FEMALE GENITAL MUTILATION: THE LIMITS OF CULTURAL RELATIVISM

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When slavery was a custom every right-minded person supported it. Nothing is as powerful a legitimizer as social custom, even more powerful than law.¹

INTRODUCTION

The subjugation of women is as old as the history of ‘mankind’. It is a social custom that goes back at least to the Stone Age. Indeed, the practice of female genital mutilation is said to have its roots in that era.² In any event, it certainly pre-dated the world’s major religions, including Islam, the religion with which it is most closely associated.

With the fairly recent emergence of women’s voices at the international level protesting the systemic violence against women, of which female genital mutilation is a serious manifestation, there has been a countervailing force, known as cultural relativism, calling for States to safeguard their cultural, religious and community values against the imposition of Western norms of sexual licence and amoral individualism.

In 1946 for example, attempts in Sudan to ban the practice of female genital mutilation were regarded by some as colonialist imperialism and were staunchly defended in the name of culture and religion.

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The practice of female genital mutilation remains widespread and affects 100 to 130 million women worldwide.

This paper looks at the role of cultural relativism within the context of female genital mutilation. It queries the distinction between culture and religion and asks whether the distinction is of any significance in this debate. Finally, it speculates as to the possible implications of this practice and its justifications for women's international human rights.

**FEMALE GENITAL MUTILATION**

If you examine the causes of female genital mutilation you will find that it is not related to Islam; it is not related to Africa; it is not related to any colour or religion. It is related to a patriarchal class system of 5,000 years ago when men started to build a patriarchal family, a patriarchal society.  

It is estimated that worldwide, the number of girls and women who have been genitally mutilated is between 100 and 130 million. At least 2 million girls per year or 6,000 per day are at risk of female genital mutilation. Most of these girls live in Africa, however there are many at risk in Asia and the practice also takes place among immigrants to Western countries. Further, there is some indication that female genital mutilation of a less severe variety has been practised by some Australian Aboriginal tribes, although, as the Family Law Council notes, it is not known to what extent such practices persist today.

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5 Ibid

remains widespread and affects 100

serves to highlight the suffering and trauma associated with this practice and its justifications

The absence of cultural practice you will find is not related to Africa; it is related to a patriarchal society. When men started to build a

million. At least 2 million girls per year undergo genital mutilation. Most of these girls are at risk in Asia and the practice is widespread in these countries. Further, there is a need to acknowledge that severe forms of male circumcision have parallels with FGM and that there are movements worldwide to stop the widespread practice of male circumcision generally, as a violation of the right of the male child to bodily integrity. Nevertheless, there is a certain acceptance within our Western culture of male circumcision, that is, the practice of cutting off the foreskin from the tip of the penis without damaging the organ itself. There is therefore room for confusion and a masking of what is really happening if female genital mutilation is referred to as female circumcision. What is at issue is not a small, cosmetic change. There is an amount of cutting in FGM that is anatomically much more extensive than in male circumcision.

**Types of Female Genital Mutilation**

There are 3 main types of female genital mutilation: clitoridectomy, excision and infibulation. The following descriptions come from Nahid Toubia's work:

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8 Above, note 4
9 Id, 9
10 Id, 9-10
1) Clitoridectomy: part or whole of the clitoris is amputated;

2) Excision: both the clitoris and the labia minora (inner lips) are amputated. 85% of all women who undergo female genital mutilation have a clitoridectomy or excision; and

3) Infibulation: this is the most severe form of FGM, comprising 15% of all female genital mutilations, and involves the removal of the clitoris and labia minora, in addition to the slicing away of the labia majora. The raw surfaces of the labia majora are either stitched together or held together with thorns and the girl’s legs tied together for several weeks or months until a hood of skin covers the urethra and most of the vagina. A small opening is reconstructed and a hollow reed inserted to permit urination and menstruation.

**Comparison with Male Circumcision**

The male equivalent of clitoridectomy (in which all or part of the clitoris is removed) would be the amputation of most of the penis. The male equivalent of infibulation (clitoridectomy + cutting away of labia majora and labia minora + sewing up of vagina) would be removal of the entire penis, its roots or soft tissue, and part of the scrotal skin.11

**Female Genital Mutilation Procedure**

The time that the genital mutilation is carried out in a woman’s life varies, from infancy to just before marriage. The most common time however is around the age of 7 years, before puberty. The operation is carried out without anaesthetic (although, in some places, anaesthetic is now starting to be used) by the grandmother or the village-midwife using a razor blade or scissors. The girl is held down by several people while the woman cuts the genitals. Women chant and beat drums, largely to drown out the girl’s hysterical screaming.12

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11 Ibid
12 DeMeo, James “The Geography of Male and Female Genital Mutilations” in Denniston, George C & Milos, Marilyn F (eds), above, note 1, 7
An infibulated woman stays that way usually until her wedding night, when she is cut open to allow intercourse. In many cases, the couple will have only met each other for the first time at their wedding. Subsequent sexual intercourse is difficult due to the presence of scar tissue, a too-small vaginal opening, the wound, pain and psychological trauma. Often, the couple will engage in anal sex as a substitute. This heightens the risk of HIV infection.\footnote{13}

A woman is again cut open (defibulated) at childbirth, due to the too-small opening and the presence of inelastic scar tissue in the vagina. After childbirth, during prolonged absences of the husband, or after divorce the woman is reinfibulated.\footnote{14} DeMeo describes the situation thus:

Deprived of legal rights and social status, these women live a life oscillating between horrifying rituals of infibulation-defibulation-infibulation. Mortality and morbidity of girls and women, immediately after the mutilations and childbirth, are thereby significantly increased. Infections, bleeding, shock, fistulas and even death are not uncommon results of such mutilations.\footnote{15}

There are severe short-term and long-term physical, psychological and sexual consequences associated with all of the above forms of female genital mutilation, however the effects are exacerbated in the case of infibulation.\footnote{16} Today, the most severe forms of female genital mutilation occur in Sudan, Mali, Djibouti, Egypt, Ethiopia and Somalia, and the other forms of female genital mutilation exist within 21 other African nations.\footnote{17}

**Physical Effects**

The immediate effects of female genital mutilation procedures, especially infibulation, can include haemorrhage, shock, acute infection (from

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instruments used and treatments placed on the wounds), septicemia, tetanus, damage to nearby organs and death.18

Doctors in Sudan have estimated that the number of fatalities due to infibulation is about one-third of all girls in areas where antibiotics are not available.19 For those girls who survive the immediate aftermath of the mutilation, there are ongoing problems with infection and bleeding that can recur through life.

