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IN THE NAME OF TRADITION: ERADICATING THE HARMFUL PRACTICE OF FEMALE GENITAL MUTILATION

Once I entered the secret bush, I was taken to a very dark room and undressed. I was blindfolded and stripped naked. I was then carried by two strong women to the site for the operation. I was forced to lie flat on my back by four strong women, two holding tight to each leg. Another woman sat on my chest to prevent my upper body from moving. A piece of cloth was forced in my mouth to stop me [from] screaming. I was then shaved. . . . I was genitally mutilated with a blunt penknife. . . . These were terrible times for me. Each time I wanted to urinate, I was forced to stand upright. The urine would spread over the wound and would cause fresh pain all over again. Sometimes I had to force myself not to urinate for fear of the terrible pain. I was not given any anaesthetic in the operation to reduce my pain, nor any antibiotics to fight against infection. Afterwards, I haemorrhaged [sic] and became anaemic [sic]. This was attributed to witchcraft. I suffered for a long time from acute vaginal infections.¹

I. INTRODUCTION

Female genital mutilation,² sometimes referred to as female

1. Amnesty International, *Female Genital Mutilation—A Human Rights Information Packet*, sec. 1 (visited Nov. 10, 1998) <<http://www.amnesty.org/ailib/intcam/femgen/fgm1.htm>> [hereinafter Amnesty International, *Human Rights Information Packet*].

2. See Hope Lewis, *Between Irua and "Female Genital Mutilation:": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1, 6 (1995). See also NAHID TOUBIA, *FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION* 9 (1993). There is substantial controversy over the terminology used in reference to this procedure. Some, particularly in communities where the practice takes place, call it "female circumcision," which is a euphemism that emphasizes the religious dimensions of the practice. See Lewis, *supra*, at 5. Many find this term misleading and offensive, as it draws parallels to the non-mutilating ritual of male circumcision. See TOUBIA, *supra*, at 9. Male circumcision involves merely removing the foreskin on the tip of the penis without causing damage to the organ itself. See *id.* The female procedure, on the other hand, is far more extensive and anatomically damaging. See *id.* The term "female genital mutilation," however, has been objected to by proponents of the practice who insist that this phrase implies a purposeful attempt to hurt members of one's own family or community and is a misrepresentation of the actual rationale behind the practice. See Lewis, *supra*, at 5.

In 1993, the 46th World Health Assembly of the World Health Organization passed a

circumcision,³ female cutting⁴ or female genital surgery,⁵ “constitutes all procedures [that] involve partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or any non-therapeutic reasons.”⁶ While no definitive statistics are available regarding the prevalence of female genital mutilation,⁷ recent estimates show that between 100 and 180 million women have been mutilated.⁸ “Most of them live in [twenty-eight] African countries, a few in the Middle East and Asian countries, and increasingly in Europe, Canada, Australia, New Zealand and the United States of America.”⁹ Female genital mutilation is practiced on girls throughout the world during infancy, childhood, at the time of marriage or later.¹⁰ The specific form of mutilation varies depending on the society in which it is practiced.

resolution supporting the use of the term ‘female genital mutilation’ to describe clitoridectomy, infibulation, and other related practices.

To be culturally sensitive, nongovernmental organizations working in countries where the practice is widespread tend to use ‘female circumcision’ or other local names for the operation, according to Asha Mohamud of [the Program for Appropriate Technology in Health], a reproductive health organization.

‘While the community’s intent may be circumcision, the actual outcome is mutilation,’ [Mohamud] said.

Kate Chalkley, Measure Communication, *Female Genital Mutilation: New Laws, Programs Try to End Practice* (last modified Aug. 10, 1999) <<http://www.measurecommunication.org/factsheets/Oct97p4.htm>>. Because this Comment proffers that the ritual is a violation of fundamental human rights, despite the benevolent intent of practicing communities, the term “female genital mutilation” is used herein.

3. See TOUBIA, *supra* note 2, at 9.

4. See Gerry Mackie, *A Way to End Female Genital Cutting* (last modified Nov. 2, 1998) <<http://www.fgmnetwork.org/articles/mackie1998.html>>.

5. See Lewis, *supra* note 2, at 1.

6. World Health Organization, *Female Genital Mutilation: Information Pack* (visited Sept. 2, 1999) <http://www.who.int/frh-whd/FGM/infopack/English/fgm_infopack.htm>.

