally written by a prominent anthropologist Melville Herskovits, a student of Franz Boas who continued his relativistic tradition. The statement was submitted to the UN Human Rights Commission but without any noticeable influence

¹⁸ S.E. Merry, Human Rights Law and the Demonization of Culture (And Anthropology Along the Way), *Polar: Political and Legal Anthropology Review* 26:1, 2003, p. 65.

¹⁹ M. Bloch, R. Grillo, S. Howell, M. Sahlins, *Encyclopedia of Social and Cultural Anthropology*, London, Routledge, pp. 206-209.

²⁰ *Ibid.* p. 721

on the Declaration.²¹

The statement stressed the importance of the individual as a member of the social group and consequently the importance of the culture of the individual as a member of society to fully develop personality. Furthermore, it stated that “standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole.” The statements emphasized the enculturation; its consequence, ethnocentrism; as well as tolerance.²²

Already then the statement stressed aspects that turned out to be relevant for the field of human rights. By posing a question how could the declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America, it warned against the cultural imperialism. Furthermore, it expressed concern of the danger of Declaration not being culturally sensitive and of its ethnocentric aspects.²³

The statement criticized the Nazi-Germany that made the statement to lose its credibility in the eyes of the readers. It was interpreted as contradicting the outlined principles in the earlier parts. The end of the statement in its original version stated: ‘Even where political systems exist that deny citizens the right of participation in their government, or seek to conquer weaker peoples, underlying cultural values may be called on to bring the peoples of such states to a realization of the consequences of the acts of their governments, and thus enforce a brake upon discrimination and conquest. For the political system of a people is only a small part of their total culture.’

This claim was seen as incompatible with phrases as: ‘the individual realizes his personality through his culture, hence respect for individual differences entails a

²¹ Kuppe, R., *Human Rights from an Anthropological Perspective. Human Rights and Anthropology*. October 2014.

²² American Anthropological Association. *Statement on Human Rights*. *American Anthropologist* 59. pp. 539-542.

²³ *Ibid.* p. 539.

respect for cultural differences.²⁴ But the statement could not be interpreted just as contradicting but as well that the tolerance for cultural differences does not entail the exclusion of all other ethical issues.

‘World-wide standards of freedom and justice, based on the principle that man is free only when he lives as his society defines freedom, that his rights are those he recognizes as a member of his society, must be basic.’²⁵ According to Sally Engle Merry, the Statement is an assertion of moral values that includes tolerance for cultural differences as one of those values. It does not deny the ability to make moral judgments.²⁶

All in all, the statement emphasized the following main aspects: the cultural diversity, the tolerance for the diversity, the importance of enculturation and the danger of ethnocentrism and cultural imperialism. As presented, enculturation and tolerance provided the basis for the early theory of cultural relativism. The most controversial aspect of relativism tends to be the question whether or to what extent relativism requires the toleration of intolerance. Interestingly, Boas, Herskovits and other proponents of cultural relativism were openly criticizing racism and colonialism. In the following sub-chapter, the authors will be presented that touch upon the issue of role of tolerance in relativism.

2.1.2. ‘Revised’ Cultural/Ethical Relativism

In this sub-chapter, I merge the arguments for interpretation of relativism of two articles, namely: *Relativism and the Search for Human Rights* by Alison Dundes Renteln and *Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)* by Sally Engle Merry. I have chosen Alison Dundes Renteln and Sally Engle Merry for their innovative theoretical and methodological suggestions for possible solutions for the relativism/universalism clash in the field of human rights.

²⁴ American Anthropological Association. *Statement on Human Rights*. *American Anthropologist* 59: 541-543.

²⁵ American Anthropological Association. *Statement on Human Rights*. *American Anthropologist* 59: 543

²⁶ S.E. Merry, *Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)*, *Polar: Political and Legal Anthropology Review* 26:1, 2003, p. 56.

Moreover, Renteln, who regards ethical relativism as a subset of cultural relativism, outlines three different theories of ethical relativism, based on the arguments of the eminent philosophers. First theory claims that peoples differ in their basic moral beliefs. She calls it the apparent ethical relativism, since the moral differences among cultures are a well-established empirical fact and this formulation says nothing about which ones might be right or wrong and it allows favoring someone its own moral system and see it as superior.²⁷

The second theory, a normative ethical relativism, she considers to be self-refuting. This is the thesis of ethical relativism as prescriptive (value) hypothesis. Its proponents are commonly regarded as extreme relativists, also Herskovits is considered to be one. The theory claims that “in every case the rightness of any act or goodness of anything for a member of culture A is justified by reference to what in fact is considered right or good in a culture A”.²⁸

This theory is often associated with the requirement of tolerance of diverse moral practices. According to Herskovits, cultural relativism means: “evaluations are relative to the cultural background out of which they arise.” The critique is that if under evaluations it is understood that it means all evaluations then the theory contradicts itself since if all evaluations are relative, it destroys objectivity and there can be also no objectivity of sociological and anthropological investigations.²⁹

The third theory is the thesis of ethical relativism as descriptive (factual) hypothesis. This position holds that “there are or there can be no value judgments that are true, that is, objectively justifiable, independent of specific cultures.”³⁰ She claims that there can be no objective way of deciding the truth of value judgments. In comparison with the theory of apparent ethical relativism, this theory “makes a claim about the source of justification for different moralities.” Contrary to the first theory, an absolute moral scale is not possible and cultures cannot be judged morally superior to others. It is not a value theory, as a normative ethical relativism, but a theory about

²⁷ A.D. Renteln, 'Relativism and the Search for Human Rights' in *American Anthropologist*, Vol.90, No. 1, 1988, pp. 60-61, Available from Jstor (accessed 13 January 2012).

²⁸ Ibid.

²⁹ A.D. Renteln, 'Relativism and the Search for Human Rights' in *American Anthropologist*, Vol.90, No. 1, 1988, p. 60-61, Available from Jstor (accessed 13 January 2012).

³⁰ Schmidt 1955:872 cited in cited in A.D. Renteln, 'Relativism and the Search for Human Rights' in *American Anthropologist*, Vol.90, No. 1, 1988, pp. 60-61, Available from Jstor (accessed 13 January 2012).

value judgments. She redefines Herskovits formulation into: “cultural relativism means that *some* evaluations are relative to the cultural background out of which they arise.” With this formulation, she also permits the possibility of universal values (see below). She stresses that the relativism does neither imply tolerance nor objectivity and that the enculturation³¹ forms the basis of the theory and not the tolerance.³²

Furthermore, she argued that Herkovits and others like-minded put tolerance for the basis of the theory due to their own ethnocentrism and enculturation, since the tolerance is a value preference of American culture. Due to enculturation also relativists prefer their own moral system, in this case, tolerance, a value of the liberalism and democracy. However, she argued that a relativist would acknowledge that the criticism is based on his/her own ethnocentric standards.

She argued that the major contribution of relativism is not its advocacy of tolerance, but enculturation. Importantly, according to her relativism allows three types of moral criticism: 1. If the act in question is contrary to the norms of the society in which it occurs; 2. If the act not only violates the internal standard of the society but a universal standard as well; and 3. if the act is in accordance with the society’s internal standard, but violates the critic’s own standard (ethnocentric criticism).³³

In her interpretation of relativism, the empirical research might uncover cross-cultural universals, since the supposition that because all moral systems differ, there can be no convergence is false. She considers relativism to be compatible with the existence of cross-cultural universals but stresses that it is relevant to make a distinction between universals and absolutes. The difference between absolutes and universals touches an important issue of social change. Contrary to absolutes, “cross-cultural universals are moral principles whose source is found in cultural ideas may evolve” while absolutes are fixed. According to her, a cross- cultural universal can provide a standard for judging right or wrong. Her interpretation of relativism does not preclude change.³⁴

According to Renteln, only through cross-cultural empirical research universal moral

³¹ The idea that people unconsciously acquire the categories and standards of their culture. See: A.D. Renteln, ‘Relativism and the Search for Human Rights’ in *American Anthropologist*, Vol.90, No. 1, 1988, pp. 57-62, Available from Jstor (accessed 13 January 2012).

³² A.D. Renteln, ‘Relativism and the Search for Human Rights’ in *American Anthropologist*, Vol.90, No. 1, 1988, pp. 57-62, Available from Jstor (accessed 13 January 2012).

³³ *Ibid.*, pp. 63-68.

³⁴ *Ibid.*, pp. 65- 66.

values could be discovered. In the search for these universals, she has studied findings from over a hundred societies and investigated whether or not universal human rights exist empirically. She concluded that the principle of retribution tied to proportionality, (*lex talionis*), or ‘an eye for an eye, a tooth for a tooth’ seems to be universal. Universally there seems to be a rule stating that the punishment for a crime ought to be proportional to the gravity of the crime. Furthermore, she sees the reason why the principle of retribution tied to proportionality is so widespread, is because it puts a limit on violence. Subsequently, she concludes, that if there is a worldwide commitment to this principle, this may indicate a global willingness to embrace particular human rights, such as against genocide or torture.³⁵

In conclusion, Renteln’s interpretation of cultural relativism changes its relationship to human rights. She attempts to show that not only relativism shouldn’t be treated as an “enemy” for human rights but it could be beneficial for it. She stresses the role of enculturation and regards it as an essential feature of cultural relativism. Here, an important question of culture arises again.

As showed above, the concept of culture is crucial in understanding relativism and anthropology is the discipline that has worked the hardest in order to illuminate its many meanings. As showed in the previous sub-chapter, with Boas came the pluralistic and relativistic conception of culture.

In the 1940s and 1950s, anthropologists were preoccupied with finding the ‘correct’ definition of culture. Many of these definitions were collected in an ambitious survey by Kroeber and Kluckhohn in 1952. (more than 150 definitions of culture were collected).³⁶ Despite the efforts there is no agreed definiton of the concept of culture in anthropology.

The second big shift in theorizing about culture came with Clifford Geertz. With him the turn to meaning and symbols came in anthropology, transforming culture from a set of things and traits to a collection of symbolic systems, relying on different

³⁵A.D. Renteln, International. Human Rights. *Universalism Versus Relativism*. Newbury Park, London, New Delhi: Sage Publications, 1990, p.14

³⁶M. Bloch, R. Grillo, S.Howell, M. Sahlins, *Encyclopedia of Social and Cultural Anthropology*, London, Routledge, p. 207.

symbolic representations. His significant ideas helped redefine the discipline of anthropology in the late 20th century. This new view of culture opened up the contemporary discourse about the concept.³⁷

In the late 20th century, the concept of culture was marked by a cultural criticism. The postmodernist style of rethinking and deconstructing everything has proved itself to be quite fruitful in its take on culture and it pointed out many problems that go with it. Ever since then, there has been an ongoing debate on whether culture should be redefined, replaced or exiled altogether. However, the public discourse seems to be slow when it comes to catching up with the reforms of a concept within a given discipline.

Sally Engle Merry argued that the misunderstanding of the concept of culture influences misinterpretation of the theory of relativism. In her article, she presents an up-to date understanding of culture in Anthropology.³⁸ After the ethnographic research on the international human rights system and its approach to violence against women, she concluded that the documents generated at global conferences typically see culture as an obstacle to the human rights of women and that culture is being equated to tradition, is seen as static and a reason for the existence of so-called harmful practices. Furthermore, this holistic conception of culture which is dominant in the field of human rights was (as illustrated above) prevalent in the 20th century American anthropology. This conception provides no space for change, contestation, or the analysis of the links between power, practice and values.³⁹

Moreover, she observed the trend to ‘culturalize’ human rights issues- the economic or political factors for women’s subordination are being ignored, and the culture is the main argumentation.⁴⁰ She illustrates how the popular conceptions of culture originate to some extent from older anthropological understanding of it, where culture was understood as a system of values and beliefs and was separated from institutions,

³⁷ L. Beldo, *Concept of Culture in 21st Century Anthropology*. A Reference Handbook Vol. 1802, edited by H. James Bix, Sage Publications.2010, pp. 146-148.

³⁸ S.E. Merry, Human Rights Law and the Demonization of Culture (And Anthropology Along the Way), *Polar: Political and Legal Anthropology Review* 26:1, 2003, p. 56.

³⁹ *Ibid.* pp.65-66.

⁴⁰ *Ibid.* pp. 65-72.

practices and the political economy. This understanding of culture contributed to the idea of cultural relativism as an inability to judge.⁴¹

However, contemporary anthropology understands culture differently. Despite its many different doctrinal schools there are aspects which are persistent in the contemporary conception of culture, i.e.: It is unbounded, contested, connected to relations to power. Furthermore, it encompasses beliefs, values but, importantly, also practices and habits. Culture is seen as a far more fluid, contested, and changing set of values and practices. This conception emphasizes the making of culture, society, and institution and the grounding of this action in specific places and moments. Culture is also a product of institutional arrangements, political structures and, legal regulations and as these institutions change, so do beliefs, values and practices.⁴² As the concept of culture changed so did the anthropological understanding of cultural relativism. As Merry correctly observes that the concept of culture in the international human rights discourse is used in the Boasian sense so it is consequently as well cultural relativism.

Merry emphasized that the culture is being made also at the international human rights settings, such as UN meetings. She stressed that the human rights legal system produces culture as well. According to her, this is being done in the following ways⁴³:

Firstly, by defining problems and articulating general principles in diverse documents, produced by consensus. The documents produced at the global conferences, UN bodies meetings, can be ratified by states and should in theory be incorporated into state-legal system. NGOs play a crucial role in lobbying for particular words in these documents, do the research on which the documents are based, and are publicizing the documents and also pressuring the governments to obey them. Furthermore, NGO's work with UN agencies, doing awareness rising among the population and support the victims to complain to UN bodies.

Secondly, special appointed individuals, expert groups and working groups investigate individual complaints and national practices. Their reports can also

⁴¹ Ibid.p. 63.

⁴² Ibid. pp.64- 69.

⁴³ Ibid. pp.70-71.

articulate general principles. Also here human rights NGOs play crucial role in helping individuals to complain as well giving information to special investigators. Additionally, NGOs also write reports where national government's violations are being uncovered.

And thirdly, at the regular hearing where the periodic reports of countries that have ratified convention are reviewed, which she regards as the most law-like of all the human rights processes. The states are also here theoretically obliged to incorporate its provision into its national laws. Also here Ngo's are important. They produce shadow reports- reports that are parallel to government reports. Ngo's also contribute to the process of report writing by the government and publicize the proceedings.

She emphasized that if it would be recognized that human rights are deeply shaped by culture this could be used for the better effectiveness of human rights. Culture shouldn't be seen just as an obstacle.⁴⁴

To sum it up, according to Renteln and Merry, the theory of cultural relativism as well as the concept of culture have been the subject of much misunderstanding and misinterpretation. All in all, the following features of relativism can be identified: tolerance is not required- moral criticism is allowed; the role of enculturation is essential and related to it- the conceptualization of culture; relativism does not preclude change- cross-cultural universals are possible.

3. The Universal Periodic Mechanism (UPR)

This chapter is divided in two sub-chapters. In the first part, institutional and legal framework of the Human Rights Council (hereinafter, 'the HRC') is presented along with the foundation of the UPR (hereinafter, 'the UPR'). In the second part, the UPR objectives, the principles that guide the process, and the different stages of the review process are presented.

⁴⁴ Ibid. pp.70-71.

The UPR is a mechanism of the HRC. When the HRC replaced the Commission on Human Rights (hereinafter, “the Commission”), the UPR was the only substantial change in the mandate of the HRC. Additionally, also due to its novelty, great importance is attached to the mechanism. Its main aim is to universally improve human rights situations on the ground. All 193 UN member states are being periodically reviewed in Geneva.