Studies carried out in Sudan have indicated that almost all infibulated women experience significant problems in urinating. The average period of time it takes an infibulated woman to urinate is ten to fifteen minutes. They have to force the urine out drop by drop. Severe infections can lead to incontinence. Sometimes the hole left after infibulation is too small and prevents the flow of menstrual blood, which collects in the abdomen.20

There have been instances where girls have been killed to preserve their family’s honour when the swelling of their bellies and the absence of menstruation have been wrongly interpreted as pregnancy.21 There are also difficulties in childbirth due to a too-small opening and the presence of inelastic scar tissue. Delayed births are common and there can be brain damage and death of the baby because of lack of oxygen.22

**Psychological Effects**

Toubia points out that most attention given to health problems associated with FGM concentrates on the physical aspect, with little attention paid to the psychological issues. There is a lack of qualified psychologists to analyse the

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20 Australian Family Law Council, above, note 18
problems. Psychological symptoms are often regarded as the work of evil spirits. Therefore, says Toubia,

[m]any women who may be traumatized by their circumcision experiences, worried about a physical complication, or fearful of sex have no acceptable means of expressing their feelings and suffer in silence...in public hospitals in Sudan, thousands of women come to the Ob/Gyn outpatient clinics with vague chronic symptoms which they metaphorically interpret as originating from the pelvis. With a little probing, the women talk about fear of sex, the threat of infertility after infection, and fears about the state of their genitals (they have no way of assessing whether they are normal). Yet, these women's symptoms are labelled hysterical, their feelings dismissed as those of malingerers.23

SEXUAL EFFECTS

FGM in its usual forms means at least the removal of the clitoris; the taking away of the primary female sexual organ, while leaving the vaginal reproductive organ (which has minimal capacity for sexual response) largely intact. Toubia notes that:

It would be difficult for any child above infancy not to associate circumcision with some diminution of sexual desire; the message and the act appear to be interrelated...With infibulation, in particular, the radical shaving off of all sensitive tissue plus the folding away of the vagina, can be seen as a metaphor for the denial of a woman's sexuality and the locking up of her reproductive capacity with a chastity belt made of her own flesh. The 'protective hood' is only allowed to be cut open or dilated to permit the husband his lawful access to the vagina in return for his bride price. Later it is opened further when the woman is performing her sacred duty of childbirth.24

23 Above, note 4, 19
24 Above, note 4, 18
The removal of the sexual organ is at odds with the social requirement that a woman be sexually desirable and pleasing to her husband, and that she show her husband that she is enjoying the experience. Toubia concludes that “[a]lthough nearly all societies subjugate women in some way, FGM is the most drastic measure taken by any society to control women’s sexuality and reproduction.”

ORIGINS OF FEMALE GENITAL MUTILATION

DeMeo believes female genital mutilation may have started in East North Africa or even Arabia prior to 4,000 BC and spread with migration of these peoples due to major climate change. Based upon the geographical distribution and cross-cultural aspects, DeMeo states that the origins of male and female genital mutilations were probably identical, with the forcible castration of young African boys for the eunuch trade and the infibulation of girls to ensure their virginity when presented for the Near Eastern harem slave trade. The regions that practice infibulation today were once primary capture zones in the Turk and Arab slave trade for young African girls and boys.

DeMeo comments that the use of eunuchs has died out over the last 100 years with the decline in the harem system, but female genital mutilation has persisted in accordance with the arranged marriage system, ingrained fear of women’s sexuality and the subordination of women generally.

Anti-circumcision author Sami Aldeeb has quoted one Pierre Leulliette as follows:

Millions of children between the age of 2 and 14 are horribly tortured in an atmosphere of collective hysteria, in scorn of their bodies, in defiance of their lives... That barbarian culture! Is it not
with the social requirement that a woman submit to her husband, and that she show experience. Toubia concludes that women in some way, FGM is the attempt to control women’s sexuality and the lowest manifestation of the unlimited, omnipresent phallicracy? Those mutilations! Aren’t they first and foremost an example of man acting out his most secret hatred and deepest fear of women? 29

This view, that men’s fear of women and their sexuality has caused the repression and discrimination suffered by women throughout history and across civilisations, is one shared by many feminist writers. Fran Hosken, for example, writes:

The notion that female sexuality is dangerous and has to be controlled exists in the heads of men in all patriarchal societies...

This control by men over the bodies and lives of women takes different forms in different countries. 30

The more recent Muslim empires and nations adopted and spread the mutilation practice and then ocean-navigating people carried the practices from the Red Sea and Persian Gulf regions to Indonesia, New Guinea, Borneo and other areas of Muslim inhabitation.

There has been no finding as to whether genital mutilations in the Americas and Australia arose independently or were transmitted by immigration. For example, in the North West Kimberley region of Western Australia, a harsh form of male circumcision known as subincision or genital skin stripping was practised. It is speculated that as this particular form of circumcision had also been taking place along the Red Sea coast, it may have originated from there. 31 On the other hand, there is some support for the proposition that the more severe forms of subincision occurred in the desert centre of Australia.

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29 Leulliette, Pierre as quoted in Sami A. Aldeeb Abu-Sahlieh, “To Mutilate in the name of Jehovah or Allah: Legitimisation of Male and Female Circumcision”, Swiss Institute of Comparative Law, Lausanne, 21[INTERNET] URL: http://www-isdc.unil.ch/
31 De Meo, above, note 12, 3
and there are only less severe forms on the Coast.\textsuperscript{32}

According to anthropological reports, in the areas where male subincision occurs, female subincision has also been present. This has taken various forms, from extensive laceration of the vaginal walls and cliteridectomy to the slightest laceration of the hymen.\textsuperscript{33} Anthropologist Ashley-Montagu wrote in 1937 that the practice in Aboriginal Australian culture had become a purely ceremonial rite, with no stated therapeutic purpose.\textsuperscript{34}

**THE CULTURAL REASONS GIVEN FOR FEMALE GENITAL MUTILATION**

"Torture is not culture." \textsuperscript{35}

The following list has been cited by Toubia\textsuperscript{36} and others as comprising the various reasons given for the ongoing practice of FGM:

1) Male/Community Approval:
   - initiation into womanhood and into the tribe
   - the non-circumcised cannot be married
   - tests girl's capacity to cope with the future pain of childbirth
   - ensures paternity of children
   - female circumcision enhances the husband's sexual pleasure

2) Beauty/Cleanliness:
   - female genitals are unhygienic and need to be cleaned (removed)
   - female genitals are ugly
   - female circumcision is fashionable

\textsuperscript{32} Ashley-Montagu, M.F., Coming Into Being Among the Australian Aborigines (London: George Routledge & Sons Ltd, 1937), 293
\textsuperscript{33} Ibid
\textsuperscript{34} Id, 300
\textsuperscript{35} Walker, Alice, quoted in David Kaplan et al., "Is it Torture or Tradition?", Newsweek, 20 December 1993, 124
\textsuperscript{36} Above, note 4, 37
In the areas where male subincision is present. This has taken various forms, including genital cutting and clitoridectomy. In many cases, male circumcision has been accompanied by female circumcision, which was largely practiced to prevent infanticide. According to anthropologist Ashley-Montagu, in 1971, Australian culture had become a purely masculine society, with female circumcision being performed for various purposes.

**Purposes for Female Genital Mutilation (FGM):**

1. **Health:**
   - Female circumcision improves fertility and prevents maternal and infant mortality.
   - The Bambara people of Mali believe the clitoris will kill a man if it comes into contact with the penis during intercourse.
   - In Nigeria, some groups believe the baby will die if its head touches the clitoris during delivery.

2. **Morality:**
   - Female circumcision safeguards virginity.
   - Female circumcision cures sexual deviancy in women—excessive sexual arousal, lesbianism, masturbation.

3. **Religion:**
   - God sanctifies females and requires them to be circumcised.

**Culture and Religion**

An examination of the doctrinal claims of a religion, and the religion as put into practice within a particular historical context, reveals inherent contradictions. In his article, "Muslim Voices in the Human Rights Debate", Heiner Bielefeldt quotes Lebanese philosopher Subhi Mahmasani who blamed the medieval jurists for having "mixed religion with the daily ways of life" to such an extent that, finally, "incidental worldly matters were placed on the same level with the original, essential and immortal provisions of religion". 

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38 Ibid
Religious ideals contain the principle of human equality. This is true across all of the world’s major faiths including Christianity, Islam, Hinduism and Buddhism. It has, however, been in the interpretation and application of religion within a particular society that distinctions have emerged between the ideal and the practice. As it has overwhelmingly been men who historically have interpreted religious texts and assumed controlling positions both within the religious practice and within society generally, the ideal of equality has tended to become, in practice, the superiority of men. It is therefore not surprising that interest in maintaining the status quo is maintained.