7. See The Female Genital Mutilation Education and Networking Project, *FGM in Africa: Statistics* (visited Sept. 1, 1999) <<http://www.fgmnetwork.org/intro/stats.html>> [hereinafter Education and Networking Project, *Statistics*].

8. See Measure Communication, *Symposium on Female Genital Cutting* (last modified Aug. 10, 1999) <<http://www.measurecommunication.org/topics/fgc/synopsis.htm#Senegal>> [hereinafter Measure Communication, *Symposium*]. The World Health Organization indicates that between 100 and 132 million worldwide have been mutilated and each year, and an additional two million are at risk of future mutilation. See World Health Organization, *supra* note 6.

9. World Health Organization, *supra* note 6.

10. See *id.*

Female genital mutilation is an ancient ritual of torture that is violative of fundamental human rights, yet escapes significant international intervention because it is protected under the guise of “culture” or “religion.” While female genital mutilation may be a traditional expression of culture, it is also one of the most massive threats to the health and human rights of women and girls, affecting the 6,000 girls who are forced to undergo the irreversible surgery every day.¹¹ Like torture, female genital mutilation is the intentional infliction of severe pain and suffering. Each year, the lives of two million girls,¹² and any children they potentially bear, are at risk because of this cruel, painful, degrading and discriminatory practice that exclusively targets female victims.

Moreover, those who survive the mutilation are forced to cope with the resulting scars, both physical and psychological, for the rest of their lives. There will be no end to this barbaric ritual without international intervention. Yet, while international governing bodies have taken a firm stance and appropriate action against torture since witnessing the atrocities of World War II, they have fallen short in the arena of female genital mutilation.¹³

Female genital mutilation is an extreme form of abuse that permanently affects millions worldwide and must be stopped. This violative procedure will continue unabated unless the international community transforms universal human rights principles into enforceable world law and has the global political will to intervene, despite putative national sovereignty issues. In addition, international governing bodies, such as the United Nations (U.N.), must act in conjunction with local governments to remove the protective covering of cultural pluralism and work proactively toward ending this barbaric gender-based persecution. “[C]ulture must not be used as a smoke screen to prevent recognizing and dealing with the historical oppression of women and their

11. See Waris Dirie, *The Tragedy of Female Circumcision: One Woman's Story*, MARIE CLAIRE, Mar. 1996, at 68; see also Amnesty International, *Working Together for Change—Stop Female Genital Mutilation* (visited Nov. 10, 1998) <<http://www.amnesty.se/women/289e/htm>> [hereinafter Amnesty International, *Working Together for Change*].

12. See Amnesty International, *Working Together for Change*, *supra* note 11; World Health Organization, *supra* note 6. According to the United Nations Children Fund (UNICEF), seventy-five percent of all female genital mutilations take place in Egypt, Ethiopia, Kenya, Nigeria, Somalia, and the Sudan. See UNICEF, *2 Million Girls a Year Mutilated* (visited Sept. 23, 1999) <<http://www.unicef.org/pon96/womfgm.htm>>.

13. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 4.

universal, cross-cultural subordination.”¹⁴ Although the U.N. took some initial steps by creating investigative commissions, holding conventions, and drafting declarations that can possibly be *construed* as opposing the practice, these measures have been virtually ineffective. While it is important to draft international legal documents that specifically prohibit the practice of female genital mutilation, it is not enough. Even the creation of “laws” that impose no punishment for disobedience will be ineffective. Individual countries must enforce criminal laws prohibiting female genital mutilation and punishing those who practice it, thereby making an unequivocal statement that the practice will not be tolerated.¹⁵

Further, while creating and enforcing stringent anti-mutilation laws at both international and local levels is a good start, it is simply that: a start. Combating female genital mutilation solely on legal terms has been, and will continue to be, unsuccessful.¹⁶ “[T]rying to fight [female genital mutilation] on legal terms is ineffective since those who practice it oftentimes do not report it. F[emale genital mutilation] is also widely practiced in villages and remote places where the government does not have easy access.”¹⁷ Thus, the only way to effectuate true change is to

14. Berta Esperanza Hernandez-Truyol, *Women's Rights as Human Rights—Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT'L L. 605, 672 (1996).

15. Some genital mutilation opponents proffer that mere penal law is not enough to end the practice. See Stan Meuwese & Annemieke Wolthuis, Defence for Children International the Netherlands, *Discussion Paper: Legal Aspects of FGM Legislation on International and National Level in Europe*, in Proceedings of the Expert Meeting on Female Genital Mutilation Ghent-Belgium Nov. 5–7, 1998, reprinted on *Rising Daughters Aware* (visited Nov. 3, 1999) <<http://www.fgm.org/ProceedExpert.html>>.