According to the OHCHR, the mechanism strengths are that it is based on equal treatment for all countries, provides an opportunity for all states to declare what actions they have taken to improve their human rights situations, providing technical assistance to states as well as sharing best human rights practices around the globe.⁴⁵

The basis for the review assessment is the UN Charter; the Universal Declaration of Human Rights; human rights treaties ratified by the State concerned; voluntary pledges and commitments made by the State; as well as applicable international humanitarian law.⁴⁶

3.1. A Brief History of the UPR

The Commission was established during the first United Nations Economic and Social Council (ECOSOC) meeting on December, 10 of 1946 and it was the first political body within the UN system committed solely to human rights. The Commission was a highly criticized organ and in 2006 it was replaced by the HRC. The Commission lost its legitimacy and credibility mostly due to the use of selectivity criteria and double standards, as well as the lack of compliance by the member states with both the recommendations given by mandate holders as well as with treaty obligations. Moreover, the composition of the Commission was also disputable, since several of its members had critical human rights records. Consequently, on the 15th of March of 2006, the United Nations General Assembly created the HRC to replace the

⁴⁵ OHCHR, *Basic facts about the UPR*, 2015, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>, (accessed, 17.7.2015)

⁴⁶ Ibid.

Commission. While the Commission was an organ of ECOSOC, the HRC was given a higher status. It is directly related to the General Assembly as its subsidiary organ.⁴⁷

The Council has 47 members, which are elected by the majority of the members of the General Assembly. This is done by secret ballot, based on equitable geographical distribution, without the possibility of reelection after two consecutive terms. Not to repeat the mistakes of the past, an additional requirement was established. For a country to be elected as a member of the Council, the member should uphold the highest standards in the promotion and protection of human rights. In accordance with this new requirement, there is now also the possibility for a member's suspension.

In the same resolution 60/251 where the General Assembly created the HRC on 15 March, 2006, it mandated to:

‘undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session.’⁴⁸

In 2007, one year after its first meeting, members of the HRC adopted its own institution-building package in resolution A/HRC/RES/5/1. One of the key elements of this package was the new UPR mechanism. The resolution outlines key practices and guidelines to be followed during the UPR. The mechanism was further refined during the review process through resolution 16/21 and decision 17/119. These two

⁴⁷ J.V. Barrios, *The Universal Periodic Review. A new hope for international human rights law or reformulation of errores of the past?*, Colombia, 2008, pp. 103-104.

⁴⁸ General Assembly, *Resolution adopted by the General Assembly*, resolution 60/251, A/RES/60/251, 3 April 2006.

documents provided the modifications of modalities for the review in the second and following cycles.⁴⁹

3.2. UPR Process

The UPR should not be seen, particularly by the member states, just as a 3.5 hours review at the *Palais de Nations* in Geneva, but a full-circle process comprised of 3 key stages:⁵⁰

- 1) Review of the human rights situation of the State under Review (hereinafter, SuR);
- 2) Implementation between two reviews (4.5 years) by the SuR of the recommendations received and the voluntary pledges made (Follow-up);
- 3) Reporting at the next review on the implementation of the received recommendations and pledges and on the human rights situation in the country since the previous review.

The HRC outlined principles that the UPR, an intergovernmental and action-oriented process, should follow. The first is the promotion of the universality, interdependence, indivisibility and interrelatedness of all human rights. It is considered to be a cooperative mechanism based on objective and reliable information and on interactive dialogue. Additionally, the UPR should allow the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, and should be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner. Furthermore, it should ensure universal coverage and equal treatment of all States. The SuR should be fully involved and the process should complement and not duplicate other human rights mechanisms.⁵¹

⁴⁹ OHCHR, *Basic facts about the UPR*, 2015,

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>, (accessed 15 July 2015)

⁵⁰ UPR Info, *What is the UPR?*, 2015 <http://www.upr-info.org/en/upr-process/what-is-it>, (accessed 5 June 2015)

⁵¹ General Assembly, Resolution 5/1, *Institution-building of the United Nations Human Rights Council*, A/HRC/RES/5/1, 18 June 2007.

The objectives pursued by the UPR are various: the improvement of the human rights situation on the ground; the fulfillment of the State's human rights obligations and commitments, the assessment of positive developments and challenges faced by the State; the enhancement of the State's capacity and of technical assistance; the sharing of best practice among States and other stakeholders; support for cooperation in the promotion and protection of human rights; as well as the encouragement of full cooperation and engagement with the HRC, other human rights bodies and the OHCHR.⁵²

The reviews are conducted by the UPR Working Group, consisting of the 47 members of the HRC. However, any UN member state can take part in the dialogue with the reviewed States. Each State review is assisted by groups of three States, known as troika that serve as rapporteurs.⁵³ The troika is a group of three delegates from HRC members selected by drawing lots. A troika member participates at the country review as other delegation but has two additional assignments: to receive all written questions and/or issues raised by the Working Group and transmit them to the SuR, as well as to help preparing the report of the Working Group with the assistance of the OHCHR and the SuR.⁵⁴

Each review starts with the presentation by the SuR of its National Report and of its responses to the advance questions. Advance questions were submitted by States in writing at least ten days before the review. Following this presentation, an interactive dialogue takes place during which States ask questions and make recommendations on the human rights situations in the country under review. During this interactive dialogue, the SuR takes the floor to answer the questions and to comment on the recommendations and raised issues. At the end, the SuR presents its concluding remarks. The SuR's total speaking time is 70 minutes and other States have a total of 140 minutes. The duration of the review was three hours for each country in the first cycle.⁵⁵

⁵² Ibid.

⁵³ UPR Info, What is the UPR?, 2015, <http://www.upr-info.org/en/upr-process/what-is-it> , (accessed 15 July 2015)

⁵⁴ UPR Info, List of UPR Terms, 2015(<http://www.upr-info.org/en/glossary>), (accessed 15 July 2015)

⁵⁵ UPR Info, What is the UPR?, 2015, (<http://www.upr-info.org/en/upr-process/what-is-it>), (accessed 15 July 2015)

HRC adopted in March, 2011 the Resolution 16/21 where the changes and decisions for the second cycle of the UPR are outlined: the second cycle of the UPR would begin in June, 2012, the cycle period changed from 4 years to 4.5 years and 42 member states will be reviewed during the three Working Group sessions per year. The resolution highlights that the second and subsequent cycles should focus on the implementation of the recommendations and the developments of the human rights situation in the SuR.⁵⁶ From the second cycle onwards the time of review has been extended to three hours and thirty minutes.⁵⁷

During the first cycle, all UN member states have been reviewed, – with 48 States reviewed each year. In the second cycle, which officially started in May, 2012 with the 13th session of the UPR Working Group, 42 States will be reviewed each year. The order of review remains the same as in the first cycle.⁵⁸

The following three documents are issued before the Working Group sessions as a basis for the review: 1) information provided by the State under review in a National Report of maximum 20 pages. The information should be prepared through a broad consultation process with all relevant stakeholders; 2) a Compilation prepared by the OHCHR of the information contained in the reports of independent human rights experts and groups i.e.: the special procedures, human rights treaty bodies, and other UN entities. Compilation should not be longer than 10 pages; and 3) A Summary of information from other stakeholders including national human rights institutions and non-governmental organizations prepared as well by the OHCHR. The summary should as well not exceed 10 pages. The National Reports and the Summaries prepared by the OHCHR need to be ready six weeks before the WG review.⁵⁹

In the Summary report NGOs submit information can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group.⁶⁰

⁵⁶ Ibid.

⁵⁷ OHCHR, Basic facts about the UPR, 2015, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>, (accessed 17 July 2015)

⁵⁸ Ibid.

⁵⁹ General Assembly, Resolution 5/1, *Institution-building of the United Nations Human Rights Council*, A/HRC/RES/5/1, 18 June 2007.

⁶⁰ OHCHR, Basic facts about the UPR, 2015,

Following the review by the Working Group, a report is prepared by OHCHR, troika, and involvement of the SuR. The outcome of the review is a Working Group report that provides a summary of the proceedings of the review process. It consists of the questions, comments and the responses by the reviewed State, as well as, most importantly, recommendations made by States to the country under review.⁶¹

During the Working Group session half an hour is allocated to adopt each of the Working Group reports for the States reviewed that session. These take place no sooner than 2 days after the country review. The reviewed State comments on the recommendations, choosing to either accept or note them. All the recommendations are included in the report. The report then has to be adopted at a plenary session of the HRC. During the plenary session, the SuR can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Additionally, member and observer States can express their opinion on the outcome of the review. Importantly, NHRIs, NGOs and other stakeholders can take the floor and have the possibility to make general comments.⁶²

In the follow-up to the review, the State has the primary responsibility to implement the accepted recommendations. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations. During the second review, the State should provide information on the implementation of the recommendations. The HRC can address cases if States are not co-operating.⁶³

The first cycle of the UPR came to an end in 2012 and the second is almost completed. Its implementation on the ground is still to the big extent unclear. Importantly, it is a process that gives an opportunity for the participation of different, relevant stakeholders such as NGOs and civil society and, last but not least, it is the

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>, (accessed 17 July)

⁶¹ OHCHR, *Basic facts, about the UPR*, 2015,

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>, (accessed 17 July 2015)

⁶² Ibid.

⁶³ Ibid.

first international human rights mechanism to address all countries and potentially all human rights issues, which provides a unique opportunity to analyze relativistic manifestations. The following chapter will give an overview of relativistic expressions with the example of the UPR reviews of African states.

4. Relativism in the Universal Periodic Review: African States

During Chad's 1st UPR review, Egypt made a following recommendation:

‘Continue its efforts to promote all universally agreed human rights and fundamental freedoms, and continue to resist attempts to enforce any values or standards beyond the universally agreed ones.’⁶⁴

At its 1st review, Algeria noted that: ‘With regard to human rights, Algeria has adopted the principle of universality and an increasing engagement in the ratification of international instruments.’⁶⁵

But at the UPR countries do not just express their support for universality of human rights but also challenge it and stress the importance to take into consideration specificities of particular society:

Mauritius underlined the importance of respecting different cultural practices and that as a multiracial, multi-ethnic, multi-religious, multicultural country it cannot be insensitive to the needs and cultural rights of ‘its’ people.⁶⁶

The universalistic and particularistic expressions are easy to identify on these examples. However, this chapter will go beyond such obvious indicators. In this chapter, I present and analyze the perspectives and arguments of the State under review as well as of other member states with aim to get an overview of expressions of relativism in the UPR reviews of African states. The analysis of the all the documents was, particularly due to its immense quantity, challenging. For all countries available documents were analyzed, however, prevalence for expressions of

⁶⁴ A/HRC/12/5*, 5 October 2009, Para. 82.

⁶⁵ A/HRC/8/29, 23 May 2008, Para. 6.

⁶⁶ A/HRC/25/8, 26 December 2013, Para 127.

relativism have been identified in the Working Group Report, National Report and Human Rights Council report.

This comparative analysis provides an overview of different States arguments and perspectives in respect to non-compliance with international standards and illuminates different positions that the states take. The following questions will be addressed: how do the States' arguments and perspectives differ for different issues? How is concept of culture understood? Are the governments criticizing or supporting selected issues?

The first finding of this research was to see for which issues culture is seen to play a role for the non-compliance with international standards. An analysis showed that culture is seen as playing a role for the State's compliance with its human rights obligations for numerous different practices, classified as "harmful traditional practices", death penalty and sexual orientation. These specific issues are high on human rights agenda and this is reflected also in the UPR figures.

According to the UPR Info NGO, the 10 most raised issues in the UPR reviews were international instruments (4,043 recommendations); women's rights (3,515); rights of the child (3,323); torture and other cruel, inhuman, or degrading treatment or punishment (1,649); justice (1,494); detention conditions (1,042); human rights education and training (900); death penalty (881); right to education (852); and special procedures (834). Additionally, women's rights and rights of the child were according to the survey also among the ten most implemented issues.⁶⁷ The various practices termed as "harmful traditional practices" are predominantly in the area of women's and children's rights.

In the following part of the chapter, an analysis of identified human rights issues i.e., "harmful traditional practices", sexual orientation and the death penalty will be provided. The section "harmful traditional practices" will present three topics in detail i.e. female genital mutilation, persons accused of witchcraft, and people with albinism. The perspectives and arguments of all reviewed countries are presented. This enables to see differences among them, in respect to the same human rights

⁶⁷ UPR Info. *Beyond promises. The Impact of the UPR on the Ground*. Geneva, 2014, p-26-27.

issue. Additionally, for each topic, states that decided to make a recommendation regarding the particular topic will be listed. This will provide an insight into the States priorities, positions as well as general acceptance of the human rights issue by different countries. For the analysis theoretical framework presented in the first chapter will be applied.

4.1. “Harmful Traditional Practices “

The term ‘harmful traditional practices’⁶⁸ is commonly used in the human rights discourse. Initially, it was developed to describe female genital mutilation (hereinafter, FGM) and eventually started being used to also describe other practices that are regarded as harmful and seen to have cultural legitimacy.⁶⁹ The following examples show how culture is seen as an obstacle from various perspectives: UN Compilation, State under review, Member States, and the Stakeholders’ Summary. As Sally Engle Merry observed at the CEDAW, also in the UPR documents, the concept of culture is commonly equated with tradition, values, and religion. It is, as presented below, primarily seen as an obstacle for the enjoyment of women’s and children’s rights.

For the 2nd review of Botswana, concern was expressed by Committee on the Elimination of Discrimination against Women (CEDAW) about the entrenched ‘harmful traditional and cultural norms and practices’. It urged Botswana to modify or eliminate such negative cultural practices and stereotypes.⁷⁰ Similarly, for the 1st review of Burkina Faso, CEDAW also expressed concerned about the continuing strong prevalence of patriarchal attitudes and deep-rooted stereotypes and of customs and traditions that discriminate against women, particularly women in rural areas.⁷¹

⁶⁸ Also referred to as harmful cultural practices, or discriminatory practices.

⁶⁹ S.E. Merry, *Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)*, *Polar: Political and Legal Anthropology Review* 26:1, 2003, p. 63.

⁷⁰ A/HRC/WG.6/15/BWA/2, 9 November 2012, Para.11.

⁷¹ A/HRC/WG.6/3/BFA/2 6 October 2008, Para.12.

OMCT⁷² noted that although violence against women is mainly perpetrated in the private sphere, frequently the State is liable for it. It was added that the State's failure to adopt measures to prevent and punish such practices is generally due to cultural reasons and that authorities are very reluctant to intervene and investigate situations where women are victims of violence.⁷³

CEDAW expressed serious concern about the persistence of entrenched harmful cultural norms and practices, including feminine genital mutilations, early marriages, *sororate*⁷⁴ and *levirate*⁷⁵.⁷⁶ The representatives of Guinea stated that a number of entrenched, traditional practices undermine human rights i.e., forced and early marriages, female circumcision, levirate and sororate.⁷⁷

The delegation of Burkina Faso stated at its 1st review that despite the pervasiveness of the modern State, the lives of the vast majority of citizens are governed by ancestral traditional rules. Furthermore, it argued that these traditional rules generally underlie social cohesion and that some are barely compatible with human rights. Following practices were listed as "serious obstacles" to the enjoyment of certain rights: forced marriage, wife inheritance, female circumcision, caste systems and accusations of witchcraft.⁷⁸

In its 2nd review, the delegation of Cape Verde highlighted that its legislation was very modern and in line with international standards, but that traditional mentalities could not be abolished by decree.⁷⁹

⁷² Submitted by World Organisation Against Torture, Geneva, Switzerland, UPR submission, February 2008, p. 3. See also Association des Femmes Juristes du Bénin, Cotonou, Bénin, UPR submission, February, 2008, p. 2.

⁷³ A/HRC/WG.6/2/BEN/3, 9 April 2008, Para.22

⁷⁴ The sororate is the custom according to which when a woman dies her kin group offers a sister as a wife to the widower. In the sororate society the husband of the barren woman marries her sister. See: <http://anthropologyguide.blogspot.com/2012/01/levirate-and-sororate-system.html> (accessed 29 July 2015)

⁷⁵ The levirate is a system according to which a man marries the widow of his dead brother. See: <http://anthropologyguide.blogspot.com/2012/01/levirate-and-sororate-system.html> (accessed 29 July 2015)

⁷⁶ A/HRC/WG.6/17/TCD/2, 6 August 2013, Para.23.