As noted above, the concepts of culture and religion have, in many societies become so enmeshed that it may be difficult to isolate one from the other; indeed, they may be indistinguishable. The religion of Islam and life within Muslim societies has often been referred to in this way. Brooks notes the results of a British study on family violence in which the researchers found that women married to men of Muslim background were eight times more likely to be killed by their spouses than any other women in Britain. She goes on to comment:

Presented with statistics on violence towards women, or facing the furore over the Rushdie fatwa... Muslims... ask us to blame a wide range of villains: colonial history, the bitterness of immigrant experience, Bedouin tradition, pre-Islamic African culture. Yet when the Koran sanctions wife beating and the execution of apostates, it can’t be entirely exonerated for an epidemic of wife slayings and death sentences on authors. In the end, what [they]...are proposing is as artificial an exercise as that proposed by the Marxists who used to argue that socialism in its pure form should not be maligned and rejected because of the deficiencies of ‘actually existing socialism’. At some point, every religion, especially one that purports to encompass a complete way of life and system of government, has to be called to account for the kind of life it offers the people in the lands where it predominates.40

40 Above, note 2, 231
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The author concludes that religion, whatever its theoretical underpinnings, has
to account for the way it operates in practice, that is, the cultural reality.

Toubia states that female genital mutilation is a practice of culture, not
religion. It is most often associated with Islam, however there is no question
that female genital mutilation preceded Islam. When Islam came to Africa, it
is most likely that female genital mutilation was simply incorporated into the
new religious beliefs of the African people.41

Female Genital Mutilation and Islam

There is no religious requirement for female genital mutilation in Islam. It is
not mentioned in the Qur'an, nor in the “hadith” which is a collection of
Mohammed’s sayings recorded after his death. Mohammed was illiterate,
therefore the sayings are contained in oral histories. The expression “sunnah”
means the tradition of Mohammed, made up of his behaviour and his sayings.42

The most common justification from Muslim jurists for the practice of female
genital mutilation is based upon the sunnah, in which an alleged debate
between Mohammed and a women who was a circumciser of female slaves is
recounted. According to the myth, Mohammed asked the circumciser
if she
was still practising her profession. She said “yes, unless you forbid it”.
Mohammed is alleged to have replied: “It is allowed. Come closer so that I
can teach you: if you cut, do not overdo it, because it brings more radiance to
the face and it is more pleasant for the husband.” 43

It is thought that Mohammed may have been referring to a male-type circum­
cision where the clitoral hood is removed, with the object of making the
clitoris even more sensitive to touch.44 Toubia notes however that notwithstanding this interpretation, there is no documented evidence that this minor

41 Above, note 4, 31
42 Sami A. Aldeeb Abu-Sahlieh, “Jehovah, His Cousin Allah, and Sexual Mutilations”
in Denniston, George C & Milos, Mailyn F (eds), above, note 1, 47
43 Ibid
44 Toubia, above, note 4, 31
form of male-style circumcision or “sunnah” circumcision occurs in ritualistic practices, which focus instead upon the actual cutting and removal of sexual organs.\textsuperscript{45}

Toubia points out that there are also different levels of religious requirements contained within Islam: mandatory practices, strongly recommended practices, and “makrama” - practices that are not essential. She says that even for those people who accept the direction implied in Mohammed’s speech, circumcision for women in Islam is regarded as makrama, or optional.\textsuperscript{46}

The procedure is not practised in all Islamic countries, for example it is not in Saudi Arabia, Iraq, the Gulf States, Kuwait, Algeria or Pakistan. It is however practised in India by the Daudi Bohra, whose religious beliefs are derived from an Egyptian-based sect of Islam.\textsuperscript{47} Hosken says that in Southeast Asia, the operations carried out on female children are not indigenous to Asia, but were imported with Islam.\textsuperscript{48}

Operations, although expressly done to prevent the ‘hypersexuality’ of women, are performed as a religious Muslim rite. The practice is therefore limited exclusively to the Muslim population in Indonesia and Malaysia, with no other religious groups involved. This is in contrast to the situation in Africa and the Middle East where female genital mutilation was practised long before Mohammed, but the practice was adopted and spread by Islam.\textsuperscript{49}

Hosken reports that in Malaysia, the circumcision of girls is regarded as an Islamic duty by the Malay people. The practice has now become:

modernised and medicalized. In the process, all rituals that resemble what is still practised, for instance in Sudan and rural Egypt such as a feast and giving the child special clothes, have

\textsuperscript{45} Above, note 4, 9-10
\textsuperscript{46} Id, 32
\textsuperscript{47} Ibid
\textsuperscript{48} Above, note 30, 279
\textsuperscript{49} Ibid
different levels of religious requirements. Rituals, strongly recommended practices, are essential. She says that even for those in Mohammed’s speech, circumcision was, or optional.\textsuperscript{46}

In some countries, for example it is not in Saudi Arabia, Algeria or Pakistan. It is however in other countries, whose religious beliefs are derived from Mohammed’s speech, that circumcision is compulsory or optional.\textsuperscript{46}

Hosken says that in Southeast Asia, children are not indigenous to Asia, but were brought to prevent the ‘hypersexuality’ of Muslim rite. The practice is therefore not practised in Indonesia and Malaysia, with the result that the situation in Africa, where genital mutilation was practised long before the spread of Islam, is in contrast to the situation in Southeast Asia.\textsuperscript{49}

The circumcision of girls is regarded as an essential part of their culture and as a way of ensuring that they are not aware of what is being done to them.\textsuperscript{50}

In Indonesia, according to Hosken, the operations are known only on the Island of Java among the devout Muslims.\textsuperscript{51} In her work \textit{The Hosken Report}, Hosken reproduces an extract from an Indonesian book published in 1956 called \textit{Guidelines for Health Care According to Islamic Law} by Ahmad Ramali. Part of this extract is as follows:

Therefore, circumcision among Muslim female children involves cutting the prepuce of the clitoris, sometimes the clitoris itself or the labia minora. The child lies flat on her back, lifts up her knees and straddles her legs widely ... Above the mons veneris (female genitalia) and vulva (vagina), a white cloth is placed by the shaman (healer, medicine man). The cloth is cut so that there is a small hole which is placed against the clitoris. Other instruments include a pair of scissors or a sharp knife and also a slice of Rhisoma (turmeric). At the time of the circumcision, the shaman fastens his left hand on the genital of the child. The hand is pressed slowly (gently) such that the clitoris protrudes through the white cloth, until the boundary between the glans and the corpus clitoridis is visible. After some words of prayers, the clitoris is cut with a pair of scissors or a small knife, as closely as possible along this boundary. If it is cut by a knife, a slice of Rhisom (turmeric) is placed as a base between the knife blade and the clitoris. It is a very fast procedure, and the child is kept occupied such that she is not aware of what is being done to her. A piece of cotton is placed on the wound to stop or prevent excessive bleeding.\textsuperscript{52}

\textsuperscript{50} Id. 285
\textsuperscript{51} Above, note 30, 279
\textsuperscript{52} Ibid
Hosken comments that although the practice is described in a book on health care, the book does not stipulate the health benefits to the girl child resulting from the practice. She speculates also about whether the author has ever attended such a procedure, given his claim that the little girl is not aware of a man cutting into the most sensitive organ of her body.53

In his article “To Mutilate in the Name of Jehovah or Allah”, scholar Sami A. Aldeeb Abu-Sahlieh quotes the Inter-African Committee’s view of the role played by religion and Muslim religious leaders in the matter of female genital mutilation.54 In 1984, the President of the Inter-African Committee stated:

An erroneous idea of religion has played a key role in maintaining the practice of excision and other practices which tend to relegate the woman to a lower status in relation to the man.55