[A] penal approach [to female genital mutilation] will be[,] in most cases[,] a late reaction [to] something that has already taken place. One should not confide too much in the preventive power of the penal code. It is well known that severe punishment based on a penal code is really not [a] deterrent to people who believe that what they are doing is acceptable, justified and even requested by custom, religion and culture.

Id. According to this perspective, the entire legal system must be involved in the struggle to end genital mutilation. See *id.* For example, administrative laws regulating the medical profession should be amended to specifically address professionals practicing female genital mutilation. See *id.* Family law relating to the parental role could be modified to encumber parental rights when parents place their children at risk of mutilation. See *id.*

16. See The Female Genital Mutilation Education and Networking Project, *Female Genital Mutilation: An Introduction* (visited Sept. 1, 1999) <<http://www.fgmnetwork.org/intro/fgmintro.html>> [hereinafter Education and Networking Project, *Introduction*].

17. *Id.*

address the issue on all fronts: by uniting the international community and uniformly declaring that female genital mutilation violates fundamental human rights; providing education on women's sexuality and the dangers of the practice; introducing alternative methods; raising public awareness within communities; and enforcing international and local legislation that criminalizes the practice.

This Comment explores the practice of female genital mutilation as a violation of human rights. Part II explains what female genital mutilation entails, the different variations of the practice, and the potential short and long-term health hazards associated with the procedure. Part III discusses the different arguments advocates employ to support the perpetuation of female genital mutilation. Part IV focuses on the practice as a human rights violation by exploring both gender-oriented and gender-neutral international law. Part IV also discusses ways in which international law has been insufficient to effectuate substantial change in the practice of female genital mutilation and needs improvement. Part V examines the debate between applicable international theories and explains that a universal approach must be utilized when exploring human rights issues. Finally, Part VI presents a multi-level approach to eradicating the practice of female genital mutilation.

II. WHAT IS FEMALE GENITAL MUTILATION?

A. Background and Definitions

There are basically three varieties¹⁸ of female genital mutilation.

18. While most sources refer only to three main types of mutilation, some sources indicate a fourth classification exists. See World Health Organization, *supra* note 6. This form of genital mutilation includes: any piercing, cutting or stretching of the clitoris and/or labia; cauterization by burning the clitoris; scraping or cutting the vagina; and introduction of any outside materials to promote bleeding, tightening or narrowing of the vagina. See *id.*

1. *Sunna*¹⁹ Circumcision²⁰

The mildest form of female genital mutilation, "*sunna*" circumcision, involves removing the tip of the clitoris with a razor blade, scissors, a piece of broken glass, a sharp stone,²¹ or finger nails (if the child is less than two weeks old),²² while leaving intact most of the clitoris and the labia minora (the vagina's small lips). Appropriately, in Arabic, "*sunna*" means "tradition."²³

2. Clitoridectomy or Excision²⁴

The second variety of female genital mutilation is the "clitoridectomy" or "excision," which entails removing most or all of the clitoris, the adjacent labia minora, and sometimes all of the external genitalia as well.²⁵ Here, the labia majora (the vagina's large lips) and the vulva remain unharmed.²⁶

3. Infibulation²⁷

The most drastic form of female genital mutilation is "infibulation," also referred to as "stitching"²⁸ or "Pharaonic circumcision."²⁹ This extreme procedure involves removing the

19. For consistency, "*sunna*" is used in lieu of other spellings throughout this Comment.

20. See generally FRAN P. HOSKEN, THE HOSKEN REPORT: GENITAL AND SEXUAL MUTILATION OF FEMALES 33 (4th rev. ed. 1994); Fran P. Hosken, *Female Genital Mutilation: Strategies for Eradication* (from the First International Symposium on Sexual Mutilations, Mar. 1-3, 1989) (visited Jan. 20, 1999) <<http://www.nocirc.org/symposia/first/hosken.html>> [hereinafter Hosken, *Strategies for Eradication*].

21. See Dirie, *supra* note 11, at 68.

22. See Amnesty International, *Working Together for Change*, *supra* note 11.

23. Hosken, *Strategies for Eradication*, *supra* note 20.

24. See generally Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

25. See Hosken, *Strategies for Eradication*, *supra* note 20.

26. See *id.*

27. As author Fran Hosken pointed out:

The term infibulation is derived from fibula, which means clasp or pin in Latin and goes back to the old Romans; a fibula was used to hold together the folds of a toga The Romans also fastened together the large lips of slave girls to prevent them from having sexual intercourse as becoming pregnant would hamper their work.

