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Introduction

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V. Women and the Law in Africa

Introduction

Christina A. McGinley*

In this portion of the review, we have chosen to highlight issues that affect women in Africa. Specifically both authors who have submitted to this section have focused on the cultural and traditional notions of sexuality of a female and how those beliefs plague many women living in Africa. Most of the traditions are viewed by the western world as sadistic, brutal and inhumane. In fact the most prevalent custom and/or tradition in Africa is Female Genital Mutilation, depicted as mutilation for the effect on a women's genitalia after a circumcision or excision has occurred. Female genital mutilation has been practiced for decades in Africa and is well rooted in African custom and tradition. Women are believed to be "cleansed" and "cultivated" by this practice. The reality is that while the tradition attempts to strip a women of a burden or mark that she is born with prior to her the marriage, it often strips the females of self-worth, dignity and individuality. This practice has forced many women who practice this tradition into a sub-serviant class believed to be ruled by their husbands and dominated by the maleness of African society. That is my view, a Westerner, a Caucasian American educated in westernized cultures and traditions and never accustomed to the practices or beliefs of African women. My background and who I am does not make my position less credible. I do not have to be an African woman to appreciate the malignant effects that such a practice has on a woman.

Oluyemsi Bamgbose, a Senior Lecturer and Head of the Department of Private and Business Law at the University of Ibadan, Ibadan, Nigeria has submitted a writing that elaborates on the cultural traditions and law in Africa with emphasis on its effects on the African Adolescent Girl. The African adolescent girl is described as born into a world of male dominance where female sexuality is often described as taboo or forbidden within African cultural practices. Bamgbose describes a culture that gives little significance to the rights of a female in her own sexuality. Instead what is depicted is cultural traditions rooted in degrading sexual stereotypes creating a plague of oppression upon the young female. A young girl is forced to have her female genitalia mutilated in what is traditionally known as cultural "cleansing"; a young girl is forced to marry, sometimes as young as twelve years of age, an unknown much older male resulting in the young girl's rape and assault at the hands of her own husband. This is known to occur to these young girls and although in most if not all African countries rape is forbidden by law. Regardless, her family and peers often view female victimization

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as solicited by the victim resulting in her ostracization from the community as well as profound hostility and stigmatization towards her.

Bamgbose argues that the effects of these cultural practices on the young female adolescent girl are crippling and that the preservation and protection of the sexuality of a young adolescent girl is essential to the cultural survival and continuity of the African culture. The practice of targeting the young female and practicing these cultural strippings of femaleness and individuality has separated the African female from the culture and community in the whole. The result of these practices, conditioned on human suffering, will permanently separate the "female" from the community and result in the eventual demise of the culture.

The demise of African culture on a grand scale may be a remote truth. It seems inevitable although that the more advanced educationally and materially that these women become will trigger an empowerment within them to prevent these dogmatic African cultures from practicing their sexual oppressive rituals upon young women.

In the second article in this section, Glennys Ortega discusses the involvement of the United States in the sexual oppressive practices of many African states when some young women flee Africa to the United States in hopes of asylum. Political asylum is a broad issue that goes beyond a single woman who petitions the United States to allow her a right to stay in the U.S. and offers her protection from her government. The decision to grant political asylum has many effects particularly on an international level in the diplomatic relations between the United States and Africa as well as the precedential effects of the policies and decisions made in the United States upon other parties who seek political asylum from nations who practice similar cultural traditions believed by the United States to be violations of human rights. But perhaps most controversial is the identification of the individual rights of the "woman." Recognition not as an "African woman" but simply a woman, a female with rights she individualizes yet maintains in common with all other women here in the United States and globally.

Ortega has addressed the role of the United States in such political asylum cases. In 1999, our Second Circuit heard the case of *Abankwah v. Immigration and Naturalization Service*, 185 F.3d 18 (2d. Cir. 1999). In a controversial decision, the second circuit disregarded the prior precedent in political asylum cases requiring the petitioner to prove a "well-founded fear of prosecution in a particular place" (generally the country fled from) for a more relaxed standard of simply proving the petitioners *personal* fear of prosecution in the particular place. The Court emphasizes the individuals' fear of prosecution in a particular place rather than whether the practice of her native country would be likely to prosecute her on her return. Ortega seemingly concludes that this "new standard" allows a petitioner/applicant to provide a "merely plausible

story” to pass a lower threshold of proof resulting in the improper grant of asylum.

While there is no doubt that the United States has wrestled with this issue for many years, political asylum is a protection not in itself a remedy to the problem. The Second Circuit decision focuses on, rightly I believe, the thoughts of the individual. A young girl is effected as an individual and those effects stem from the African community and not simply within the African legal system. Although a country may not have a policy to prosecute a woman who has fled to the United States that does not prevent her native tribe and social community from persecuting her upon her return. That persecution by her community could and often has resulted in the girls’ death. This concept of individual fear appears to be what the second circuit recognized. The effects on the young individual girl extend beyond the law. Perhaps this is a U.S. awakening of the harsh reality of the lives of African Women who undergo these barbaric practices and who flee to the United States in hopes of a better life.

Ortega’s article highlights the perhaps inevitable floodgate of litigation that the *Abankawah*¹ case may have opened. As a realist I am conscious that any court opinion may be read to its extreme and used as a springboard for all types of petitioners seeking political asylum in the United States. However I am even more aware that the American System of Jurisprudence has its way of curing the effects and narrowing their decisions to prohibit a grant of political asylum in what Ortega may deem as cases without merit or where political asylum should not be granted.

At least in the manner of human rights violations that plague the women in Africa, it helps that our courts have viewed their needs from an individual basis because it is their individualism that has attempted to be stripped by their native countries. If the United States is in a position to grant the political asylum as a protection for the particular petitioner then the view from the individual’s perception of fear upon return to her native country appears to be the crucial inquiry.

Ortega’s article provides the reader with an understanding of the United States involvement over the years in the area of political asylum and suggests that in light of the recent trend in U.S. law, that the view towards asylum should be reevaluated.

1 *Abankwah v. Immigration and Naturalization Service*, 185 F.3d 18 (2d. Cir. 1999).