In 1987, the Vice-President of the above Committee stated:

I request more aggressive tactics to put an end to the practice of infibulation. I call for more active support especially from the religious leaders of Islam after it has been confirmed many times that this practice is contrary to the precept of Islam.56

It is interesting to observe the emergence of “liberal Muslims”, who are examining the sources of Shar’ia or Islamic Law, particularly the Qur’an and the Sunnah, and revisiting some of the interpretations and practices that have arisen from them, including that of FGM. Such reformers place much emphasis on human dignity as an essential part of the Qur’anic teaching57, and do not condone the practice of FGM. Bielefeldt notes that “[F]or many liberal

53 Id, 280
54 Sami A. Aldeeb Abu-Sahlieh, “To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision”, Swiss Institute of Comparative Law, Lausanne [INTERNET] URL: http://www.isdc-unil.ch/
55 Ibid
56 Ibid
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ance of “liberal Muslims”, who are African Law, particularly the Qur’an and interpretations and practices that have FGM. Such reformers place much egalitarian part of the Qur’anic teaching57, and Siebelfeldt notes that “[f]or many liberal

Muslims, no inherent contradiction exists between Islamic principles and the emancipatory claims of human rights as embodied in the existing international standards.” 58

Female Genital Mutilation and other Religions

With regard to Christianity, in the Bible, as with the Qur’an, there is also no mention of female circumcision. There was however, widespread condoning of the practice of female genital mutilation in Africa by Catholic Church priests, as a way to maintain women’s sexual purity. 59 The Protestant Church was more active against the practice, nonetheless, as noted above, attempts by British Colonialists to ban infibulation in Sudan in 1946 were ineffective. In relation to Judaism, again, there is no mention of female circumcision in the Torah and it is not known, except among Ethiopian Jews called Falashas, most of whom now live in Israel. 60

‘Culture’ as ‘Private’

In order to make the...mutilated women visible on the human rights and international theory agendas, it is necessary to examine what goes on under the epithet “culture” so that it can no longer be invoked in order to define a sphere of existence immune to (western) human rights criticism. 61

An examination of feminist readings indicates a widespread view that any notion of culture which relies upon the subordination of women as a basic tenet cannot be immune from international scrutiny.

Referring to her activism on the issue of FGM, Fran Hosken, for example, has stated:

58 Id, 610
59 Sami A. Aldeeb Abu-Sahlieh, above, note 54
60 Ibid
I feel that my own personal sense of dignity and worth as a woman and human being is under attack by these mutilations inflicted on helpless children for no other reason than that they are female. I cannot tolerate this. I find it impossible, indeed absurd, to work for feminist goals, for human rights, for justice and equality, while ignoring senseless attacks on the essence of the female personality, which these operations represent.62

The defence of ‘culture’ or ‘religion’ is often employed in the same way that the notion of ‘private’ has been used to exclude matters from what is seen to be the public international domain. Hilary Charlesworth has stated in this regard:

...the notion of cultural, and religious, rights can often reinforce a distinction between public and private worlds that operates to the disadvantage of women: culture and religion can be seen as spheres protected from legal regulations even though they allow the oppression of women by men. While the right to gender equality on the one hand, and religious and cultural rights on the other can be reconciled by limiting the latter, in political practice cultural and religious freedom are accorded a much higher priority nationally and internationally.63

In a similar vein, Gayle Binion argues that cultural and religious institutions have much to gain “in the preservation of their autonomy from the illusion of invisibility that the two-spheres theory provides”.64 She says that overcoming the public/private dichotomy is one of feminism’s greatest hurdles in creating an inclusionary approach to human rights and in incorporating the diverse everyday life experiences of women into its models.65 Binion believes that

62 Above, note 30, 14.
65 Id, 516.
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only by challenging the distinction and bringing it out into the open can we hope to overcome spousal rape, beatings and murder, prostitution, the institution of purdah (in which women are essentially imprisoned in their homes) and the malnutrition, mortality [and, it could be added, mutilation] of female children.66

CULTURAL RELATIVISM

Katherine Brennan notes that in 1959, the World Health Organisation (WHO) declined a request by the Economic and Social Council of the United Nations to study ways to eradicate female circumcision, arguing that these operations "are based on social and cultural backgrounds, the study of which is outside the competence of the World Health Organisation." 67

This argument has also been made by anthropologists, among others, since the United Nations' adoption of the Universal Declaration of Human Rights. In 1947, the American Anthropologists' Association (AAA) issued a statement rejecting the applicability of any Declaration of Human Rights to mankind as a whole:

The rights of Man in the Twentieth Century cannot be circum
cscribed by the standards of any single culture, or be dictated by the aspirations of any single people.68

The doctrine of cultural relativism asserts that knowledge and truth are culturally contingent and that all cultures are equally valid.69 Brennan describes the tension between cultural relativism and the concept of universal human rights as follows:

66 Ibid
Cultural relativists criticize the current international human rights system because, in its search for potential human rights violations, it looks at cultural practices which have been condoned for centuries by the societies which engage in them. These critics assert that cultural practices have a legitimate function indigenous to the culture and that judging these practices according to international norms imposes outside values upon the society. Human rights proponents respond that their evaluation of cultural practices is based on universally accepted norms and, therefore, does not impose the views of outsiders.  

Annie Bunting points out that relativists have used the theory of cultural relativism to argue that “the ethical basis for international human rights is Western; therefore international norms should not be the basis for value judgments in other cultural contexts.”

Feminists are questioning the defence of culture in relation to the denial of the fundamental rights of women. As noted by Gayle Binion, Helie-Lucas has pointed out that “while such practices as maiming and corporal punishment regularly elicit international voices of outrage, genital mutilation of women is attributed to ‘culture’.”

Notwithstanding the rhetoric of cultural relativism, it is apparent that States parties to United Nations Declarations and Conventions have agreed that there are certain rights that should apply universally, including freedom from genocide, torture, slavery and racial discrimination. There are, for example, only four reservations to the Convention on the Elimination of All Forms of Racial Discrimination.

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70 Above, note 67, 68
72 Above, note 64, 21
73 This is not to say that States necessarily abide by the Conventions they have acceded to. Gross violations committed or ignored by States parties are common. At least in principle however, they have agreed that certain human rights are sacrosanct.
current international human rights violations, potential human rights violations, which have been condoned for which engage in them. These critics value indigenous values upon the society. Human cultural relativism have used the theory of cultural basis for international human rights is value judgments should not be the basis for value judgments.

of culture in relation to the denial of the violations committed. As stated by Gayle Binion, Helie-Lucas has noted that maiming and corporal punishment as outrage, genital mutilation of women is being justified.

Cultural relativism, it is apparent that States and Conventions have agreed that there are certain human rights are sacrosanct. At least in the denial of the rights of women.

This is to be contrasted with the marginalisation that has occurred in relation to violations of the human rights of women. The much heralded Convention on the Elimination of All Forms of Discrimination Against Women (Women’s Convention) of 1979 and its committee body, have been rendered largely ineffective due to a lack of resources and the toleration of the widespread practice of States making reservations to fundamental aspects of the Convention. One hundred and thirty three nations have acceded to the Women’s Convention and over one hundred reservations have been made to the treaty, most of these on cultural or religious grounds.

Binion notes that “[a]ll social order, values, and power can be understood as culture... The facts and conditions of cultural diversity among societies cannot, from a feminist perspective, justify a failure to rectify the conditions in which women live worldwide.” The fact that there is no single explanation for the practice of FGM points to the convenience and the fluidity of the notion of culture, in being able to justify any number of harmful activities.