⁷⁷ A/HRC/WG.6/21/GIN/1, 30 October 2014, Para.154.

⁷⁸ A/HRC/WG.6/3/BFA/1, 21 August 2008, Para.98

⁷⁹ A/HRC/24/5, 3 July 2013, Para. 84.

Ghana confirmed at its 1st review that there are certain cultural practices such as female genital mutilation, ritual enslavement and various forms of widowhood rites that violate the rights of women and girls. It also stressed that it is difficult to eradicate cultural practices simply by law.⁸⁰

Ghana further claimed that there are efforts aimed at overcoming negative religious attitudes and practices that hinder girls education and that laws have been enacted criminalizing some of these attitudes and practices such as female genital mutilation, *trokosi*⁸¹ and forced child marriages.⁸² At the 2nd Angola's review, the representatives reported that despite the fact that principle of equality is enshrined in the constitution, Angola recognized the existence of certain "bad practices and stereotypes", above all in rural zones, derived from cultural practices that discriminate against women and girls.⁸³ Furthermore, the delegation of Equatorial Guinea expressed efforts aimed at overcoming negative religious attitudes and practices that hinder girls' education. It stated that entrenched cultural attitudes persist in many rural areas and that the positions adopted by religious leaders are obstacles to an outright ban on female genital mutilation.⁸⁴

The majority of the states used and accepted the term harmful traditional practices, however, Botswana explicitly rejected it. At the HRC adoption the delegation pointed out that it did not accept the recommendations implying the existence of harmful practices to women, especially those alleging the persistence of early contract marriages and the existence of polygamy. It stated that there were no practices harmful to women and that the law in Botswana forbade polygamy.⁸⁵ The following

⁸⁰ A/HRC/8/36, 29 May 2008, Para.66.

⁸¹ In southeastern Ghana, virgin girls are given to village priests as a way of appeasing the gods for crimes committed by family members, See: <http://www.equalitynow.org/node/185>

⁸² A/HRC/8/36, 29 May 2008, Para.85.

⁸³ A/HRC/28/11, 5 December 2014, Para.61.

⁸⁴ A/HRC/WG.6/19/GNQ/1, 3 February 2014, Paras. 36-85.

⁸⁵ A/HRC/10/29, 9 November 2009, Para. 272.

examples will illustrate how for various human rights issues cultural arguments are applied differently.

Regarding corporal punishment, Botswana reaffirmed that the practice is part of their culture and that parents believe that it is important as a form of correction. Chile, Slovenia, Sweden, and France made recommendations regarding elimination of corporal punishment. The recommendations were not accepted and the Government stated it has no plans to eliminate corporal punishment since it is a ‘legitimate and acceptable form of punishment by the norms of the society.’⁸⁶

The delegation of Guinea Bissau pointed out that early and forced marriage was rooted in traditional culture and that eliminating the practice would take a great deal of time and would require careful handling. It further added that progress has been noted on the ground and the Government expressed the willingness to continue to work on the subject.⁸⁷ Djibouti, United Kingdom, Portugal, Argentina, France, Sierra Leone, Maldives, Canada, and Spain made recommendations.⁸⁸

A different perspective was taken by the Eritrea. The delegation stated that there were no cases of child labour in Eritrea and that children were not recruited for labour, but that there was ‘a culture, tradition and practice of children participating in family activities and work.’⁸⁹

At the 2nd review of Equatorial Guinea, it was stated that it is clear that some groups remain highly skeptical about the change of mindset required to abandon practices and customs that violate the human rights protection mechanisms that the Government is trying to implement.⁹⁰ The delegation of Eritrea provided information on the steps taken towards cultural transformations as well as ‘to explore the cultural

⁸⁶ A/HRC/10/69, 13 January 2009, Para.46.

⁸⁷ A/HRC/29/12, 13 April 2015, Para.43.

⁸⁸ Ibid. Para. 96.

⁸⁹ A/HRC/26/13, 7 April 2014, Para. 23.

⁹⁰ A/HRC/WG.6/19/GNQ/1, 3 February 2011, Para.30

heritage of all the ethnic groups in conformity with the ideals of national unity and national development.⁹¹

With regard to the reservation to article 2 of CEDAW, the delegation of Lesotho stated that Lesotho was moving step by step towards lifting the reservation and that it was ‘bound by its traditions, which were what developed a nation. It added that in order to take people away from those traditions was not easy and involved much dialogue.’ The government said to be engaged in this dialogue.⁹²

As Sally Engle Merry argued, and as it could be seen on the examples presented above, there is a trend to problematize culture. But some States put attention also to the other factors that influence human rights situation. Following examples will illustrate this.

Cote d’Ivoire stated at the plenary that reasons for discrimination, violence against women and the fight against female genital mutilation are to be found in: social and cultural obstacles; low levels of awareness among the population; low level of economic empowerment among women; low level of women’s representation in elected office and public appointments; insufficient awareness about women’s rights among the relevant actors; and low literacy rates among women.⁹³ Furthermore, also Ethiopian delegation specified that legal and policy measures were introduced to rectify the deep-rooted political, economic and cultural bias against women.⁹⁴

Egypt stated in its National Report that challenges in regard to human rights are: various form of terrorism; global financial, economic and food crisis; lack of human rights culture; lack of education continues to hamper efforts to disseminate a human rights culture and to raise awareness of human rights; the fact that approximately one quarter of the population is illiterate. In that connection it was also added that, ‘practices derived from certain customs and traditions continue to pose challenges for efforts to promote a human rights culture among certain groups and in certain parts of

⁹¹ A/HRC/26/13, 7 April 2014, Para.13.

⁹² A/HRC/29/9, 13 April 2015, Para.107.

⁹³ A/HRC/13/56, 8 February 2011, Para.54.

⁹⁴ A/HRC/13/17, 4 January 2010, Para.12.

the country’.⁹⁵

The above presented examples showed how culture is perceived as something negative, however, concept of culture was also positively portrayed. This has already been showed in the above example of Egypt’s statement in its National report. The following examples further illustrate this.

The delegation of Burkina Faso said that a national strategy to promote a culture of peace and tolerance had been adopted with the aim of promoting peaceful coexistence between communities and religions.⁹⁶ Furthermore, Ghana made a following recommendation to Cote d’Ivoire at its 1st review: ‘Within the context of incorporating the values of the culture of peace in public and private education, include actions to eliminate violence in schools and to address the special needs of children affected by conflict.’⁹⁷

Moreover, the concept of human rights as a culture and subsequently that the culture is being made also at the international human rights settings, is, to the certain extend, acknowledged by the States. The following examples demonstrate this: During Egypt’s 1st cycle, Lao People’s Democratic Republic stated that it acknowledged progress made in promoting human rights culture.⁹⁸ The representative of Cameroon expressed support for projects likely to significantly impact the human rights culture in Cameroon.⁹⁹ Furthermore, at Djibouti’s 1st review, Morocco recommended to

‘Consolidate and enhance its progress achieved for the promotion of civil and political rights, notably in the areas of freedom of expression, freedom of the media and the dissemination of a human rights culture.’¹⁰⁰

⁹⁵ A/HRC/WG.6/7/EGY/1, 16 November 2009, Para.23

⁹⁶ A/HRC/10/80, 7 January 2009, Para. 21

⁹⁷ A/HRC/13/9, 4 January 2010, Para.99.

⁹⁸ A/HRC/14/17, 26 March 2010, Para.47.

⁹⁹ A/HRC/11/21, 12 October 2009, Para.74.

¹⁰⁰ A/HRC/11/16, 5 October 2009, Para.67.

Moreover, at Mauritius's 2nd review it was said that ‘educating the population on human rights at all levels and nurturing a culture of human rights remains a priority.’ Human rights as culture were mostly used in a relation to the need of its dissemination.¹⁰¹ Despite this implicit acknowledgment by the States that culture is not something static, when States referred to culture in respect to other issues it was perceived as something that is fixed.

In conclusion, the term ‘harmful traditional practices’ (also cultural practices, harmful traditional practices, discriminatory practices, and negative cultural practices), is being applied for various different human rights issues. Besides female genital mutilation, the term(s) is /are being used for the following issues: polygamy, *trokosi*, *levirate*, *sororate*, child, early and forced marriage, people accused of sorcery and albinism.

All in all, I see the term to be problematic problematic, since it tends to problematize the culture. Furthermore, in general, ‘harmful traditional practices’ are being overwhelmingly argued as reason for women’s and children’s rights violations. It is perceived as something that needs to be fought against. Botswana and the Republic of Congo denied the existence of harmful traditional practices in their countries.

4.1.1. Female Genital Mutilation (FGM)

The practice attracted major attention and criticism in the global North. It is defined by WHO, UNICEF and the UNFPA as “all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.”¹⁰²

The FGM, also termed as Female Genital Modification, Female Genital Cutting or excision, is mainly associated with and practiced in Africa, where the practice exists in 28 countries, although documented also in a few Middle East countries and in Asia.

¹⁰¹ A/HRC/25/8, 26 December 2013, Para.9.

¹⁰² WHO: Classification of Female Genitale Mutilation.2015,

<http://www.who.int/reproductivehealth/topics/fgm/overview/en/>, (accessed 29.07.2015)

Countries with very high prevalence rates are, for example: 98% in Somalia, 96% in Guinea, 93% Djibouti, 91% Egypt and Sierra Leone, 89% in Eritrea and northern Sudan, and 85% in Mali. Many African countries have outlawed or are in the process of outlawing the practice. FGM is criminalized in eighteen African countries: Benin, Burkina Faso, Central African Republic, Chad, Côte D'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Ghana, Guinea, Kenya, Mauritania, Niger, Senegal, South Africa, Tanzania, and Togo.¹⁰³

According to the United Nations Population Fund (UNFPA) it is practiced in the following African countries: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Cote D'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Ethiopia, Eritrea, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda and Zambia.¹⁰⁴ All these countries have been analyzed.

Benin

1st Cycle: The UPR delegation of Benin said that on the issue of FGM, a law was voted on in 2003 to ban this practice and various measures were taken, with the aim to eradicate this customary practice.¹⁰⁵ Recommendations regarding elimination of FGM were made by: the UK, Canada, and Mauritania.¹⁰⁶

2nd Cycle: With regard to measures taken to combat female genital mutilation, the delegation noted that the legislation in force in Benin punished all forms of FGM. Furthermore, the delegation explained that in order to effectively combat the practice, information and awareness-raising sessions were regularly organized by state and civil society in order to better protect girls' health.¹⁰⁷ Recommendations regarding

¹⁰³ Center for Reproductive Rights. FGM. 2015.
<http://www.reproductiverights.org/document/female-genital-mutilation-fgm-legal-prohibitions-worldwide>. (accessed 15.7.2015)

¹⁰⁴ UNFPA, FGM: Frequently asked questions. 2015.
http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#where_practiced (accessed 15.7.2015)

¹⁰⁵ A/HRC/8/39, 28 May, 2008, Para. 31.

¹⁰⁶ A/HRC/8/39, 28 May, 2008, Para. 56.

¹⁰⁷ A/HRC/22/9, 11 December, 2012, Para. 62.

FGM were made by: Slovenia, Germany, Italy, Spain, Switzerland, and Belgium.¹⁰⁸

Burkina Faso

1st Cycle: The delegation informed that FGM was punishable by law and that the efforts were undertaken, in cooperation with technical and financial partners, NGOs and other associations.¹⁰⁹ Nigeria noted the progress made in the fight against FGM. The Democratic Republic of the Congo encouraged Burkina Faso to pursue measures to counter female genital mutilation.¹¹⁰ The following countries recommended continuing efforts to eradicate FGM: Luxembourg, Netherlands, Albania, Brazil, Australia, Algeria and the UK.¹¹¹

Cameroon

2nd Cycle: The delegation reported that the phenomenon was restricted to the far north, north and southwest parts of the country. In total, it stated that 1.4 percent of the population was mutilated in Cameroon. It listed several actions carried out to fight against FGM.¹¹² Furthermore, it also stressed that it shared the concerns expressed by speakers in relation to women's rights. Despite achievements, the delegation recognized that FGM was an unacceptable human tragedy arising from both cultural and economic factors, that awareness-raising was necessary to end such practices and that those that engage in them should be given the opportunity to retrain.¹¹³ Recommendations were made by: Spain, Cypress, UK, Uruguay, Germany, Hungary, Haiti, Belgium, Burundi, Chile, Guatemala, and Senegal, Uruguay, France, South Africa, China, Ethiopia, and Rwanda.¹¹⁴

Central African Republic

1st Cycle: The delegation stated that FGM was not practiced on its territory and was prohibited by law. However, cultural beliefs, practices and the interests of

¹⁰⁸ A/HRC/10/80, 7 January 2009, Para. 108.

¹⁰⁹ A/HRC/10/80, 7 January 2009, Paras. 24-63.

¹¹⁰ A/HRC/10/80, 7 January 2009, Paras. 71-85.

¹¹¹ A/HRC/10/80, 7 January 2009, Para.98.

¹¹² A/HRC/24/15, 5 July 2013, Para.31.

¹¹³ A/HRC/24/15, 5 July 2013, Para. 89.

¹¹⁴ Ibid.

practitioners are seen to challenge its implementation.¹¹⁵ Recommendations regarding eradication of FGM were made by: Italy, Portugal, Spain, Sweden, Italy, and Azerbaijan.¹¹⁶

Chad

1st Cycle: Ghana asked for information on measures aiming to eliminate discriminatory practices against women and girls.¹¹⁷ Regarding the implementation of the national legislation prohibiting FGM and/or implement further measures to eradicate FGM following states have made recommendations: Sweden, The Czech Republic, Slovenia, Spain, Italy, Austria; Netherlands, Tunisia, Ghana, Italy, and Tunisia.¹¹⁸

2nd Cycle: The delegation stated that FGM was practiced only by a few ethnic groups in Chad, and that the government wished to introduce penalties in its national legislation in order to comply with its international obligations.¹¹⁹ Furthermore, it stressed that FGM is banned in Chad, as is early marriage, forced marriage, domestic violence and sexual abuse. In its national report it was stated that difficulties and constraints were (among others) deriving from traditional and customary practices.¹²⁰ Recommendations were made by Costa Rica, Democratic Republic of Congo, Comoros, Ethiopia, and Sierra Leone.¹²¹

Côte D'Ivoire

1st Cycle: Côte d'Ivoire stressed that FGM was a punishable offence and that efforts were being made to raise public awareness of the issue of excision.¹²² It added that the government supports NGO initiatives.¹²³ The Democratic Republic of the Congo

¹¹⁵ A/HRC/12/50, 25 February 2010, Para 221.

¹¹⁶ A/HRC/12/2, 4 June 2009, Paras.74-75.

¹¹⁷ A/HRC/WG.6/5/TCD/1, 16 February 2009, Para. 71.

¹¹⁸ A/HRC/12/5*, 5 October 2009, Para.82.

¹¹⁹ A/HRC/25/14, 3 January 2013, Para.14 .

¹²⁰ A/HRC/WG.6/17/TCD/1, 17 July 2013, Para. 43.

¹²¹ A/HRC/25/14, 3 January 2013, Para.110.

¹²² A/HRC/13/9, 4 January 2010, Para.46.