Id.

28. See Dirie, *supra* note 11, at 70.

29. "It is called 'Pharaonic' as the operation, according to historic documents, was already recorded in ancient Egypt more than 2,000 years ago in Pharaonic times." Hosken, *Strategies for Eradication*, *supra* note 20.

clitoris, the adjacent labia minora and most of the labia majora, and joining the two raw sides of the vulva across the vagina, where they are held in place with thorns or tightly sewn together with catgut.³⁰ A tiny passage the size of a fingertip or pinhole, which is sometimes preserved by inserting a foreign object,³¹ is left open to allow the girl to urinate.³² The girl's legs are then bound together to prevent movement and she must lay immobilized for several weeks while the wound heals.³³ "When the wound has healed[,] the reconstructed opening is surrounded by skin and tough scar tissue. If the vulva does not heal successfully or the opening is considered too big, the girl is operated on again."³⁴ A mutilated woman often must be cut open on her wedding night to allow intercourse and sewn up again thereafter to secure fidelity to her husband.³⁵ Statistics show that in countries such as the Sudan, Ethiopia, and Somalia, nearly ninety-eight percent of women have undergone infibulation.³⁶

B. Short and Long-Term Health Hazards

1. Physical Effects

There is powerful medical documentation of the extreme dangers resulting from female genital mutilation.³⁷ Physical repercussions may be no less torturous than the mutilation itself. One study indicates that eighty-three percent of women who have been exposed to the ritual surgery will require some form of medical treatment to alleviate conditions that arise from the operation.³⁸

30. See Marianne Sarkis, *What is Female Genital Mutilation?* (visited Aug. 20, 1998) <<http://www.hamp.hampshire.edu/~mnbF94/whatis.FGM.html>>. A "catgut" is "a tough cord that is made from the intestines of certain animals (as sheep) and that is used for strings of musical instruments, for sports rackets, or for sutures in closing wounds." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 353 (1986).

31. See World Health Organization, *supra* note 6.

32. See Sarkis, *supra* note 30.

33. See Dirie, *supra* note 11, at 70.

34. World Health Organization, *supra* note 6.

35. See Dirie, *supra* note 11, at 70.

36. See *id.*

37. See generally Hosken, *Strategies for Eradication*, *supra* note 20.

38. See OLAYINKA KOSO-THOMAS, *THE CIRCUMCISION OF WOMEN: A STRATEGY FOR ERADICATION* 29 (1987).

[The procedure] is mostly done in unsanitary conditions in which a midwife [or village elder] uses unclean sharp instruments, such as razor blades, scissors, kitchen knives, and pieces of glass. These instruments are frequently used on several girls in succession and are rarely cleaned, causing the transmission of a variety of viruses such as the HIV virus, and other infections. Antiseptic techniques and anesthesia are generally not used, or for that matter, heard of. . . . In some areas in West Africa, dirt, ashes or pulverized animal feces are thrown into the wound to stop the bleeding, which contributes to the opportunity for infection, shock, and uncontrolled hemorrhaging. Following the procedure, the girl's legs are bound together for as long as [forty] days, during which time (if she survives) her wound heals and scars.³⁹

The physical risks common to girls who undergo the procedure are many⁴⁰ and vary depending on the type of surgery involved.⁴¹ Infibulation, the most extreme form of female genital mutilation, often results in physical complications that are, at minimum, permanently disabling, or at maximum, deadly.⁴² Some of the more common complications associated with the surgery may include, but are not limited to: extreme pain and shock;⁴³ hemorrhage;⁴⁴ repeated urinary problems;⁴⁵ infection;⁴⁶ painful scars;⁴⁷ stones in the bladder and urethra due to obstruction and infection;⁴⁸ damage to the organs surrounding the clitoris and labia;⁴⁹ cysts ranging from the size of a pea to the size of a

39. Education and Networking Project, *Introduction*, *supra* note 16.

40. See Catherine L. Annas, *Irreversible Error: The Power and Prejudice of Female Genital Mutilation*, 12 J. CONTEMP. HEALTH L. & POL'Y 325, 330 (1996).