Mackie quotes Mary Daly’s view linking:

footbinding, genital mutilation, and other misogynistic practices in a patriarchal sado-ritual syndrome that is obsessed with purity, is sanctioned by tradition, and has ‘an inherent tendency to ‘catch on and spread, since [the rituals] appeal to imaginations conditioned by the omnipresent ideology of male domination,’ uses women as scapegoats and token torturers, ritualizes and ‘normativizes’ atrocities, and is legitimated by male scholars despite appearances of disapproval.

74 Charlesworth, above, note 63, 58
75 Bowman, M & Harris, D, Multilateral Treaties Index and Current Status (Nottingham: University of Nottingham Treaty Centre, 1995)
76 Charlesworth, H; Chinkin, C & Wright, S, “Feminist Approaches to International Law” (1991) 85 The American Journal of International Law 613, 633
This view has been echoed elsewhere. At the Fourth International Symposium on Sexual Mutilations in 1996, James DeMeo outlined the intimate relationship between the urge to mutilate the genitals of children and much broader anti-sexual, anti-female, patriarchal, obedience-demanding and authoritarian social customs and attitudes. He argued:

The older woman who cuts the genitals of the young girls was subject to the rite herself as a child, just as, in our own culture, the violent, child-abusing parent was subject to a general pattern of abuse and neglect in his or her own childhood.79

In DeMeo’s opinion, “genital mutilations will stubbornly persist so long as these broader customs and attitudes remain unmasked, unchallenged and uncriticized”.80

Brennan notes that in the United Nations Sub-Commission’s decision to support a study of female circumcision in 1982, it managed to avoid the conflict between cultural relativism and human rights theory, by describing the issue as an undisputed health problem and by stating that there was African support for the study. Nevertheless, as Brennan records, in the study by the Working Group on Traditional Practices, there was a weighing of the cultural function of female circumcision against the harmful consequences.81

The Working Group noted that, traditionally, the practice has served as a physical rite which introduces girls into womanhood, and also that it tests the girl’s capacity to endure acute suffering and cope with the future pain of childbirth. The Group noted that changes in the practice had rendered these functions obsolete. The operations are no longer carried out at puberty, but in infancy or early childhood, when the girl is too young to appreciate the significance of the ritual. Further, some operations are carried out in hospital settings, where no ritual accompanies the operation. This strengthens the view that the practice is done in blind adherence to tradition, rather than to fulfil an

79 Above, note 12, 10
80 Id, 11
81 Above, note 67, 389-390
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the operation. This strengthens the view
ence to tradition, rather than to fulfil an

initiatory function.82

Brennan notes the Working Group’s somewhat “evasive” conclusions that
“female circumcision became outmoded because it no longer served a function
and because changes in cultural values meant that it became less tolerable.” 83

ESSENTIALISM AND CULTURAL RELATIVISM

The criticism of essentialism as levelled at white western feminist activists has
been described by Tracy E. Higgins as follows:

Feminists who theorized a commonality among women were
criticized for committing the dual sin of reinforcing patriarchal
assumptions about women as a group and marginalizing some
women along the lines of race, class and sexual orientation.84

Rather than a ‘monolithic’ theory about FGM being an example of the general
oppression of women, anti-essentialists call for the inclusion of different
women’s voices in the FGM debate; it is argued that the focus of attacks on
such practices need to be local and contextualised, with the primary
involvement of the (predominantly) African women who are affected.

Western feminists who have involved themselves in the FGM debate,
including Fran Hosken, have been criticised for their efforts.85 Many cultural
relativists have joined in the anti-essentialist attack on Western feminists,
however, it is argued that they do so out of very different motives. While anti-
essentialists call for more inclusion of different perspectives, cultural
relativists attempt to stop debate altogether. Relativists may be guilty of the
very thing they accuse Western feminists of: that is, treating culture as
monolithic. It is thus pertinent to examine the anthropological perspective on
this issue.

82 Ibid
83 Id, 392
84 Above, note 69, 99
85 Lewis, above, note 7, 30
Decline of Cultural Relativism in Anthropology

As noted above, anthropologists have tended not to participate in the creation of international conventions regarding human rights due to their adherence to the theory of cultural relativism. However, as Carolyn Fluehr-Lobban points out, this reluctance is changing with anthropologists' recognition that their work with people at the grassroots level gives them a unique perspective to contribute to the international debate concerning human rights.86

Anne-Belinda S. Preis has noted that an interesting paradox is thus emerging: in the same period that cultural relativism has been increasingly espoused in human rights debate, the theory has declined in importance within anthropology itself. That is, changes in the modern world in terms of the globalisation of economic, social and political life, have led anthropologists to recast their assumptions about 'culture' being a "homogenous, integral and coherent entity", and they have begun to perceive culture as highly dynamic, overlapping and changing.87

HUMAN RIGHTS BELONG TO ALL WOMEN

Preis states that human rights have "become part of a much wider, globalized, cultural network of perspectives". Therefore, the traditional relativist view of human rights as particularly 'Western' cannot be sustained. She cites the Unity Dow case by way of example and says that Ms Dow and her feminist supporters certainly consider human rights to be theirs as well.88 This example

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88 Id, 302 - 305. In that case, Unity Dow challenged changes to the Botswana Citizenship Act in 1984, that provided that children born to Botswana women married to foreigners no longer had the right of Botswana citizenship by virtue of their birth there. The same law did not apply to the children of men who married foreign women. In June 1991, Judge Horowitz of the Appeal Court of Botswana delivered his judgment in which he rejected the state defence that gender discrimination is allowed, writing that "the time when women were treated as chattels or were there to obey the whims and wishes of males is long past." The government threatened to appeal the decision, and if that failed, to amend the Constitution to allow gender discrimination.
attended not to participate in the creation of human rights due to their adherence to rever, as Carolyn Fluehr-Lobban points anthropologists' recognition that their role gives them a unique perspective to concerning human rights. An interesting paradox is thus emerging: activism has been increasingly espoused in declined in importance within anthropological world in terms of the globalisation of life, have led anthropologists to recast culture as highly dynamic, inhomogenous, integral and coherent. Therefore, the traditional relativist view of culture as highly dynamic, inhomogenous, integral and coherent cannot be sustained. She cites the example of Ms Dow and her feminist rights to be theirs as well. This example also supports Hilary Charlesworth's view that the acquisition of rights "is an important tactic in the international arena. Because women in most societies operate from such a disadvantaged position, rights discourse offers a recognized vocabulary to frame political and social wrongs." Binion argues that the current international human rights discourse needs to be re-conceptualised to speak about "responsibility", with a focus on impact rather than intent by powerful social actors, and a re-defining of rights as needs, with a goal to effecting change rather than blaming. She suggests that women may fare better under a model like this, than under the traditional set of international law obligations.

There have been other warnings about reliance upon "beautifully crafted human rights documents" to bring national laws (including religious and customary laws) into line with human rights principles. Various writers, including Rebecca Cook, have cited Abdullahi An-Na'im, a Sudanese scholar, who has suggested that a formalistic understanding of international legal obligations is not enough.

What is needed is stimulation of internal discourse and cross-cultural dialogue in order to establish the legitimacy of human rights principles within the context of particular cultures and traditions. Without such legitimacy he says, "neither the law nor other agents of social change will be capable of improving the status of women." Similarly, Cook cites Sri Lankan feminist Radhika Coomaraswamy, who has suggested that human rights discourse will be more effective when it can "plug into many of the dynamic social movements taking place in South Asia."

This did not take place due to the holding of the Fourth World Conference on Women in Beijing. Shortly before the Conference the Botswana government changed the Citizenship Act to remove the discrimination. 