¹²³ A/HRC/WG.6/6/CIV/,13 September 2009, Paras. 72-117.

supported efforts made in fighting female genital mutilation. Recommendations explicitly regarding the elimination of FGM were made by Angola, Egypt, Luxembourg, Argentina, and Senegal.¹²⁴

Djibouti

2nd Cycle: With regard to the practice of FGM, the delegation informed that legislation had been promulgated in 2009 and advocacy and awareness-raising campaigns in recent years reduced the number of people being circumcised.¹²⁵ The government stated that the issue of FGM and gender violence is a major concern for the government and for the whole national community.¹²⁶ Recommendations were made by South Africa, France, Netherlands, Australia, Canada, Spain, Ecuador, Uruguay, Germany, USA, Ghana, Italy, UK, Slovakia, and Cape Verde.¹²⁷

Egypt

1st Cycle: Egypt reported that it was able to take significant steps towards eradicating FGM including by criminalizing it and that it was committed to eradicating this practice.¹²⁸ Bhutan made a following recommendation: “Continue its efforts to eradicate female genital mutilation and strengthen implementation of its laws and administrative decisions criminalising its perpetrators.”¹²⁹

2nd Cycle: Despite actions made, the government reported that women still face several challenges, particularly social and cultural difficulties that were negatively reinforced during the rule of the Muslim Brotherhood, which attempted to change or abolish many acts of legislation that had been adopted in favour of women.¹³⁰ Recommendations were made by Serbia, Burkina Faso, and Sierra Leone¹³¹

Eritrea

1st Cycle: On the matter of FGM, the delegation referred to the extensive campaign by

¹²⁴ A/HRC/13/9, 4 January 2010, Para.99.

¹²⁵ A/HRC/24/10, 8 July 2013, Paras.25-26.

¹²⁶ A/HRC/WG.6/16/DJI/1, 4 February 2013, Para 43.

¹²⁷ A/HRC/24/10, 8 July 2013, Paras.143-144.

¹²⁸ A/HRC/14/17, 26 March 2010, Paras.13-77.

¹²⁹ A/HRC/14/17, 26 March 2010, Para.95.

¹³⁰ A/HRC/28/16, 24 December 2014, Para.79.

¹³¹ A/HRC/28/16, 24 December 2014, Para.166.

the government to educate the public about this issue. It pointed out that, while the practice was rooted in a very traditional culture, and it will take time to eliminate it, the government expressed commitment to address this issue. Furthermore, the government claimed that FGM is a deeply rooted and widely practiced tradition in many countries, including developed ones. The government stated that despite the cultural justifications, FGM practices violate basic human rights principles. Prior to enacting the law banning FGM, the government conducted an extensive campaign to demystify the concept and persuade citizens and communities about the health risks of FGM and to invoke the rights of women.¹³² Following countries commended/encouraged further measures regarding FGM: Algeria, Turkey, Australia, France, Slovenia, Argentina, Azerbaijan, China, Canada, Austria, and Algeria.¹³³

2nd Cycle: The Government informed that it outlawed the practice and an extensive campaign was ongoing. However, challenges still remained in addressing that problem, including reaching nomadic populations and changing behavior through knowledge and awareness.¹³⁴ Additionally, the delegation emphasized that this practice has been deeply rooted in the cultural and religious beliefs of some communities and due to it a significant number of young girls had been affected.¹³⁵ Recommendations were made by Republic of Korea, Chile, Croatia, France, Ireland, Uruguay, Slovenia, and Argentina.¹³⁶

Ethiopia

1st Cycle: The Government expressed regret that FGM is one of the most common forms of violence against women and girls in the country and informed that the measures have been taken against these practices by undertaking a legislative reform and by condemning these acts. It stressed that the acceptance rate of the practice by the community has now dropped from 60% to 31%.¹³⁷

¹³² A/HRC/13/2, 4 January 2010, Para.72.

¹³³ A/HRC/13/2 4 January 2010, Paras. 26-79.

¹³⁴ A/HRC/26/13, 7 April 2014, Para.21.

¹³⁵ A/HRC/26/13, 7 April 2014, Paras.21-88.

¹³⁶ A/HRC/26/13, 7 April 2014, Para.122.

¹³⁷ A/HRC/WG.6/6/ETH/1, 4 August 2009, Para. 88.

2nd Cycle: The delegation reported on the various measures taken to improve the welfare of children and the measures taken to promote and protect the rights of women as well as to combat harmful traditional practices, including FGM, and child, early and forced marriage.¹³⁸ Recommendations were made by Djibouti, Italy, Japan, Myanmar, Rwanda, Spain, Belgium, Cyprus, and Honduras.¹³⁹

Gambia

2nd Cycle: The Government acknowledged that FGM was still being practiced in the country and that ‘this harmful practice’ was being addressed by the government and civil society organizations through community empowerment programmes. The delegation noted the calls for legislation to eliminate FGM. It highlighted that, given the strong cultural backgrounds and traditional practices, the authorities decided to carry out public awareness campaigns to educate people on the effects of FGM.¹⁴⁰ Recommendations were made by: Slovenia, Germany, Ghana, India, Canada, Maldives, Italy, Montenegro, Angola, Australia, Brazil, Chile, Ethiopia, and Rwanda.¹⁴¹

Ghana

2nd Cycle: Recommendations regarding efforts to fight/eliminate FGM were made by Italy, Senegal, Uganda, Germany, Greece, Republic of Korea, Uruguay, Canada.¹⁴² FGM: Portugal, Norway, Brazil, Switzerland, and Uruguay.¹⁴³

Guinea

2nd Cycle: With regard to FGM, the delegation admitted that it was a real problem and that the government was tackling it with determination, although cultural resistance and a number of traditional institutions are an obstacle. It added that traditional institutions often influence society more than the state.¹⁴⁴ The delegation emphasized

¹³⁸ A/HRC/27/14, 7 July 2014, Paras. 15.

¹³⁹ A/HRC/27/14, 7 July 2014, Paras. 155-157.

¹⁴⁰ A/HRC/28/6, 24 December 2014, Paras. 21-98.

¹⁴¹ A/HRC/28/6, 24 December 2014, Para. 109.

¹⁴² A/HRC/22/6, 13 December 2012, Para.125.

¹⁴³ A/HRC/22/6, 13 December 2012, Para.125.

¹⁴⁴ A/HRC/29/6, 10 April 2012, Para.188.

that the practice was deeply rooted in Guinean society. Recommendations were made by the United States, Argentina, Chile, Comoros, Czech Republic, Slovenia, South Africa, Thailand, Togo, Ethiopia, France, Ghana, Ireland, Italy, Netherlands, Norway, Portugal, and Republic of Korea.¹⁴⁵

Guinea-Bissau

1st Cycle: The delegation informed that a bill to criminalize FGM and that will “put an end to this reprehensible practice” is in the preparatory stages.¹⁴⁶ The delegation also stated that practice is motivated by socio-cultural or any other non-therapeutic consideration and reported that young girls in Guinea-Bissau used to undergo excision after turning the age of 7, but more recently it has become difficult to monitor the age at which the ritual is performed. According to the delegation this happened because the practice is widely condemned and many families are now circumcising their children immediately after birth. The delegation acknowledged that practice constitutes a serious violation of the rights of the child. Recommendations regarding FGM were made by: France, Germany, Israel, Brazil, Canada, Egypt, Mexico, Argentina, Angola, Norway, Slovenia, the United States, Senegal, France, Norway, and Israel.¹⁴⁷

2nd Cycle: The Government informed that it continued its effort to raise public awareness after adopting the legislation on female genital mutilation.¹⁴⁸ Germany, the United States, Australia, Chile, Ireland, Italy, Italy, Mexico, Spain, Djibouti, United Kingdom, Portugal, Argentina, and France made recommendations regarding FGM.¹⁴⁹

Kenya

1st Cycle: The delegation stated that the practice of FGM was on the decline, although wide disparities among geographic areas were witnessed in that regard.¹⁵⁰

¹⁴⁵ A/HRC/29/6, 10 April 2012, Paras.144-114.

¹⁴⁶ A/HRC/15/10, 16 June 2010

¹⁴⁷ A/HRC/15/10, 16 June 2010, Paras.57-65.

¹⁴⁸ A/HRC/29/12, 13 April 2015, Para.38.

¹⁴⁹ A/HRC/29/12, 13 April 2015, Para.96.

¹⁵⁰ A/HRC/15/8, 17 June 2010, Para.47.

2nd Cycle: The delegation stressed that the enactment of the Prohibition of Female Genital Mutilation Act 2011, aimed at preventing and punishing the practice, was a key milestone. It further added that FGM is being practiced only by a few communities in the country.¹⁵¹ Recommendations were made by FGM Estonia, Timor-Leste, Togo, Angola, Austria, Canada, Colombia, Ethiopia, Ghana, Lithuania, and Poland.¹⁵²

Mali

1st Cycle: In order to combat excision, family violence and child labour the government adopted programmes which, it claimed, were producing encouraging results. Malian policy on FGM centred on awareness raising and education and was based on the belief that it was essential to obtain widespread public support for the eradication of such practices before adopting legislation. The delegation stressed again that the country preferred awareness raising and education to the adoption of punitive measures.¹⁵³ Following countries recommended enacting legislation prohibiting FGM: Japan, Switzerland, Ireland, The Czech Republic, The Netherlands, Italy, Canada, Netherlands, Japan, Ireland, Czech Republic, Switzerland. Mexico, Portugal, Canada; and Luxembourg.¹⁵⁴

2nd Cycle: The delegation said that it is implementing the National Programme to Fight Excision and the national policy and action plan for the elimination of the practice of excision. In response to the question about the chief obstacles to the implementation of the agreement to abandon the practice of excision in the communities that had signed it, the delegation said that the sole obstacles were cultural in nature and that many communities had abandoned the practice even without having signed the agreement. The delegation stated that while the development of a legislative text might be indicative of political will it would not itself put an end to the practice.¹⁵⁵ Recommendations were made by: Paraguay, Djibouti, Holy See, Switzerland, Germany, Czech Republic, Hungary, Italy,

¹⁵¹ A/HRC/29/10, 26 March 2015, Para.14.

¹⁵² A/HRC/29/10, 26 March 2015, Para.142.

¹⁵³ A/HRC/8/50, 13 June 2008, Paras. 30-54.

¹⁵⁴ A/HRC/8/50, 13 June 2008, Paras. 20-57.

¹⁵⁵ A/HRC/23/6, 12 March 2013, Paras. 49-57.

Montenegro, Netherlands, and Portugal.¹⁵⁶

Mauritania

1st Cycle: The Government reported that it had drawn up standard operating procedures for cases of gender-based violence, formulated a policy to the practice, and was in the process of developing a national policy to combat gender-based violence.¹⁵⁷ Recommendations were made by Senegal, Argentina, Mexico, Poland, Norway, Burkina Faso, Germany, Ghana, Ecuador, Brazil, Israel, Argentina, Ghana, Brazil, and Israel.¹⁵⁸

Niger

1st Cycle: The delegation informed that a law criminalizing the practice has been adopted and that the State and non-governmental organizations have implemented programmes and conducted awareness-raising and training activities in order to combat the practice.¹⁵⁹ Recommendations were made by Slovenia, Norway, Poland, Italy, Germany, Belgium, Ecuador, and Spain.¹⁶⁰

Nigeria

1st Cycle: The National Consultative Forum stated that in spite of government's programme and the efforts of several national and international NGOs, there were still parts of Nigeria that engaged in some harmful traditional practices, like FGM. Government said it is prepared to work closely with all stakeholders in order to achieve the eradication of this practices.¹⁶¹ The following States made recommendations: Italy, Austria, and Norway, Ukraine, Qatar, and Norway.¹⁶²

2nd Cycle: Recommendations regarding FGM and harmful traditional practices were made by: Ireland, Republic of Korea, France, Austria, Japan, Netherlands, Italy, Holy

¹⁵⁶ A/HRC/23/6, 12 March 2013, Paras. 110-112.

¹⁵⁷ A/HRC/16/17, 4 January 2011, Para. 49.

¹⁵⁸ A/HRC/16/17, 4 January 2011, Paras. 90-92.

¹⁵⁹ A/HRC/17/15, 25 March 2011, Para.48.

¹⁶⁰ A/HRC/17/15, 25 March 2011, Para.76.

¹⁶¹ A/HRC/WG.6/17/NGA/1, 30 July 2013, Para.77.

¹⁶² A/HRC/11/26*, 5 October 2009, Para.103.

See, Costa Rica, Paraguay, DRC, Norway, Slovenia, and Slovakia.¹⁶³ Additionally, Democratic Republic of the Congo stated at the review that the national report makes it clear that harmful traditional practices are deeply rooted in the culture and encouraged the government to intensify its efforts in the field of human rights education to eliminate this problem.¹⁶⁴

Senegal

1st Cycle: The Government informed that people have recently been sentenced due to practicing FGM. It emphasized that this was done despite public opposition.¹⁶⁵ Recommendations were made by South Africa, Botswana, UK, Luxembourg, Ireland, and Switzerland.¹⁶⁶

2nd Cycle: The delegation informed that new policies had been implemented to combat FGM and that several regions renounced the practice. It further reported that, of around 5,000 communities, more than 4,500 abandoned practicing excision and that the efforts were now focused on the remaining 500 communities.¹⁶⁷ Recommendations were made by Cote d'Ivoire, Algeria, Gabon, Angola, Argentina, Ecuador, Brazil, Paraguay, Burkina Faso, and Rwanda.¹⁶⁸

Sierra Leone

1st Cycle: On the protection of women and girls, the Government stated that it intended to press the issue of curtailing and eventually abolishing “deeply- rooted harmful traditional practices such as early marriage and FGM”.¹⁶⁹ The Government expressed commitment to the elimination of the practice.¹⁷⁰ The delegation of Sierra Leone pointed out that the Nigerian government needed to redouble its efforts for the elimination of the practice of FGM. Recommendations were made by France, Costa

¹⁶³ A/HRC/25/6, 16 December 2013, Para.135.

¹⁶⁴ A/HRC/11/26*, 5 October 2009, Para.135.

¹⁶⁵ A/HRC/11/37, 16 October 2009, Para 511.

¹⁶⁶ A/HRC/11/24*, 5 October 2009, Para.97.

¹⁶⁷ A/HRC/25/4, 11 December, 2013, Paras. 7-57.

¹⁶⁸ A/HRC/25/4, 11 December, 2013, Para.124.

¹⁶⁹ A/HRC/18/10, 11 July 2011, Para.10.

¹⁷⁰ A/HRC/18/10, 11 July 2011, Para.58.

Rica, Senegal, Slovenia, Sweden, Austria, Japan, Canada, Germany, Switzerland, Portugal, United Kingdom, Italy, Argentina, and Slovenia.¹⁷¹

Somalia

1st Cycle: The delegation said that the Somali Penal Code covers “hurt”, “grievously hurt” and “very grievously hurt” and that Islam also prohibits FGM. It added that despite this FGM is very widespread in Somalia and almost all Somali women and girls are subjected to this “damaging practice”¹⁷². Somalia also stated that it was considering the inclusion of a specific crime in the Penal Code regarding FGM.¹⁷³

Recommendations were made by Argentina, Canada, Mexico, France, Italy, Norway, Canada, Netherlands, Portugal, Australia, Islamic Republic of Iran, Belgium, Costa Rica, Uruguay, Spain, and Japan.¹⁷⁴

Uganda

1st Cycle: The delegation said that in order to control the practice of FGM, parliament passed the Prevention of Female Genital Mutilation Act 2009. Recommendations were made by France, Poland, Slovenia, Argentina, Spain, Japan, and Canada.¹⁷⁵

Tanzania

1st Cycle: The delegation of Tanzania said that it found itself constrained by several factors, relating to traditions, resources and calamities, both natural and man-made. It further added that challenges included the killing of persons with albinism, FGM, maternal and child mortality and the quality of education. Delegation emphasized that the Penal Code criminalized FGM, and that also the national and local policies provided important opportunities to address gender-based violence.¹⁷⁶

Recommendations were made by Egypt, Argentina, Brazil, Cape Verde, Uruguay, Hungary, Netherlands, Australia, France, Poland, Denmark, Ghana, Canada, Brazil,

¹⁷¹ A/HRC/18/10, 11 July 2011, Para.80.

¹⁷² A/HRC/18/6, 11 July 2011, Para.19.

¹⁷³ A/HRC/18/6, 11 July 2011, Para.69.

¹⁷⁴ A/HRC/18/6, 11 July 2011, Para.98.

¹⁷⁵ A/HRC/19/16, 22 December 2011, Para. 111.

¹⁷⁶ A/HRC/19/16, 22 December 2011, Paras. 11-12.

Cape Verde, France, Poland, and Poland.¹⁷⁷

Togo

1st Cycle: Togo delegation said that it adopted a law on FGM in 1998 as well as a national policy on gender equality and equity and the related plan of action in 2011.¹⁷⁸

Furthermore, it stated that awareness-raising activities were being carried out and that the practice became less common. Recommendations were made by Republic of Moldova, Mexico, Uruguay, Argentina, Slovakia, and Cape Verde, Australia, Uruguay, Argentina, and Slovakia.¹⁷⁹

In conclusion, majority of states expressed condemnation of the practice very explicitly. The government representatives perceived the practice as something that has to be eradicated. Several states also explicitly stated that the practice is a human rights violation. Cultural arguments were the most common obstacle for the eradication of the practice. Once, also economic factors were acknowledged. Several African states made recommendations.

4.1.2. People Accused of Sorcery

Every year, thousands of people, the vast majority are women and children are accused as witches, often abused, cast out of their families and communities and in many cases murdered. Also families of the people accused of witchcraft are being discriminated against.¹⁸⁰

A report for the United Nations High Commissioner for Refugees, “Witchcraft Allegations, Refugee Protection and Human Rights”, says the abuse of children accused of witchcraft is common in countries that have suffered years of conflict where traditional social structures have disappeared and where child soldiers have often emerged as a threat. And in countries where sudden deaths from diseases such as AIDS are common, where there are few if any prospects of a better life, and where

¹⁷⁷ A/HRC/19/16, 22 December 2011, Paras. 85-87.

¹⁷⁸ A/HRC/19/1014, December 2011, Paras. 26-67.

¹⁷⁹ A/HRC/19/1014, December 2011, Para. 100.

¹⁸⁰ OHCHR, *Witches in 21st Century*, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/Witches21stCentury.aspx>. (accessed 15 June 2015)

revivalist churches confirm signs of witchcraft, children are often accused of supernatural powers and persecuted.¹⁸¹

Angola

1st Cycle: Angola stated that the issue of children involved in “witchcraft” was extremely complex, as it related to accusations made by communities against children in those same communities. The Government reported that the measures were taken against e.g., by establishing a national commission involving various participants, including the populations concerned.¹⁸² The issue of witchcraft was explicitly raised by Czech Republic and Italy, which made recommendations.¹⁸³

2nd Cycle: The delegation said that the accusation of children witchcraft is “a troubling phenomenon that arises especially in rural areas in recent years” and that the government has been working in partnership with UNICEF and civil society organisations to eliminate the practice. This was done by awareness campaigns providing psychological support and, in some cases, a foster family for the victims.¹⁸⁴

Benin

1st Cycle: The delegation stressed that measures have been taken to address the issue and to implement recommendations made by the Committee on the Rights of the Child¹⁸⁵.

2nd Cycle: Regarding so-called “witch children”, the delegation pointed out that specific measures were currently being considered with a view to eradicating the phenomenon e.g., a national forum on the issue has been held.¹⁸⁶ Recommendations

¹⁸¹ Ibid.

¹⁸² A/HRC/14/11, 24 March, 2010, Para. 51.

¹⁸³ A/HRC/14/11, 24 March, 2010, Para.87.

¹⁸⁴ A/HRC/28/11, 5 December 2014, Paras.87-88.

¹⁸⁵ A/HRC/8/39, 28 May, 2008, Para. 28.

¹⁸⁶ A/HRC/22/9, 11 December, 2012, Paras. 17-61.

were made by Thailand, Mexico, and Chile, Holy See, Romania, Rwanda, United Kingdom of Great Britain and Northern Ireland, and Uruguay.¹⁸⁷

Burkina Faso

1st Cycle: The delegation stated that ‘despite the pervasiveness of the modern state, the lives of the vast majority of citizens are governed by ancestral tradition and while these traditional rules generally underlie social cohesion and are therefore people’s first point of reference, some of them are incompatible with officially guaranteed rights, like in the case of witchcraft’. It added that, although these practices have become less common in the past few years they still exist and constitute serious obstacles to the effective attainment of certain rights.¹⁸⁸

2nd Cycle: Burkina Faso said that it is experiencing some difficulties and constraints that are impeding country’s human rights situation. It added that ‘from a socio-cultural point of view, these include the persistence of harmful traditional practices including’, *inter alia*, the social exclusion of persons accused of witchcraft.¹⁸⁹

Central African Republic

1st Cycle: The delegation said that it is a cultural problem and that decriminalizing it would be impossible, since that would open the way for people to take the law into their own hands. It added that action could be taken on the severity of the penalties provided for by the Criminal Code.¹⁹⁰ Recommendations to delete the crime of witchcraft from the penal code were made by Czech Republic, France, United Kingdom, and Czech Republic.¹⁹¹

2nd Cycle: The delegation reported the steps taken to develop new strategies to eradicate the problem e.g.: a national forum on ritual infanticide was held in Benin and that the forum revealed that the practice is in decline, though pockets. It further

¹⁸⁷ A/HRC/22/9, 11 December 2012, Para.108.

¹⁸⁸ A/HRC/WG.6/3/BFA/1, 21 August 2008, Para.98.

¹⁸⁹ A/HRC/WG.6/16/BFA/1, 6 February 2013, Para.87.

¹⁹⁰ A/HRC/12/2 4 June 2009, Para. 46.

¹⁹¹ A/HRC/12/2, 4 June 2009, Paras. 74-75.

stated that also representatives of State bodies, NGOs, local elected officials, and traditional and religious leaders have been included in discussions on new strategies that could be developed to eradicate the killing of “witch children” in the north of Benin.¹⁹²

Ghana

1st Cycle: The Democratic Republic of the Congo requested information on witch camps. The delegation of Ghana replied that the belief in witchcraft is strong in many areas and explained that some rural women are banished from their villages on suspicion of witchcraft. These banished women live in witch camps and that in some cases some of these women are lynched or assaulted.¹⁹³

4.1.3. People with Albinism

Albinism is a rare, genetically inherited condition which occurs worldwide regardless of ethnicity or gender. Most commonly it results in the lack of melanin pigment in the hair, skin and eyes.¹⁹⁴

People with albinism face multiple forms of discrimination. Children with albinism are often abandoned or are the victims of infanticide. Furthermore, their mothers are often rejected by their husbands and families. Body parts of people with albinism are being used for “witchcraft rituals”, since some believe that they are magical being or ghosts. They are not being only mutilated, but can be also killed. The perpetrators mostly enjoy impunity.¹⁹⁵

Burundi

¹⁹² A/HRC/WG.6/17/CAF/1, 13 July 2013, Para. 72.

¹⁹³ A/HRC/8/36 29 May 2008, Para.28.

¹⁹⁴ OHCHR. *People with Albinism*. 2015, <http://albinism.ohchr.org/human-rights-dimension-of-albinism.html>, (accessed 13 July 2015)

¹⁹⁵ Ibid.

1st Cycle: The delegation stated that the murder of people with albinism was a tragedy based on superstition and that efforts were being made to educate the population, particularly in the regions bordering the United Republic of Tanzania.¹⁹⁶

2nd Cycle: The Burundi delegation stated that the government had taken measures to protect people with albinism, and further claimed that perpetrators are harshly punished.¹⁹⁷ Recommendations regarding the persons with albinism were made by Uruguay, Cote d'Ivoire, and Sri Lanka.¹⁹⁸

Gabon

2nd Cycle: Gabon stressed that ritual crimes were not recognized as offences in Gabon's criminal legislation.¹⁹⁹ Recommendations regarding ritual murders and crimes were made by Algeria, Belgium, Czech Republic, Germany, Uganda, and Belgium.²⁰⁰

For the both phenomena, people accused of witchcraft and people with albinism, representatives of States took a clear position. Representatives reported about the measures taken against and some also explicitly stated that it is a human rights violation. Furthermore, it was also presented as something that belongs to a rural areas. It has again been stated that it is a cultural problem.

4.2. Sexual Orientation

In 1789, homosexuality was illegal in 126 countries. Since then an increasing number of countries decriminalized same-sex relationships.²⁰¹ Despite this trend towards decriminalization, some 77 countries still have laws that criminalize private,

¹⁹⁶ A/HRC/10/71 8 January 2009, Para.43.

¹⁹⁷ A/HRC/23/9, 25 March 2013, Para.116.

¹⁹⁸ A/HRC/23/9, 25 March 2013, Para.126.

¹⁹⁹ A/HRC/22/5, 13 December 2012, Para.50

²⁰⁰ A/HRC/22/5, 13 December 2012, Para.101

²⁰¹ BBC News, Illegal to be Gay, 2015, <http://www.bbc.com/news/world-25927595> (accessed 12 July 2014)

consensual same-sex relationships and expose individuals to the risk of arrest, prosecution, imprisonment and, in at least five countries²⁰², even the death penalty.²⁰³ Additionally, some states have simultaneously laws that punish and protect and in some countries different regions have different laws.²⁰⁴

In Africa, situation is upsetting. 37 African nations even criminalized same-sex relationships and 4 countries allow for the death penalty in all or some parts of the country.²⁰⁵ And this figures present only country's legal status, and not much about the peoples' attitudes. Even South Africa, the first and only country in Africa that legalized same-sex marriage, attract recent international attention due to the challenge of homosexual women being raped with an attempt 'to cure' them.

Angola

1st Cycle: The delegation stated that Angola's legislation only recognized heterosexual and monogamous marriages and that its national law does not criminalized homosexuality.²⁰⁶

2nd Cycle: In the second cycle, the Government reiterated that they are no cases of legal prohibition or discrimination on the basis of sexual orientation.²⁰⁷

Benin

1st Cycle: Several states called upon Benin to decriminalize homosexual relations between consenting adults. The delegation of Benin said that the phenomenon is marginal and moreover that 'families would never allow their children to be taken to court for such an offence, so no criminal ruling has ever been rendered, despite being

²⁰² Parts of Nigeria, Mauritania, Sudan and parts of Somalia. See: <http://www.bbc.com/news/world-25927595>

²⁰³ OHCHR. Combating discrimination. 2015.

<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx> (accessed 12 July 2015)

²⁰⁴ BBC News, Illegal to be Gay, 2015, <http://www.bbc.com/news/world-25927595> (accessed 12 July 2014)

²⁰⁵ BBC News, Illegal to be Gay, 2015, <http://www.bbc.com/news/world-25927595> (accessed 12.7.2014)

²⁰⁶ A/HRC/14/L.10, 18 June 2010, Para.475

²⁰⁷ A/HRC/WG.6/20/AGO/1, 4 August 2014, Para.143.

provided for by law'.²⁰⁸ However, Benin explicitly committed itself to take all necessary measures to make human rights effective and universal.²⁰⁹

2nd Cycle: Recommendations on the basis of sexual orientation and gender identity were made by: Canada, Germany, Norway, Argentina, and The United States.²¹⁰

Botswana

1st Cycle: The delegation confirmed that the law in Botswana criminalizes same-sex sexual activities.²¹¹ Botswana stated that criminalization of same-sex sexual activity and practices is a reflection of the moral and religious norms of the society. However, it added that there was no known case of discrimination based on sexual orientation.²¹² Recommendations regarding discrimination on the basis of sexual orientation were made by France, Spain, Netherlands, Slovakia, Czech Republic, and Canada.²¹³

2nd Cycle: Botswana informed that 'as a predominantly Christian nation, it has not reached a stage in which it can accept same sex activities'. Furthermore, it stated that prior to changing laws, educational campaigns on this issue have to be conducted in order to be accepted by the people.²¹⁴ Recommendations were made by Australia, Canada, Czech Republic, Argentina, Netherlands, Spain, Slovakia and France.²¹⁵

Burundi

²⁰⁸ A/HRC/8/39 of 28 May 2008, Para. 11-29.

²⁰⁹ A/HRC/8/39, 28 May 2008, Para.55.

²¹⁰ A/HRC/22/9, 11 December 2012, Para. 110.

²¹¹ A/HRC/10/69, 13 January 2009, Para.19.

²¹² A/HRC/10/29, 9 November 2009, Para. 270.

²¹³ A/HRC/10/69, 13 January 2009, Para.92.

²¹⁴ A/HRC/23/7/Add.1, 23. May 2013, Para.35.

²¹⁵ A/HRC/23/7, 22 March 2013, Paras. 116-117

1st Cycle: Several states expressed concern against discrimination based on sexual orientation, especially due to criminal sanctions against homosexuality in proposed criminal code revisions. The representative of Burundi clarified that the amendment to the draft of the new criminal code had been adopted by the lower house of Parliament and that it would need to discuss the matter with the country's authorities in order to be able to give further details.²¹⁶

2nd Cycle: With regard to discrimination against homosexuals, the delegation acknowledged that the Criminal Code of 2009 still punishes homosexuality and added that it was in line with the country's customs and values. The delegation asked for the international community's understanding while Burundian society prepared for a change in mentality.²¹⁷

Cabo Verde

1st Cycle: Cape Verde stated that its legislation neither forbids nor punishes sexual relations between persons of the same sex, unless minors are involved and stressed that society is traditionally very tolerant. The Canadian NGO HIV/AIDS Legal Network congratulated the country for accepting recommendations dealing with programmes to combat HIV/AIDS.²¹⁸ Recommendation was made by Sweden.²¹⁹

Cameroon

1st Cycle: It was stated that for the culture of Cameroon, homosexuality was not permitted by society and that the legislation is a reflection and an affirmation of the 'sociological value'.²²⁰ France, and Luxembourg recommended non-discrimination against homosexuals and Argentina, Canada, The Czech Republic, and Luxembourg, Brazil, Mexico recommended abolishing the criminalization of homosexual acts.²²¹

2nd Cycle: Replying to questions concerning homosexuality, the delegation of

²¹⁶ A/HRC/10/71, 8 January 2009, Para. 19-47.

²¹⁷ A/HRC/23/9 of 25 March 2013, Para. 121.

²¹⁸ A/HRC/10/81 12 January 2009, Para.62.

²¹⁹ A/HRC/10/81 12 January 2009, Para.63.

²²⁰ A/HRC/24/15, 5 July 2013, Para.382.

²²¹ A/HRC/11/21*, 12 October 2009, Paras.25-46.

Cameroon noted that its society did not ‘yet accept homosexuality as normal behavior’ and that attitudes would change over time. Furthermore, the representative stressed that article 29 of the Universal Declaration of Human Rights provided that a State could limit a freedom for the purpose of ‘meeting the just requirements of morality, public order and the general welfare in a democratic society’. The delegation recalled that all societies evolved and that also Cameroon should be allowed the opportunity to continue as it wants and that attitudes would change accordingly.²²² Recommendations were made by Spain, Uruguay, Canada, France, Germany, Netherlands, Mexico, Spain, Uruguay, Argentina, Belgium, Czech Republic, The United States, Australia, and Belgium.²²³

Republic of Congo

1st Cycle: With regard to decriminalization of the offence of homosexuality, the Congolese delegation considered the issue to be a cultural one, and added that due to persistent prejudice the status quo remained unchanged.²²⁴ The Czech Republic made a recommendation.²²⁵

Côte d'Ivoire

2nd Cycle: The delegation stated that there is no prohibition under the law of any relations between consenting adults. It added that people’s attitudes are such that they cannot accept official recognition of same-sex relations.²²⁶ Recommendations were made by Switzerland, Netherlands, and Slovenia.²²⁷

Djibouti

1st Cycle: The representative stated that the constitution enshrines a non-discrimination principle and that the Criminal Code penalizes violations of this principle.²²⁸

²²² A/HRC/24/15, 5 July 2013, Paras. 57-129.