94 Id, 237
95 Id, 236
Coomaraswamy comments on the ongoing practice in India of sati or widow burning, and the fact that India already had laws banning the practice which were being ignored. She asks:

What is the point of all these laws if the people do not believe that putting an eighteen-year-old woman on a funeral pyre and denying her life is not a violation of the most fundamental right – the right to life? What is the point of all the Constitutional protection if “ethnic identity” is an acceptable justification for reducing the status of women according to diverse cultural practice? 96

Kathleen Mahoney points out that while customs such as child marriage, genital mutilation and unfair education and nutrition for girl children may not be legitimately passed off as cultural and may be more accurately characterised as discriminatory and harmful human rights abuses, not all cases are so easily analysed.97

In some cases, the promotion of women’s rights is seen to be not as important as other struggles of the community, such as the fight for self-determination. In fact, it can be viewed as a negative influence. For example, Hope Lewis notes that

[s]ome African Americans have expressed discomfort at the critique of African practices [FGM] by ‘one of our own’ as disloyal or inappropriate given the negative images of Africa that already pervade the Western media.98

As a further example, Brooks notes that, in rejecting the request for support by a small group of Muslim women in the West Bank who were trying to raise awareness about, and ultimately put an end to, ‘honour killings’, “West Bank

96 Quoted in Cook, above, note 93
97 Mahoney, Kathleen, “Theoretical Perspectives on Women’s Human Rights and Strategies for their Implementation” (1996) 21 Brooklyn Journal International Law 799, 854
98 Above, note 7, 35
going practice in India of sati or widow immolation, had laws banning the practice which had been in force for 500 years. If the people do not believe that the man on a funeral pyre and denying him the most fundamental right - the right to Constitutional protection if there is no possible justification for reducing the reverse cultural practice? 96

While customs such as child marriage, dowry and nutrition for girl children may not be purely cultural and may be more accurately characterized as human rights abuses, not all cases are so clear cut. Women's rights is seen to be not as important as some new age issues such as the fight for self-determination. It is of course in positive influence. For example, Hope Lewis have expressed discomfort at the [FGM] by 'one of our own' as a means to counteract the negative images of Africa that could be seen as palliative. 98

But, in rejecting the request for support by the West Bank who were trying to raise the issue of an end to, 'honour killings', "West Bank perspectives on Women's Human Rights and 1996) 21 Brooklyn Journal International Law Security Council unanimously adopted a resolution calling for an end to the practice of sati. 99

Charlesworth has noted too, the West's complicity in the oppression of women through its support of the notions of statehood and self-determination. She cites the example of the strong United States support for the Mujahadeen Afghani resistance movement against the Soviet invasion, without any concern for the very low status of women within traditional Afghan society. 100 It is pertinent to note that there are women's movements within some cultures to resist what is perceived to be Western domination. As Mahoney points out, some Muslim women argue that modernisation, urbanisation and other twentieth century developments have motivated women to look for security in tradition. 101

As noted above, Abdullah An-Na'im's view is that:

the combination of the processes of internal discourse and cross-cultural dialogue will hopefully deepen and broaden universal cultural consensus on the concept and normative content of women's international right to be free from all forms of discrimination. 102

Cook notes that An-Na'im's 'cross-cultural dialogue' approach has been questioned by some feminists because "religions and cultures are often sources of women's oppression" and that therefore "going secular' is the only option". An-Na'im's response is that "in some countries women do not have a secular option because their frames of reference or discourse are religion." 103 Giving up religion for these women would probably mean losing their families and homes. It is simply not an option.

99 Above, note 2
100 Above, note 63, 75-76
101 Above, note 97
102 Quoted in Cook, above, note 93, 237
103 Ibid
The significance of these contributions then is to affirm the correctness of the anti-essentialist approach, and to place the focus of violations of women’s human rights on local, contextualized problems of gender oppression, rather than attempting to espouse a monolithic “women’s point of view” based upon a theory of the universal subordination of women.

A very clear example of an attempt by one culture (or set of cultures) to impose a solution upon another, which was a dismal failure, was the British colonial attempt to end FGM in the Sudan in the 1940’s. The banning of FGM resulted in it still occurring, but in secret and with girls reluctant to seek medical treatment for complications. Toubia reports that the prevalence of the practice (predominantly infibulation) in Sudan at present is 89%.

An inevitable reaction upon learning of the extent and consequences of FGM is the temptation to call for very strong action on the part of the United Nations to ensure that it is ended. The fact that 6,000 girls per day undergo a procedure that will result in lifelong consequences for each of them imbues the situation with a sense of urgency. However, the experience in Sudan suggests that any attempt to impose a solution from outside will result in failure.

Mackie has written that not only is infibulation nearly universal and persistent where it is practised, but that rather than diminishing with modernisation, public education and legal prohibition, it is becoming more widespread. He says that it is spreading from North Sudan to Southern and Western Sudan. For example, infibulation was unknown in Nyala in West Sudan 50 years ago and it now saturates the area twenty years after its introduction. Mackie also notes that recent international and national attempts to educate people and discourage or prohibit female genital mutilation “have had no apparent effect.”

104 Higgins, above, note 69, 103
105 Above, note 4, 25
106 Above, note 78, 1004
107 Id, 1014
Mackie cites a survey by Abdalla in 1980 of 70 Somali female and 40 Somali male university students. The results revealed that 60 percent of the women and 58 percent of the men believed that female genital mutilation should be abolished, however 66 percent of the women and 50 percent of men planned to mutilate their daughters. Thus, a majority (acting collectively) would abolish the practice, while a majority (acting individually) would inflict it on their daughters. Abdalla concluded that “no one dares to be the first to abandon it.”

Mackie believes that lessons may be learned from the Chinese experience with female footbinding, which lasted for 1,000 years but ended in a single generation, to demonstrate how it may be possible to apply a similar technique in the battle against FGM.

**FOOTBINDING IN CHINA**

Mackie describes the practice of footbinding as follows:

> Beginning at about age six to eight, the female child’s four smaller toes were bent under the foot, the sole was forced to the heel, and then the foot was wrapped in a tight bandage day and night in order to mold a bowed and pointed four-inch-long appendage. Footbinding was extremely painful in the first 6 to 10 years of formative treatment. Complications included ulceration, paralysis, gangrene and mortification of the lower limbs; perhaps 10 percent of girls did not survive the treatment... Bound feet were malodorous, and treated women were crippled and largely housebound. The custom was defended even by women and was transmitted by them.

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109 Above, note 78, 1000
Fan Hong contends that “physical constraints, in particular footbinding, served as a practical means to confine women to the home. Female bodies, therefore, were restrained to actualise and symbolise their subordinate role.” 110 Hong notes that footbinding was a necessary condition for success on the marriage market and was a tool of social control in a male dominated society. “Bound feet physically prevented women from moving about freely and unchaperoned and rendered them immune to the social disease of conjugal infidelity.” 111

Mackie says that in China, education campaigns about the negative health aspects of footbinding and international condemnation of the practice did not have a great deal of success in diminishing the incidence of footbinding, due to the fear of families that their daughters would not be marriageable. The critical point of change, Mackie contends, was the establishment of anti-footbinding and natural foot societies, and the pledge by members not to bind the feet of their daughters, nor to allow their sons to marry footbound women.