²²³ A/HRC/26/11, 7 April 2014, Para.131.

²²⁴ A/HRC/12/6, 5 June 2009, Para.77.

²²⁵ A/HRC/12/6, 5 June 2009, Para.59.

²²⁶ A/HRC/27/6, 7 July 2014, Para.18.

²²⁷ A/HRC/27/6, 7 July 2014, Paras. 128-129.

²²⁸ A/HRC/11/16*, 5 October 2009, Para.13.

Egypt

2nd Cycle: The following recommendation was made by Switzerland: ‘Apply national legislation to individuals without discrimination based on their belonging to a religious minority or on sexual orientation’. The recommendation was rejected.²²⁹

Eritrea

2nd Cycle: The delegation stated that consensual same-sex sexual conduct was ‘against the values and culture of Eritrean society’.²³⁰

Gambia

1st Cycle: With regard to homosexuality and sexual orientation, Gambia emphasized that the president never said that homosexuals should be killed. Furthermore, it stated that the Gambia had cultural values, norms and practices that were different from those of other countries, and explicitly said that it did not recognize sexual orientation as a universal human right. It noted that the law punishes sexual activity between persons of the same sex.²³¹ Recommendations were made by Netherlands, Sweden, Italy, Norway, Canada, United Kingdom, Chile, Argentina, Canada, The United States, United Kingdom, and Norway.²³²

Ghana

2nd Cycle: The delegation emphasized that Ghana does not have a policy of non-equal treatment of its citizens and that the constitution entrenches the fundamental principles of non-discrimination and equality.²³³ Recommendations were made by France, Slovenia, Czech Republic, Belgium, Portugal, Spain, Norway, Netherlands, The United States.²³⁴

Guinea-Bissau

²²⁹ A/HRC/28/16, 24 December 2014, Para.97.

²³⁰ A/HRC/26/13, 7 April 2014, Para.89.

²³¹ A/HRC/14/6, 24 March 2010, Para.63.

²³² A/HRC/14/6, 24 March 2010 Para.100.

²³³ A/HRC/22/6, 13 December 2012, Para.75.

²³⁴ A/HRC/22/6, 13 December 2012, Para. 126

2nd Cycle: Guinea-Bissau indicated that until now the issue had not been the subject of public debate as it had not yet become important enough to be made a priority. It stated that the country faced many other issues that are requiring an urgent attention.²³⁵ Furthermore, it was said that Guinea-Bissau could actually not take steps to decriminalize homosexual relations since such relations were not criminalized under the law and added that the constitution guaranteed that all persons were equal.²³⁶

Kenya

1st Cycle: With regard to same-sex relationships, it was said that there have been serious intolerance because of cultural beliefs and overwhelming opposition to the decriminalization of such relationships, as noticed during the constitutional review process. However, the Government added that it did not support discrimination in terms of access to services²³⁷ Kenya indicated that same-sex unions were culturally unacceptable in Kenya.²³⁸

2nd Cycle: Kenya stated that no individual could confirm that criminal law have been applied to them on the basis of his/her sexual orientation. It also stated that the judiciary had intervened in progressive ways, such as directing the Government to recognize the right of those who wanted to change their sexual identify in governmental documents. Kenya also reported that a policy had been developed by the Ministry of Health specifically relating to the affected persons.²³⁹ Recommendations were made by Sweden, Slovenia, and Chile.²⁴⁰

Lesotho

2nd Cycle: The delegation stated that no person have been prosecuted and emphasized that the matter was sensitive in the culture and society and that the Government was

²³⁵ A/HRC/29/12, 13 April 2015, Para 12.

²³⁶ A/HRC/29/12, 13 April 2015, Para.12.

²³⁷ A/HRC/15/8, 17 June 2010, Para.50.

²³⁸ A/HRC/15/8, 17 June 2010, Para.108.

²³⁹ A/HRC/29/10, 26 March 2015, Paras.83-141.

²⁴⁰ A/HRC/29/10, 26 March 2015, Paras.142-143.

engaged in dialogue on the issue with a view to reaching consensus.²⁴¹ Recommendations were made by Slovenia, Australia, Canada, Argentina, Netherlands, Chile²⁴².

Malawi

1st Cycle: Malawi stated that it has no plans to legalize homosexuality and that the ‘wishes of the people of Malawi in this regard should be respected’. It further added that there was no international consensus on ‘gay rights’ or on the right of ‘gay persons’ to marry and that Malawi should not be singled out and pressured to legalize homosexuality.²⁴³ However, Malawi stated that there was no homophobia or incitement against gay people and that the law simply outlawed unnatural acts, which could also be committed in a sexual relationship between a man and a woman. It noted Malawi’s historical background, i.e., that it was a British protectorate, and that when it gained its independence, it adopted all the laws in force, including that regarding unnatural acts.²⁴⁴

Mauritania

1st Cycle: Mauritania recalled that issues pertaining to homosexuality needed to be considered in light of the concerned society. It stated that as an Islamic country and a Muslim society, considering its religious and moral values, it preferred to remain silent on these matters. It further stated that as Muslims and a society subscribing to a number of universally recognized values, raising such questions was even considered to be an offence.²⁴⁵ Furthermore, it stated that the Criminal Code, which included penalties for same-sex sexual relations, was based on Muslim sharia law, reflecting personal ethics and the specific nature of the country. The delegation added that the relevant provisions would be studied in detail with a view to bringing them into line with international standards.²⁴⁶

²⁴¹ A/HRC/29/9, 13 April 2015, Para.73.

²⁴² A/HRC/29/9, 13 April 2015, Para.115.

²⁴³ A/HRC/16/4, 4 January 2011, Para.39

²⁴⁴ A/HRC/16/4, 4 January 2011, Paras.40-59

²⁴⁵ A/HRC/16/L.41, 6 April 2011, Para.720.

²⁴⁶ A/HRC/16/17, 4 January 2011, Para. 73.

Mauritius

2nd Cycle: Mauritius indicated that in 2012, the Equal Opportunities Act was enacted to provide better protection against all forms of discrimination. It further said that on the issue of discrimination on the basis of sexual orientation, and specifically the decriminalization of the offence of sodomy, the Government had introduced the Sexual Offences Bill. However, following the dissolution of Parliament in 2010, consideration of the Bill was deferred. After consultations, it was decided in 2013 not to proceed with the Sexual Offences Bill as further consultations were needed regarding the issue.²⁴⁷ Recommendations were made by Canada, Ireland, and Australia²⁴⁸.

Mozambique

1st Cycle: Mozambique stated that its constitution makes no reference to sexual orientation. It noted that the country is confronted with profoundly entrenched cultural and religious habits and such issues are recent and have only begun to be faced now. It added that homosexuality is not criminalized, as there is no such definition in the Criminal Code, so that no one can be sanctioned for homosexuality.²⁴⁹ Recommendations were made by France, Spain, and Netherlands.²⁵⁰

Namibia

1st Cycle: It was noted that the constitution outlawed discrimination of any kind and further claimed that since independence, no single case of discrimination on the basis of sexual preference or orientation has been before the courts. It added that homosexual people were not prosecuted for practicing same-sex activities in private, however, it added that this practice was not condoned, and was considered immoral and prohibited in public. It was further stated that same-sex marriages were not

²⁴⁷ A/HRC/25/8, 26 December 2013 Paras.13-121.

²⁴⁸ A/HRC/25/8, 26 December 2013 Para.129.

²⁴⁹ A/HRC/17/16, 28 March 2011, Para.85.

²⁵⁰ A/HRC/17/16, 28 March 2011, Para.91.

recognized and that the Government has no intention of amending current laws.²⁵¹

Nigeria

1st Cycle: Nigeria stated that sexual minorities are not visible in the country and that there is no officially registered association of homosexual people. It further reported that a Forum was organized but that no sexual minority or their representatives attend it. It was added that in spite of this fact, the issue was brought up at the Forum, and that the views of more than 90 per cent of the participants was that Gay-Lesbian relationship or same-sex marriage was not a human rights issue in the country. It stressed that the laws of Nigeria recognize marriage as a relationship between a man and a woman.²⁵²

2nd Cycle: The delegation said that ‘the issue of sexual orientation did not enjoy consensus within the United Nations human rights system and that all attempts to integrate sexual orientation into existing universally recognized human rights has so far failed.’ Furthermore, it stated that the overwhelming majority of Nigerians objected to same-sex relationships on the basis of their deeply held religious, cultural and moral beliefs. They added that against these factors the Government cannot successfully legislate.²⁵³ The delegation stated that Nigeria did not accept the recommendations on same-sex marriage because it conflicted with national and cultural values and that a poll conducted in 2011 has indicated that 92 per cent of the people were against same-sex marriage. Recommendations were made by Austria, Czech Republic, The United States, Sweden, Canada, Australia, Argentina, Austria, France, and Uruguay.²⁵⁴

São Tomé and Príncipe

1st Cycle: Regarding same-sex relationships, the delegation explained that although the Penal Code made such acts punishable, the provisions were no longer applied. It

²⁵¹ A/HRC/17/14, 24 March 2011, Para. 21.

²⁵² A/HRC/WG.6/17/NGA/1, 30 July 2013, Para.76.

²⁵³ A/HRC/25/6, 16 December 2013, Paras.16-69.

²⁵⁴ A/HRC/25/6, 16 December 2013, Para.138.

further added that the new Penal Code would abolish this criminal offence.²⁵⁵

South Africa

2nd Cycle: The delegation informed that discrimination on the ground of sexual orientation was prohibited by the Constitution and that recently, four perpetrators of the so-called “corrective rape” of lesbians have been sentenced to 18 years’ imprisonment.²⁵⁶ Recommendations were made by Belgium, France, Uruguay, Argentina, New Zealand, Denmark, Netherlands, United Kingdom, Canada, Austria, Finland, The United States, and Belgium.²⁵⁷

Swaziland

1st Cycle: The representative of Swaziland stated that no one has been prosecuted for sexual orientation offenses and that ‘as the world revolved’, it would look into the possibility of adopting a policy on the issue.²⁵⁸

Uganda

1st Cycle: The representative stated that Constitution prohibits marriage between persons of the same sex and Penal Code prohibits same sex relations. It noted that those who practice and / or support LGBTI issues continue to push for their recognition as a right and that there is information of covert recruitment, of especially their children and youth, into such practices which they consider to be detrimental to the moral fabric of our society. Furthermore, it was claimed that in Uganda there is overwhelming consensus that such practices are untenable and therefore culturally and legally unacceptable. It was emphasized that there should be no promotion of those practices.²⁵⁹ Recommendations were made by Canada, Norway, Slovenia,

²⁵⁵ A/HRC/17/13, 16 March 2011, Para.44.

²⁵⁶ A/HRC/21/16, 9 July 2012, Para. 23.

²⁵⁷ A/HRC/21/16, 9 July 2012, Para. 124.

²⁵⁸ A/HRC/19/6, 12 December 2011, Para.49.

²⁵⁹ A/HRC/19/16, 22 December 2011, Para.105.

Norway, Belgium, Switzerland, Australia, Argentina, Brazil, Switzerland, Austria, Spain, Sweden, Netherlands, The United States, and Denmark.²⁶⁰

United Republic of Tanzania

1st Cycle: Tanzania reported that it has no law on same-sex marriage, as the practice of homosexuality went against its traditional, cultural and religious rights. It stated that the homosexuality was illegal and punishable by law.²⁶¹

Zambia

1st Cycle: The delegation of Zambia stated that the laws in any country are reflections of its socio-economic development.²⁶²

Representatives of the governments were mostly explicitly against the rights of the LGBT people, which was not the case on the issues relating to FGM, people with albinism, and people accused of witchcraft. Most of the states arguments were claimed to be cultural and religious. However, in the case of FGM culture was seen as an obstacle, while in the case of sexual orientation it is used as justification and not as something negative. Furthermore, the representatives were several times speaking in the name of the whole society. It has been explicitly stated that the rights of homosexual people are not universal rights. Recommendations were, with few exceptions, coming from the “Western States”. No African State made a recommendation.

4.3. Death penalty

There seems to be a global trend towards abolition. 140 countries abolished the death penalty and among those, 101 for all crimes.²⁶³

In Africa some countries have abolished the death penalty, some have continued to

²⁶⁰ A/HRC/19/16, 22 December 2011, Para.113.

²⁶¹ A/HRC/19/4, 8 December 2011, Para.84.

²⁶² A/HRC/8/43, 2 June 2008, Para 36.

²⁶³ Amnesty International, *Death Penalty*, 2015, <https://www.amnesty.org/en/what-we-do/death-penalty/>, (accessed 25.7.2015)

apply it, and others put a moratorium on executions. As of December 2014, following African countries are abolitionist for all crimes: Angola, Burundi, Cabo Verde, Cote D'Ivoire, Djibouti, Gabon, Guinea-Bissau, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles and South Africa.²⁶⁴

According to Amnesty International, Sub-Saharan Africa saw particular progress in 2014. Executions percentage dropped by 28 per cent compared to 2013 and only Equatorial Guinea, Somalia and Sudan were known to have carried out executions. But the figures are not just positive. In Nigeria, 659 death sentences were recorded in 2014 and for the same year, Egypt courts handed down at least 509 death sentences. For both countries this is a significantly higher number than a year before.²⁶⁵

Algeria

2nd Cycle: The representative said that the cultural specificities and beliefs of Algerian society needed to be taken into account, in addition to the international standards.²⁶⁶ Recommendations were made by Norway, Belgium, France, Switzerland, Argentina, and Hungary.²⁶⁷

Benin

1st Cycle: Benin stated that it is moving towards a moratorium and that the abolition of the death penalty has been a matter of debate. It added that the moratorium will become an official policy²⁶⁸.

2nd Cycle: Benin acceded to the Optional Protocol to the International Covenant on Civil and Political Rights.²⁶⁹ Recommendations were made by United Kingdom, Uruguay, Australia, France, Italy, and Spain.²⁷⁰

²⁶⁴ Ibid.

²⁶⁵ Amnesty International, *Death Sentences*, 2015, <http://www.amnestyusa.org/research/reports/death-sentences-and-executions-2014>, (accessed 12.7.2015)

²⁶⁶ A/HRC/21/13, 5 July 2012, Para.122.

²⁶⁷ A/HRC/21/13, 5 July 2012, Para.129.

²⁶⁸ A/HRC/8/39, 28 May 2008, Paras.47-56.

²⁶⁹ A/HRC/22/9, 11 December 2012, Para.74.

²⁷⁰ A/HRC/22/9, 11 December 2012, Para.108.

Botswana

1st Cycle: On the death penalty, the delegation explained that there are no plans to abolish capital punishment or impose a moratorium on its application. It noted that, in 1997, the Parliamentary Law Reform Committee produced a report, which showed that the public was in favour of its preservation.²⁷¹ Recommendations were made by Spain, Brazil, Netherlands, Italy, Canada, Holy See, Ireland, United Kingdom, and Ireland.²⁷²

Burkina Faso

2nd Cycle: Burkina Faso stated that it signed the moratorium as an abolitionist country and that a draft bill was prepared ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights but that no consensus was reached. It added that consultations are still ongoing in order to better prepare opinion to accept ratification of the Optional Protocol.²⁷³ The delegation also stated in its National Report that, due to the rise in organized crime in the country, national opinion did not support abolition.²⁷⁴ The recommendations were made by United Kingdom, Uruguay, Belgium, Djibouti, Germany, Finland, Spain, Switzerland, France, Montenegro, Rwanda, Turkey, New Zealand, Australia, Slovakia, Togo, Burundi and Italy.²⁷⁵

Burundi

2nd Cycle: Burundi abolished the death penalty. Several countries welcomed the abolition.²⁷⁶ Recommendations were made by France, Belgium and Switzerland.²⁷⁷

Cameroon

2nd Cycle: The delegation argued that the law was the expression of the general will

²⁷¹ A/HRC/10/69, 13 January 2009, Para.22.