Hong too, notes that:

[m]arriage to girls with natural feet was encouraged. This move struck directly at the basic social tenet that bound feet were a necessary prerequisite to a good marriage. According to the North China Herald, the custom only received its deathblow when a growing number of Chinese men joined the societies and took the oath that neither they nor their sons would marry a ‘small-footed’ woman.112

Mackie believes that the ending of footbinding in China offers important lessons for those seeking to end the practice of female genital mutilation. Mackie’s main contention is that, as with the custom of footbinding, the custom of mutilating originated as soon as women believed that men would

110 Hong, Fan Footbinding, Feminism and Freedom: The Liberation of Women’s Bodies in Modern China (London: Frank Cass & Co Ltd, 1997) 5
111 Id, 48
112 Id, 65
constraints, in particular footbinding, served to the home. Female bodies, therefore, symbolise their subordinate role." Hong

stated that: "Confinement to the marriage condition for success on the marriage was the establishment of anti-sens, and the pledge by members not to bind their sons to marry footbound women. This move social tenet that bound feet were a marriage. According to the North... the decisive factor is that men refuse to marry women who are not excised. Since marriage is the only career for a woman in most of Africa and the Middle East, the operations continue. 'No proper Kikuyu would dream of marrying a girl who has not been circumcised' is the often cited statement by Jomo Kenyatta, the revered leader of Kenya, from his book, which was written in the 1930s and continues to be published... Kenyatta had a great influence on Africans well beyond the borders of Kenya, and his much quoted pronouncement is responsible for the mutilation of many thousands of helpless little girls and untold sufferings and deaths all over Africa. Mackie believes therefore that there should be development and encouragement of associations of parents who pledge not to infibulate their daughters, nor to let their sons marry infibulated women.

Mackie has made an interesting argument, which is appealing in its simplicity. Whether the experience of a single country in the midst of a revolution holds all the answers for an end to FGM, which is currently practised in its various forms in over 40 countries, is debatable. Nevertheless, the formation of pledge associations could well be a tactic added with little difficulty to the integrated programs that are being developed in practising countries.

not marry an un mutilated woman and men believed that an un mutilated woman would not be a faithful partner in marriage. He cites Gruenbaum in stating that "[t]estimony of an Islamic scholar that infibulation is not religiously commanded, or promoting greater awareness of medical hazards, 'would not be sufficient for a mother to risk her daughter's marriageability'."

This accords with Hosken's findings as to the reasons for the continuation of the practice. She notes:

...the decisive factor is that men refuse to marry women who are not excised. Since marriage is the only career for a woman in most of Africa and the Middle East, the operations continue. 'No proper Kikuyu would dream of marrying a girl who has not been circumcised' is the often cited statement by Jomo Kenyatta, the revered leader of Kenya, from his book, which was written in the 1930s and continues to be published... Kenyatta had a great influence on Africans well beyond the borders of Kenya, and his much quoted pronouncement is responsible for the mutilation of many thousands of helpless little girls and untold sufferings and deaths all over Africa.

Mackie believes therefore that there should be development and encouragement of associations of parents who pledge not to infibulate their daughters, nor to let their sons marry infibulated women.
ACTION BY AFRICAN STATES TO END FEMALE GENITAL MUTILATION

Most affected countries have ratified the Women’s Convention and the Convention on the Rights of the Child, which would outlaw female genital mutilation on the grounds, inter alia, of being prejudicial to the health of children. Some are also parties to the African Charter on the Rights and Welfare of the Child requiring them to take all appropriate measures to eliminate harmful social and cultural practices affecting children, including practices that are discriminatory on the basis of sex.117

Sudan and Egypt have outlawed female genital mutilation and made official statements and policy to end the practice. Other countries that practice infibulation such as Djibouti and Mali have made official statements but this has not been translated into laws banning the practices. In Somalia, where 99% of women are subject to female genital mutilation, particularly infibulation, there has been no official action or recognition of the problem whatsoever.118

Toubia comments that clear policy declarations by government and professional bodies are essential, but if the majority of the society is convinced that female genital mutilation serves the common good, legal sanctions that incriminate practitioners and families may be counter-productive. Criminalisation and regulations are only effective once a substantial body of public opinion has been raised against the practice.119

Toubia has suggested that action is needed on several levels:

1) International programs helping local groups to tackle the issue via health policy and programs, commitment to ending violence against women, and appropriate economic development programs. For example, the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (with the support of UNICEF, UNFPA, WHO & UN

117 Toubia, above, note 4, 44-45
118 Ibid
119 Id, 45
FEMALE GENITAL MUTILATION

Identified the Women's Convention and the Child, which would outlaw female genitalia, of being prejudicial to the health of the African Charter on the Rights and them to take all appropriate measures to end practices affecting children, including the basis of sex.

Female genital mutilation and made official practice. Other countries that practice infibulation made official statements but this has not ended the practices. In Somalia, where 99% of mutilation, particularly infibulation, there is no admission of the problem whatsoever.

Many declarations by government and professional majority of the society is convinced that the common good, legal sanctions that families may be counter-productive. and only effective once a substantial body of last the practice.

International Action to End Female Genital Mutilation

Economic Commission for Africa), the Organisation for African Unity and NGO's have taken a leadership role in educating the public;

2) The support of professional associations within the country and worldwide. For example lawyers, doctors, nurses etc to have clear policies, forbid members to practice;

3) National legislation, policy and programs; and

4) Community programs and activity across a wide spectrum of society -- including influencing opinion leaders.

Brooks also notes the campaign by the Eritreans' guerilla movement to wipe out FGM, as part of a wider campaign of promoting women's rights that include reforming land distribution to give women a share and pressing for women's representation in politics. The author quotes Amina Nurhussein, one of six women elected to the Eritreans' seventy-one member policy-making body, as saying: "We can't force them, we can only teach them...The women have been told it's written in the Koran that they must do these things. I could tell them it isn't but, as an outsider and a woman, my word means little against the word of the village sheik." Educating the women so that they can read the Koran for themselves is therefore one of the key aspects in the Eritreans' battle against FGM.

Is it even our fight? As a mental test, I always try to reverse the gender. If some ninety million little boys were having their penises amputated, would the world have acted to prevent it by now? You bet.
There are a number of international instruments that may be regarded as relevant to the practice of FGM. These are as follows:

(i) The Universal Declaration of Human Rights (UDHR):
   - Art. 3: everyone has the right to life, liberty and security of the person;
   - Art. 5: no-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(ii) International Covenant on Civil and Political Rights (ICCPR):
   - Art. 6: right to life;
   - Art. 7: freedom from torture or to cruel, inhuman or degrading treatment;
   - Art. 9: right to liberty and security of the person;
   - Art. 24: right of child to measures of protection.

(iii) International Covenant on Economic Social and Cultural Rights:
   - Art. 10: right to education
   - Art. 12: (1) right to the enjoyment of the highest attainable standard of physical and mental health;
   - Art. 13 (2) (a) provision for...the healthy development of the child;
   - (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

(iv) Convention on the Elimination of All Forms of Discrimination Against Women:
   - Art. 10: (h) right of access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning;
   - Art. 12: right of access to health care services, including those relating to family planning and pregnancy;
   - Art 16. (b) right to choose a spouse and to enter into marriage only with free and full consent;
   - (c) the same rights and responsibilities [as men] during marriage and at dissolution;
   - (d) the same rights and responsibilities as parents in matters relating to their children; in all cases the rights of the children shall be paramount.123
instruments that may be regarded as such are as follows:

**Human Rights (UDHR):**
- Freedom to life, liberty and security of the person;
- Freedom from torture or cruel, inhuman or degrading treatment;
- Guarantees the rights of protection.

**Political Rights (ICCPR):**
- Freedom to cruel, inhuman or degrading treatment;
- Harassment of the person;
- Guarantees the rights of protection.

**Economic, Social and Cultural Rights:**
- Development of the highest attainable standard of health;
- The healthy development of the child;
- Conditions which would assure to all children and medical attention in the event of illness.