²⁷² A/HRC/10/69, 13 January 2009, Para.21.

²⁷³ A/HRC/WG.6/16/BFA/1, 6 February 2013, Para.55.

²⁷⁴ A/HRC/WG.6/16/BFA/1, 6 February 2013, Para.64.

²⁷⁵ A/HRC/24/4, 8 July 2013, Para.137.

²⁷⁶ A/HRC/23/9, 25 March 2013, Paras. 77-84.

²⁷⁷ A/HRC/23/9, 25 March 2013, Para.126.

and that the Government was required to take this fact into account, regardless of its convictions. It further stated that the death penalty would eventually be abolished but it was important to take into account changes in society.²⁷⁸ Recommendations were made by Slovakia, Slovenia, Togo, Belgium, France, Rwanda, Estonia, Montenegro, Uruguay, Spain, Australia, and Czech Republic.²⁷⁹

Central African Republic

2nd Cycle: The delegation stated that The Code of Criminal Procedure retains the provision for the death penalty as a criminal sanction (despite the fact that during its first UPR in 2009, several countries recommended the abolition of the death penalty, and the Central African Republic stated that it would consider doing so.)²⁸⁰ Recommendations were made by Djibouti, Montenegro, Portugal, France, Germany, Rwanda, Uruguay, and Australia.²⁸¹

Chad

2nd Cycle: The delegation argued that it is not enough just to enact legislation but that attitudes needed to be changed and that, and added that when the time will be right, the State would decide what it needed to do.²⁸² Recommendations were made by Hungary, Uruguay, Australia, Djibouti, France, Rwanda, Montenegro, Spain and Switzerland.²⁸³

Comoros

2nd Cycle: The delegation stated that although the death penalty is in effect, no execution of persons condemned to capital punishment has been recorded since the first UPR Cycle in 2009 and that the draft legislation on amendment of the Criminal Code has abolished the death penalty.²⁸⁴ Recommendations were made by Portugal,

²⁷⁸ A/HRC/24/15, 5 July 2013, Para.58.

²⁷⁹ A/HRC/24/15, 5 July 2013, Para.131.

²⁸⁰ A/HRC/25/11, 6 January 2014, Para 48.

²⁸¹ A/HRC/25/11, 6 January 2014, Para.104.

²⁸² A/HRC/25/14, 3 January, 2014, Para.56.

²⁸³ A/HRC/25/14, 3 January, 2014, Para.110.

²⁸⁴ A/HRC/WG.6/18/COM/1, 8 November 2013, Para 133.

Australia, France, Togo, Spain, Montenegro, Germany, Slovenia and Uruguay.²⁸⁵

Republic of the Congo

2nd Cycle: The minister reminded that the Congo had not applied the death penalty since 1982 and that the question of the legal abolition of the death penalty was under consideration, also due to change in attitude towards the matter.²⁸⁶ Recommendations were made by Uruguay, Australia, France, Germany, Hungary, Spain, Belgium, Italy, Montenegro, Rwanda, Djibouti, Estonia, and Paraguay.²⁸⁷

Democratic Republic of the Congo

1st Cycle: The delegation stated that under the constitution the death penalty is abolished and that a bill amending the Criminal Code to explicitly repeal the death penalty was before the National Assembly. It added that no death sentence has been carried out for more than seven years.²⁸⁸ Recommendations were made by Italy, Luxembourg and France.²⁸⁹

2nd Cycle: The delegation noted that a bill was submitted to the National Assembly in 2010 and explained that due to the violence of armed conflict, the population was against abolition. It argued this to be a reason for the bill not to be adopted.²⁹⁰ Recommendations were made by Australia, Germany, Hungary, Portugal, Spain, The former Yugoslav Republic of Macedonia, Togo, Benin, Uruguay, Argentina, Italy, Lithuania, Montenegro and Rwanda.²⁹¹

Egypt

1st Cycle: Egypt emphasized that capital punishment was applied only in very rare cases and for the most severe crimes.²⁹² Recommendations were made by France,

²⁸⁵ A/HRC/26/11, 7 April 2014, Para.110.

²⁸⁶ A/HRC/25/16, 6 January 2014, Para.70.

²⁸⁷ A/HRC/25/16, 6 January 2014, Para.111.

²⁸⁸ A/HRC/13/8, 4 January 2010, Para.18.

²⁸⁹ A/HRC/13/8, 4 January 2010, Para.96.

²⁹⁰ A/HRC/27/5, 7 July 2014, Para.75.

²⁹¹ A/HRC/27/5, 7 July 2014, Para.136.

²⁹² A/HRC/14/17, 26 March 2010, Para. 93.

Chile, Spain, Brazil, Switzerland, Belgium, and Greece.²⁹³

2nd Cycle: It reiterated that the death penalty is restricted to very serious crimes. The delegation also said that there was no international consensus on the abolition of the death penalty and that ICCPR does not prohibit the death penalty, but sets conditions for applying it. Furthermore the delegation emphasized that it respects and complies with all restrictions on the death penalty and ensures due process. It reminded that the death penalty is preserved in around 50 countries and that these countries send correspondence every year to the Secretary-General, in order to stress their need to preserve the death penalty due to their cultural, political and legal specificities.²⁹⁴ The recommendations were made by Rwanda, Portugal, Paraguay, Argentina, Romania, Spain, Turkey, Togo, France, Germany, Hungary, Australia, Luxembourg, Italy, Switzerland, Uruguay, Montenegro, and Mexico.²⁹⁵

Equatorial Guinea

1st Cycle: Recommendations were made by Slovenia, Argentina, Sweden, Spain, Azerbaijan, France, and Italy.²⁹⁶

2nd Cycle: Recommendations were made by Turkey, Montenegro, Uruguay, Ecuador, Spain, Mozambique, Slovenia, Ireland, Germany, South Africa, Portugal, France, Estonia, Australia, Gabon and Rwanda.²⁹⁷

Eritrea

1st Cycle: The delegation stated that the death penalty can act as a deterrent in extreme cases of crime and that due to national particularities, historical and cultural background, abolishment of the death penalty is not acceptable at the moment.²⁹⁸

²⁹³ A/HRC/14/17, 26 March 2010, Para.97.

²⁹⁴ A/HRC/28/16, 24 December 2014, Paras. 118-164.

²⁹⁵ A/HRC/28/16, 24 December 2014, Para.166.

²⁹⁶ A/HRC/13/16, 4 January 2010, Para.71.

²⁹⁷ A/HRC/27/13, 7 July 2014, Para.135.

²⁹⁸ A/HRC/13/2/Add.1, 8 March 2010, Para.8.

2nd Cycle: The delegation reiterated that the death penalty could serve as deterrent factor and that it has been used only in very exceptional and limited cases. Recommendations were made by France and Montenegro.²⁹⁹

Ethiopia

1st Cycle: The delegation noted that during the last 15 years, only three death penalties have been carried out and added that very limited execution of the penalty clearly attests that capital punishment is declining from time to time.³⁰⁰

Gabon

1st Cycle: The Government stated that in order to ‘honour its international commitments in respect of the promotion and protection of human dignity it has ratified the majority of the relevant international conventions to which it is a party’ and that it is due to this commitment that has led to the Government’s recent decision to abolish the death penalty.³⁰¹ Recommendations were made by Finland, United Kingdom, Czech Republic, Mexico, and Canada.³⁰²

Gambia

1st Cycle: The Government stated that the death penalty was abolished but reinstated in 1995. Among the reasons given for the restoration were that “since the abolition of the death penalty in Gambia there has been a steady increase of cases of homicide and treasonable offences which, if not effectively checked, may degenerate into a breakdown of law and order” and continued that the duty is on the “State to provide adequate mechanisms for the security of life and liberty of its citizenry thereby maintaining law and order and ensuring greater respect for individual human rights.”³⁰³

2nd Cycle: The delegation argued that the moratorium was lifted in 2012 due to a sharp rise in heinous crimes being committed but that since then, the moratorium has

²⁹⁹ A/HRC/26/13, 7 April 2014, Paras.94-122.

³⁰⁰ A/HRC/WG.6/6/ETH/1, 4 August 2009, Para.6.

³⁰¹ A/HRC/WG.6/14/GAB/1, 6 August 2012, Paras. 104-105.

³⁰² A/HRC/8/35, 28 May 2008, Para.66.

³⁰³ A/HRC/WG.6/20/GMB/1, 24 July 2014, Para.11.

been reinstated.³⁰⁴ Recommendations were made by Italy, Mexico, Brazil, Costa Rica, France, Togo, Spain, Uruguay, Australia, Montenegro, Portugal, Rwanda, and Angola.³⁰⁵

Ghana

1st Cycle: Ghana noted that no death penalty has been carried out since 1993 and that after the elections in 2008, the Government intends to review the constitution. It further stated that this issue will be raised again. Recommendations were made by Mexico, Canada, Switzerland, and Portugal.³⁰⁶

2nd Cycle: The Government has accepted the recommendation to abolish the death penalty and stated that since it is an entrenched provision of the constitution, it will have to be subjected to a referendum. It further stressed that no executions have taken place since 1993.³⁰⁷ Recommendations were made by Mexico, Namibia, Turkey, Germany, France, Belgium, Uruguay, Norway, Australia, Spain, Rwanda, Switzerland, Slovakia, Greece, Spain, Slovenia, Chile and United Kingdom.³⁰⁸

Guinea

1st Cycle: The delegation of Guinea stated that it considers it premature to envisage a discussion on the abolition of the death penalty as well as the adoption of a de jure moratorium because of cultural and religious pressures which it claimed that still have a decisive influence on the domestic situation, particularly during country's transition period.³⁰⁹

2nd Cycle: With regard to the death penalty, the delegation reminded that a de facto moratorium is in place for several years. It added that the reform of the Criminal Code has begun and that the Ministry of Human Rights and Public Liberties planned to launch an awareness-raising campaign on the abolition of the death penalty.³¹⁰ Recommendations were made by United Kingdom, Benin, Australia, Italy,

³⁰⁴ A/HRC/14/6, 24 March 2010, Para.101.

³⁰⁵ A/HRC/14/6, 24 March 2010, Para.109.

³⁰⁶ A/HRC/8/36 29 May 2008, Paras.30-54.

³⁰⁷ A/HRC/22/6, 13 December 2012, Para.10.

³⁰⁸ A/HRC/22/6, 13 December 2012, Paras.123-126.

³⁰⁹ A/HRC/15/4/Add.1, 15 September 2010, Para.21

³¹⁰ A/HRC/29/6, 10 April 2015, Para. 40.

Luxembourg, Montenegro, Namibia, France, Timor-Leste, Rwanda, Chile, and Portugal.³¹¹

Guinea-Bissau

2st Cycle: Guinea-Bissau stated that it has abolished the death penalty in order to protect the right to life.³¹²

Kenya

1st Cycle: The delegation of Kenya stressed that since 1987 there has been a de facto moratorium on the death penalty in force and that currently, there is a presidential directive to all relevant Government Ministries and Departments to conduct empirical studies and engage all stakeholders in order to determine whether the continued existence of the death penalty in the laws has any value or impact in the fight against crime. Kenya acknowledged of the fact that ‘extended stay on death row causes ‘mental anguish and suffering, psychological trauma, anxiety and constitutes inhuman treatment’.³¹³ Recommendations were made by Spain, Uruguay, Ireland, Austria, Germany, Argentina, Australia, and Holy See.³¹⁴

2nd Cycle: The delegation stated that soon after the country’s first review in 2010, the Government begun discussions in collaboration with the Kenya National Commission on Human Rights and other stakeholders on how to raise public awareness regarding the abolition of the death penalty. However, the delegation stated that the process has faced challenges due to the lack of financial resources. Therefore, the awareness raising could not be carried out countrywide. Moreover, it stressed that Kenya has not carried out any execution since 1987.³¹⁵ Recommendations were made by Montenegro, Lithuania, Portugal, Poland, Albania, Angola, Uruguay, Estonia, Timor-Leste and Rwanda.³¹⁶

³¹¹ A/HRC/29/6, 10 April 2015, Para.118.

³¹² A/HRC/WG.6/21/GNB/1, 9 January 2015, Para.20.

³¹³ A/HRC/WG.6/8/KEN/1, 22 February 2010, Paras. 37-38.

³¹⁴ A/HRC/15/8, 17 June 2010, Paras. 101-103.

³¹⁵ A/HRC/WG.6/21/KEN/1, 6 November 2014, Paras. 56-83.

³¹⁶ A/HRC/29/10, 26 March 2015, Para. 142-143.

Lesotho

1st Cycle: Lesotho stated that it has retained capital punishment solely for the following offences: murder, treason and statutory rape. It further added that there has been no execution of capital punishment sentences since 1995.³¹⁷

2nd Cycle: It repeated facts from the first review and added that the Government took note of the international trend towards abolition of the death penalty.³¹⁸

Recommendations were made by Chile, Djibouti, France, Sweden, Rwanda, Spain, Australia, Uruguay, Germany, Montenegro, Italy, and Timor-Leste.³¹⁹

Liberia

2nd Cycle: The Government stated that the law reinstating the death penalty was passed in 2008 due to high rates of armed robbery and hijacking. They added that the Liberian public demanded for harsher penalties for violent offenders. However, the delegation stated that up to now, no executions have been carried out. Additionally, it listed steps taken towards a legal abolition of the death penalty.³²⁰

Libya

1st Cycle: In respect to the issue of capital punishment, the Government indicated that the death penalty was applied only in aggravating crimes. It further listed crimes punishable under Shariah law. It argued that ‘since 1990, the death penalty has been applied in ‘only’ 201 cases’.³²¹ Recommendations were made by Czech Republic, France, United Kingdom, Australia, Switzerland, Mexico, Brazil, and Israel.³²²

2nd Cycle: The Government stated that the Libyan legislature is striving to restrict the use of the death penalty and that legal measures have been introduced to minimize the use of the death penalty. It argued that the most significant is the rejection of payment of blood money. It added that the latter measure greatly reduces the number of cases

³¹⁷ A/HRC/WG.6/8/LSO/1, 22 February 2010, Paras. 50-100.

³¹⁸ A/HRC/29/9, 13 April 2014, Para. 28.

³¹⁹ Ibid., Para.115.

³²⁰³²⁰ A/HRC/WG.6/22/LBR/1, 18 February 2015, Paras. 34-35.

³²¹ A/HRC/16/15, 4 January 2011, Para.58.

³²² A/HRC/16/15, 4 January 2011, Paras.95-96.

in which the death penalty is carried out. It further added that there is an ongoing debate between those who call for the abolition of the death penalty and those who argue that is necessary to maintain it because of Sharia and in order to frighten people.³²³

Mali

2nd Cycle: The delegation said that while no law on its abolition has been adopted, the relevant draft legislation was before their National Assembly since 2008. However, the delegation added that the Malian population is not very enthusiastic about the draft legislation, but that the Government is currently educating the people about it.³²⁴ Recommendations were made by Slovenia, Switzerland, Holy See, Portugal, France, Slovakia, Argentina, Hungary, Uruguay, Italy, Costa Rica, and Montenegro.³²⁵

Mauritius

2nd Cycle: Mauritius stated that although the death penalty has been abolished by ordinary law, the Constitution has not yet been amended, which is the reason why the Second Optional Protocol to the International Covenant on Civil and Political Rights has not yet been ratified by Mauritius.³²⁶ Recommendations were made by Australia, Estonia, France, Germany, Benin, and Rwanda.³²⁷

Morocco

2nd Cycle: The delegation of Morocco informed that since 1993, no capital punishment has been carried out and that there is also a draft law aiming at reducing the number of crimes punished with the death penalty.³²⁸ Recommendations were made by Argentina, Austria, Holy See, Hungary, Spain, Italy and France.³²⁹

Niger

³²³ A/HRC/WG.6/22/LBY/1, 5 May 2015, Para.76.