Comment: The Committee on the Elimination of Discrimination Against Women (CEDAW) has issued specific recommendations to state parties regarding their responsibilities to address violence against women, particularly FGM. It suggests that parties collect and disseminate information, support national and local women's organisations, fund educational programs, integrate international health programs, invite assistance from international bodies and report on progress.\(^{124}\)

Lewis notes that this integrated approach, which recognises that African women are themselves taking action to identify and combat practices that are harmful to them, but offering support where it is sought, has received support from both Western and African feminist human rights activists.\(^{125}\)

**(v) Declaration on Violence Against Women:**

Adopted by the United Nations General Assembly in December 1993:

1. "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

2. Violence against women shall be understood to encompass, but not limited to, the following:
   (a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other practices harmful to women, non-spousal violence and violence related to exploitation.
   (c) physical, sexual or psychological violence perpetrated or condoned by the State, wherever it occurs.

\(^{123}\) Australia Family Law Council, above, note 18, 24-25
\(^{124}\) Lewis, above, note 7, 46
\(^{125}\) Ibid
4. States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns and conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.126

Comment: The Declaration has been regarded as an important milestone for women's rights, because inter alia, it explicitly defines violence against women. This definition includes FGM. Gallagher notes that:

For the first time ever, the international community openly acknowledged that the body of international laws and mechanisms established to promote and protect human rights had not properly taken into account the concerns of over half the world’s population.127

(vi) Convention on the Rights of the Child:

Art. 24 (3): State parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.128

Comment: as noted above, FGM can have serious physical, sexual, psychological and other effects upon girl children, including death. FGM is clearly a ‘traditional practice’ as referred to in Art. 24, and is therefore prohibited under the Convention.

126 Australia Family Law Council, above, note 18, 25-26
128 Australia Family Law Council, above, note 18, 27
ice against women and should not invoke religious consideration to avoid their elimination. States should pursue by all means the full joy of eliminating violence and, should:

> prevent, investigate and, in accordance with the legal systems of the State or by private persons; 

- ensure, especially in the field of education, cultural patterns and conduct of men and women; 

- combat all other forms of inferiority or superiority of either of the roles for men and women.¹²⁶

The 1993 Vienna Declaration and Programme of Action regarded as an important milestone for women, it explicitly defines violence against women. Gallagher notes that:

- the international community openly recognized the importance of human rights had not properly addressed the concerns of over half the world’s population.

**Child:**

- make all effective and appropriate measures to combat violence against women; 

- and have serious physical, sexual, psychological and emotional harm. FGM is clearly a violation of the rights of women and children, including death. FGM is clearly a violation of the rights of women and children. Therefore it is prohibited under international law.²²

(vii) **Constitution Relating to the Status of Refugees:**

- enjoins signatory nations to provide protection to any persons who:

  > "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of the person’s nationality and is unable or, owing to fear, unwilling to avail himself of the protection of that country."¹²⁹

**Comment:** There has been a case in the USA of a Nigerian woman, Lydia Oluloro, whose deportation order was cancelled by the Court on humanitarian grounds because she feared her two daughters would suffer genital mutilation if she was required to return to her native country.¹³⁰ Similarly, in Canada, a Somali woman, Khadra Hassan Farah, was granted refugee status by the Immigration and Refugee Board because she feared her minor daughter would be forced to undergo the procedure if they returned to Somalia.¹³¹

The Family Law Council notes that such a claim in Australia “could meet the Convention definition of a refugee, either by:

1) construing the woman’s opposition to a discriminatory cultural practice perpetrated against women as persecution because of political opinion; or

2) treating women at risk of female genital mutilation as a gender-defined social group."¹³²

Brooks notes that in January 1993, the Canadian government, after almost two years of consideration, made “an exception” and granted asylum to a Saudi student who had requested it on the grounds of gender persecution (not FGM).¹³³ Brooks asks why it was granted “as an exception” instead of as a matter of course, when the student was at risk of being imprisoned and even

¹²⁶ **Note:** The numbers in parentheses correspond to the footnotes at the bottom of the page.
tortured for walking outside her home with uncovered hair. She further comments that there is no chance that the granting of automatic asylum to women suffering gender persecution would lead to a flood of refugees. "Only a minority have the means to leave their country, or even their house, when men control the keys to doors and the car, and must sign their approval for the shortest of journeys." 134 This point is even stronger when the disadvantaged position of African tribal women is considered.

In 1988, after several years of deliberations, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities adopted a resolution declaring that FGM is a violation of human rights. A United Nations Special Rapporteur on Traditional Practices has also been appointed.135

Both UNICEF and WHO, which had earlier refused to become involved in the issue of FGM, began to take an active role in the late 1970's and early 1980's, in educating African peoples about the harmful health consequences of the practice. These activities have been supported by the International Council of Nurses136, the World Medical Association137, and the International Council of Women.138 In October 1994, UNICEF issued an executive directive declaring that FGM is a health hazard to children and a breach of their human rights.

CONCLUSION

Women’s voices around the world are beginning to be heard. They are speaking out against men who seek to control women’s bodies and to perpetuate violence against women – who normalise it in prostitution, who glorify it in pornography, who defend it in the name of “honour”, who cynically exploit it as ethnic cleansing, who hide it behind culture and religion – who persist in subordinating women in every aspect of public, economic, family, social and cultural life.

134 Id, 238 - 239
135 Lewis, above, note 7, 30
136 Per their 1981 policy statement on FGM.
137 1993 motion condemning FGM and the participation of doctors in such practices.
138 See 1991 Bangkok resolution regarding educational programs and information collection on FGM.
The doctrine of cultural relativism is no longer favoured among anthropologists, who were its original proponents, and it is fast losing its appeal in other fora. There is growing international momentum to ensure the eradication of the harmful practice of FGM.

However, as Brennan has noted, “the existence of laws forbidding female circumcision, or resolutions condemning the practice based on human rights norms, do not ensure that members of the culture will respond by dropping the custom.” A more subtle approach may be needed.139

Brennan suggests that the efforts of the international women’s movement working in conjunction with African women have had a significant impact on attitudes to FGM. The education of African women about the harmful consequences of FGM in addition to the propagation of “a simple idea that women deserve to be treated with dignity and to control their own bodies” has taken hold and is having an effect on traditional practices.140

In addition, it is suggested that education must also be directed towards men, in order to achieve maximum acceptance within the practising cultures and a more rapid end to such practices. Pledge societies may be of assistance in this regard. International support by way of granting asylum to women claiming gender persecution, prohibition of FGM in the West through legislation, and providing technical and other assistance as requested are also seen as ways that the West can assist in the campaign to eradicate the practice of FGM without provoking attacks on the basis of ‘imperialism’.

Brennan states:

[i]nternational norms should be used to expose both Western and non-Western cultures to these ideas... As the experience with female circumcision demonstrated, cultures are dynamic in nature, and they change in response to external and internal influences.

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139 Above, note 67, 397
140 Ibid
Simple, powerful human rights principles, upon which a great number of nations can agree, may resonate within a society and provide a catalyst for change.141

Nahid Toubia’s words may be apposite by way of conclusion:

Actions to stop FGM can be taken on many levels...The overriding consideration for all activities is that they be guided by the knowledge and wisdom of individuals from the communities involved, with special attention paid to the concerns of women. Unguided or patronizing interference from outsiders can create a backlash in favor of FGM, as has happened in the past.

Finally, it is important to emphasize that FGM is part of a persistent global situation where women remain powerless because they lack access to resources, jobs, and education, and where women’s bodies are controlled by a male-dominated social ideology. A global action against FGM cannot undertake to abolish this one violation of women’s rights without placing it firmly within the context of efforts to address the social and economic injustice women face the world over. If women are to be considered as equal and responsible members of society, no aspect of their physical, psychological, or sexual integrity can be compromised.142

141 Id,398
142 Above, note 4, 47