³²⁴ A/HRC/23/6, 13 March 2013, Para.15.

³²⁵ Ibid. Para.111-112.

³²⁶ A/HRC/25/8, 26 December 2013, Para 124.

³²⁷ Ibid. Para.128-129.

³²⁸ A/HRC/21/3, 6 July 2012, Para 71.

³²⁹ Ibid. Para.129-131.

1st Cycle: The delegation of Niger said that the country had a *de facto moratorium* on the death penalty and added that the National Consultative Council has issued an unfavourable opinion on the existing draft order regarding the issue of the death penalty in the hope of launching a major public debate and as well gaining public support.³³⁰ Recommendations were made by Switzerland, Belgium, France, Spain, United Kingdom, Norway, Sweden, Denmark, Ecuador, and Australia.³³¹

Nigeria

2nd Cycle: The delegation reiterated that the moratorium was the most important issue, but that in a federal system, State governments have a measure of autonomy. However, the delegation stressed that efforts will be made to amend the constitution.³³² Recommendations were made by Portugal, Austria, Norway, Slovenia, Czech Republic, Ecuador, Switzerland, Turkey, Spain, France, Italy, Uruguay, Poland, Slovakia, Australia, Germany, Estonia, Montenegro, Brazil, Togo, Paraguay, Rwanda, and Holy See.³³³

Sierra Leone

1st Cycle: Sierra Leone stated that it has currently no death-row prisoners and that no one was executed in Sierra Leone since 1998. It added that the question of the abolition of the death penalty was on the legislative agenda of the Government and it was extensively discussed during the constitutional review process.³³⁴ Recommendations were made by France, Ireland, Spain, Austria, Germany, Argentina, Brazil, Chile, Switzerland, Portugal, United Kingdom, Ecuador, and Belgium.³³⁵

Somalia

1st Cycle: The delegation of Somalia confirmed that the death penalty is still legally

³³⁰ A/HRC/17/15, 25 March 2011, Para 43.

³³¹ Ibid. Paras.76-78.

³³² A/HRC/25/6, 16 December 2013, Para 130.

³³³ A/HRC/25/6, 16 December 2013, Para 137.

³³⁴ A/HRC/18/10, 11 July 2011, Para. 29.

³³⁵ Ibid, Para.82.

applicable. It further stated that the Government is considering putting a moratorium on the death penalty.³³⁶ Recommendations were made by Belgium, France, Germany, Italy, Norway, Spain, Brazil, and Slovenia.³³⁷

Sudan

1st Cycle: The delegation emphasized that the death penalty was practiced in the most restricted manner and imposed for the most serious crimes. The delegation added that it is associated with the right to practice religion as guaranteed by international human rights treaties.³³⁸ Recommendations were made by Spain, Belgium, Italy, France, Slovenia, Uruguay, Brazil, Switzerland, Palestine, Ecuador, Australia, and Austria.³³⁹

Swaziland

1st Cycle: The delegation of Swaziland emphasized that it had not carried out the death penalty since 1983 and that it was an abolitionist state in practice. It further emphasized that since 1983, the sentences in 42 of the 45 death penalty cases have been commuted to life imprisonment.³⁴⁰ Recommendations were made by France, Hungary, Switzerland, Australia, Brazil, Spain, Argentina, Holy See, Romania, Portugal, Mexico, Burundi, and Slovenia.³⁴¹

Tunisia

2nd Cycle: The delegation of Tunisia stressed that the death penalty has not been implemented for over 20 years and it emphasized that this was not only a legal matter, but that also cultural and religious implications have to be considered. It further stated that the abolition of the death penalty should be a result of ‘a wide and credible national debate’.³⁴² Recommendations were made by Turkey, Germany, Italy, Portugal, Ireland, Norway, Uruguay, Hungary, Belgium, Spain, Argentina, and

³³⁶ A/HRC/18/6, 11 July 2011, Para.73

³³⁷ Ibid. Para. 98.

³³⁸ A/HRC/18/16, 11 July 2011, Para.46.

³³⁹ Ibid. Paras. 83-85.

³⁴⁰ A/HRC/19/6, 12 December 2011, Para. 51.

³⁴¹ Ibid. Para.77.

³⁴² A/HRC/21/5, 9 July 2012, Para.39.

Greece.³⁴³

Uganda

1st Cycle: The delegation of Uganda noted that the retention of the death penalty for capital offences was the result of the recommendation of the Constitutional Review Commission. It added that the results showed that the majority of Ugandans supported the use of the death penalty for capital offences. However, the Government emphasized that the death penalty as a punishment has been responsibly invoked and that the last execution had been carried out in 1999.³⁴⁴ Recommendations were made by Switzerland, France, Turkey, Holy See, Spain, Romania, Costa Rica, and Sweden.³⁴⁵

Zambia

1st Cycle: With regard to question on how the issue of the death penalty will be dealt with in the ongoing revision of the constitution, the delegation indicated that in the year 2002, a constitutional review commission was appointed to collect public opinion, *inter alia*, on the abolition or retention of capital punishment in statutes and further informed that its report and the draft constitution are currently being considered by the National Constitutional Conference.³⁴⁶

2nd Cycle: The delegation stressed the task of making a constitution resided in the people and added that the new constitution would hopefully reflect ‘the social, economic and political aspirations of the Zambian citizenry’. It further added that this process would accord the people the opportunity to decide on a definitive position on the death penalty.³⁴⁷ Recommendations were made by Burundi, Namibia, Togo, New Zealand, Slovenia, Spain, Ukraine, United Kingdom, Brazil, Italy, Australia, France,

³⁴³ Ibid, Paras. 114-116.

³⁴⁴ A/HRC/19/16, 22 December 2011, Para.13.

³⁴⁵ Ibid. Para.112.

³⁴⁶ A/HRC/8/43, 2 June 2008, Para 5.

³⁴⁷ A/HRC/22/13, 31 December 2012, Para.8.

and Rwanda.³⁴⁸

In comparison to the previous sub-chapter on sexual orientation, it can be observed that the representatives viewpoints are more moderate and various. However, the universality has been explicitly challenged again, since it has been stated that there is no international consensus on the abolition of the death penalty.

A variety of justifications can be observed. The following arguments against moratorium or abolition of the death penalty can be identified: it serves as a deterrent factor against committing crimes; due to the majority support; applied only for the most serious crimes; the capital punishments have not been carried out; and due to cultural factors.

Several states stated that they noted the international trend towards abolition of the death penalty. Additionally, two countries that have abolished the death penalty recently expressed importance of human rights for its decision for the abolition. Gabon stated that it is due to the commitment of the promotion and protection of human dignity that the Government recently decided to abolish the death penalty. Additionally, Guinea Bissau stated that its recent abolition is connected to the protection of the right to life.

For the following countries, the issue of death penalty has not been a matter of discussion at the UPR reviews: Angola, Benin, Capo Verde, Cote d'Ivoire, Djibouti, Gabon, Guinea Bissau, Madagascar, Mozambique, Rwanda, São Tomé and Príncipe, Seychelles, South Africa and Togo. These are all countries that abolished the death penalty.

5. Conclusion

The debate about the universality and relativity of human rights is a very interesting, yet complex and contentious issue. It is a fascinating topic that raises fundamental philosophical questions, such as what is right and what wrong and whether

³⁴⁸ Ibid. Para. 103.

humankind shares/could share standards for it. However, relativism is perceived in a negative light in the field of human rights. It is viewed as the opposite of universalism and therefore claimed to be incompatible and a 'danger' for it.

This thesis attempted to show that the contradiction between universalism and cultural relativism is not a necessity, quite on the contrary, that the human rights field could even benefit from it. A relativist can argue for the possibility for the existence of moral universals that can be shared by all societies. Moreover, relativism implies neither tolerance, nor objectivity and consequently allows moral criticism. Furthermore, the basis of relativism is claimed to be enculturation and an understanding of the concept of culture has proved to be crucial for the interpretation of relativism. It is claimed that an obsolete understanding of culture is prevalent in the contemporary human rights discourse and although the concept of culture is constantly an issue at the international settings, the concept seems not to be discussed enough or at all.

The expressions of relativism at the UPR are complex and have many layers. An analysis showed that the State's representatives argue that culture plays an important role for the States compliance or non-compliance with its human rights obligations, particularly for the various social phenomena that fall under the term 'harmful traditional practices', sexual orientation, and the death penalty. All these human rights issues are high on human rights agenda, only proving the debat's significance.

Governments were positioning themselves against these various issues differently. An analysis of the States' positions towards "harmful traditional practices" showed a trend of seeing culture as an obstacle and something that has to be eliminated and changed, whereas in respect to sexual orientation, the discrimination had to be accepted due to culture. Furthermore, universality of certain human rights has been explicitly challenged at the UPR. For certain issues, States have explicitly said that they do not recognize it as a universal human right.

Moreover, the trend to problematize culture has been observed, especially in relation to 'harmful traditional practices,' however, certain States admitted also other factors, e.g., the economic or political factors causing women's subordination. The representatives of the governments reasoned some aspects of culture that match with

contemporary anthropological understanding of the concept e.g. not static and holistic, but rather unbounded, contested, and connected to relations to power. Ironically, these aspects were used for State's justifications for their non-compliance. But the acknowledgment of these aspects of culture can be used also for the opposite purpose.

To the certain extend this has been done by acknowledging that human rights are shaped by culture as well. The following statement by the representatives of Gabon illustrates it:

‘The ultimate goal is to allow Gabon’s people to make the concept of human rights part of their daily lives. This will undoubtedly be a long process, but if everyone, men and women, young and old, believer and atheist, rich and poor, stands up as one and acknowledges that their neighbor is the most precious of assets, the challenge can be met, for the greater good of humanity.’³⁴⁹

The UPR mechanism proved to be a good tool for analyzing expressions of relativism but, more importantly, it is a mechanism that is also making a culture. Importantly, this is done by giving non-governmental organizations as well as civil society a possibility to be part of it. Not only that information provided by the non-governmental organizations is included in the documents that serve as a basis of the UPR reviews but the non-governmental organizations have also other possibilities to be engaged in the process e.g., pressuring States to address certain issues and recommendations, pressuring the States to implement recommendations as well as assisting the State in drafting its National Report.

The US president Barack Obama recently visited Kenya. One of the issues he decided to raise were FGM; child, early, and forced marriage; and LGBTI rights. He addressed thousands of listeners with the following statement:³⁵⁰

³⁴⁹ A/HRC/WG.6/2/GAB/1, 8 April 2008, Para.107.

³⁵⁰ The Guardian. *Barack Obama in Kenya*, 2015, <http://www.theguardian.com/us-news/2015/jul/26/barack-obama-condemns-tradition-women-second-class-citizens-nairobi> (accessed 14.7.2015)

“Treating women as second-class citizens is a bad tradition, it holds you back. There’s no excuse for sexual assault or domestic violence, there’s no reason that young girls should suffer genital mutilation, there’s no place in a civilized society for the early or forced marriage of children. These traditions may go back centuries but they have no place in the 21st century.”

This was said just a day after he advocated for LGBT rights in his father’s land. Is he imposing the “western” values? Is it a form of cultural imperialism? Is he making a culture? I believe that as long as human rights are being embraced by the people who initially had no connection to it, and until human rights are having the ability of being the tool for supporting their dignity, we should try to build this culture *together*.

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Abstract

Universality, an essential characteristic of human rights, has been challenged by relativist arguments. This paper deals with the clash between relativist-universalist perspectives in respect to human rights; however, the paper argues that the conflict between cultural/ethical relativism and universal human rights can be reconciled. The early theoretical foundations of cultural relativism in anthropology are presented as well as its more recent debates. Due to its importance for human rights, particular focus is given to cultural/ethical relativism. The paper offers an overview of relativist manifestations at the Universal Periodic Review (UPR) of Human Rights Council. The UPR reviews of African Group of Member States of the United Nations are analyzed from UPR 1st session in April, 2008 – to its 22nd session in April/May, 2015. All UPR documents were analyzed, however, most information was selected from a National Report, prepared by the state under review; from a Working Group Report, which is an outcome of the review; from the Addendum, a document by the state under review with responses to the Working Group Report list of recommendations; and lastly, from the final version of the Working Group Report, adopted by the Human Rights Council a few months after the review, where also National Human Rights Institutions, NGOs and other stakeholders make general comments. An analysis of these documents provides an overview of human rights issues for which states employ cultural arguments and relativist perspectives. The manifestations of relativism were identified and analyzed with an anthropological perspective of cultural/ethical relativism. The paper claims that cultural/ethical arguments were being employed, *inter alia*, for following human rights issues i.e.: various social phenomena labeled as “harmful traditional practices”, sexual orientation, and the death penalty.

Keywords: Universal Periodic Review (UPR), relativism, Africa, “harmful cultural/traditional practices”, death penalty, sexual orientation and gender identity.

Zusammenfassung

Universalität, ein wesentliches Merkmal der Menschenrechte, wurde mit relativistischen Argumenten angefochten. Diese Arbeit untersucht den Zusammenstoß zwischen relativistischen und universalistischen Ansätzen in Bezug auf die Menschenrechte unter der Behauptung, dass der Zusammenstoß zwischen kulturellem/ethischem Relativismus und universalen Menschenrechten versöhnt werden kann. Es werden die frühtheoretischen Grundlagen des kulturellen Relativismus in der Anthropologie sowie seine jüngeren Auseinandersetzungen präsentiert. Aufgrund seiner Bedeutung für Menschenrechte steht kultureller/ethischer Relativismus im besonderen Fokus. Diese Arbeit bietet einen Überblick über die relativistischen Erscheinungsformen der allgemeinen regelmäßigen Überprüfung (UPR) des Menschenrechtsrates. Diese allgemeine regelmäßige Überprüfung (UPR) der afrikanischen Gruppe der Mitgliedstaaten der Vereinten Nationen wurde von der ersten UPR Sitzung im April 2008 bis zur 22. Sitzung im April/Mai 2015 verfolgt. Es wurden alle UPR Dokumente analysiert, wobei die Informationen meistens aus dem Nationalen Bericht entnommen wurden, welcher vom überprüften Land vorbereitet wurde; aus dem Bericht der Arbeitsgruppe, welcher das Ergebnis der Überprüfung ist; aus dem Addendum – ein Dokument, erstellt vom überprüften Land, welches Antworten auf die Empfehlungsliste des Berichtes der Arbeitsgruppe enthält, und letztlich aus der Endversion des Berichtes der Arbeitsgruppe, welchen der Menschenrechtsrat einige Monaten nach der Überprüfung annahm, in welchem auch die Nationalen Menschenrechtsanstalten, Nichtregierungsorganisationen und andere Interessengruppen ihre allgemeinen Stellungnahmen gaben. Die Analyse dieser Dokumente verleiht einen Überblick über die Menschenrechtfragen, für welche afrikanische Länder kulturelle Streitpunkte und relativistische Ansätze anwenden. Die relativistischen Erscheinungsformen wurden anhand eines anthropologischen Ansatzes des kulturellen/ethischen Relativismus identifiziert und analysiert. In der Arbeit wird behauptet, dass kulturelle/ethische Argumente *inter alia* auf die folgenden Menschenrechtfragen angewandt wurden, i.e.: verschiedene soziale Erscheinungen,

bezeichnet als “schädliche kulturelle/traditionelle Praxen”, sexuelle Orientierung und die Todesstrafe.

Schlüsselworte: allgemeine regelmäßige Überprüfung (UPR), Relativismus, Afrika, “schädliche kulturelle/traditionelle Praxen”, Todesstrafe, sexuelle Orientierung und Geschlechtsidentität