41. See Lewis, *supra* note 2, at 13.

42. See *id.*

43. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

44. See Ontario Consultants on Religious Tolerance, *Female Genital Mutilation (Female Circumcision) in Africa, Middle East and Far East* (visited Jan. 20, 1999) <http://religioustolerance.org/fem_cirm.htm>.

45. See Research, Action and Information Network for the Bodily Integrity of Women (RAINBO), *Female Genital Mutilation: A Fact Sheet* (visited Nov. 9, 1998) <<http://www.rainbo.org/factsheet.html>> [hereinafter RAINBO].

46. See World Health Organization, *supra* note 6. The binding of a girl's legs after the mutilation may aggravate an infection by preventing the wound from draining. See *id.* This infection then may spread to the internal reproductive organs causing infertility. See *id.* Infections of this type can be fatal. See *id.*

47. See Ontario Consultants on Religious Tolerance, *supra* note 44.

48. See RAINBO, *supra* note 45.

49. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec.

grapefruit;⁵⁰ uncontrollable menstrual bleeding leading to chronic pelvic and reproductive tract infections;⁵¹ kidney stones;⁵² infertility;⁵³ contracting HIV;⁵⁴ and a host of other possible complications.⁵⁵

Because the surgery creates a considerable physical barrier, it is often extremely painful for mutilated women to engage in sexual intercourse.⁵⁶ Often, an infibulated woman's husband must cut her open to allow penetration.⁵⁷ The repeated, unskilled opening and closing of the scar tissue can cause serious damage.⁵⁸ "At marriage, the infibulation must be torn, stretched or cut open by the bridegroom, and then prevented from healing shut. This agonizingly painful procedure may take weeks or even months to complete."⁵⁹

Complications with pregnancy and childbirth are also common occurrences among mutilated women.⁶⁰ For example, in the unfortunate case of a miscarriage, the unborn fetus may be retained in the infibulated woman's uterus or birth canal.⁶¹ Further, there is an extraordinary risk to the unborn children of mutilated women.⁶² Obstructive genital scars often lead to

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50. See RAINBO, *supra* note 45.

51. See *id.* See also Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

52. See Ontario Consultants on Religious Tolerance, *supra* note 44.

53. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec.

1.

54. See World Health Organization, *supra* note 6.

55. See generally TOUBIA, *supra* note 2, at 5.

56. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec.

1.

57. See Ontario Consultants on Religious Tolerance, *supra* note 44.

58. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec.

1.

59. Hanny Lightfoot-Klein, *Prisoners of Ritual: Some Contemporary Developments in the History of Female Genital Mutilation* (visited Sept. 1, 1999) <<http://www.fgmnetwork.org/Lightfoot-klein/prisonersofritual.htm>>.

60. One observer noted that:

Giving birth is fraught with mortal danger for both the infibulated woman and her infant, due to the inelasticity of her infibulation scar, which prevents dilation beyond four of the ten centimeters required to pass the fetal head. The infibulation must therefore be cut in an anterior direction and after birth has taken place, it must be resutured.

Id.

61. See World Health Organization, *supra* note 6.

62. See Meserak "Mimi" Ramsey, *Cruel Tradition* (visited Nov. 9, 1998) <<http://www.tggh.net/forward/update.html>>.

abnormal suffering during childbirth and can create severe complications, often fatal, for both the mother and unborn child.⁶³

2. Psychological Effects

Female genital mutilation has numerous long-term emotional and psychological effects on its victims that extend far beyond the initial pain of the operation.⁶⁴ Girls forced to undergo the torturous ritual report suffering from posttraumatic stress disorder, chronic psychosomatic ailment,⁶⁵ sexual dysfunction,⁶⁶ depression,⁶⁷ and feelings of terror, anxiety, humiliation, and betrayal.⁶⁸ Because the ritual is revered as an ancestrally decreed custom, girls who forego the torture are often deemed unmarriageable.⁶⁹ Moreover, girls in cultures practicing genital mutilation are raised to believe that their chastity is integrally tied to their families' honor.⁷⁰ This massive emotional burden can cause extensive damage to children's psychological welfare.

[Female genital mutilation] may leave a lasting mark on the life and mind of the woman who has undergone it. The psychological complications of [the practice] may be submerged deeply in the child's subconscious mind, and they may trigger the onset of behavioural [sic] disturbances. The possible loss of trust and confidence in those that are the care-givers has been reported as another serious effect. In the longer term, women may suffer feelings of incompleteness, anxiety, depression, chronic irritability, frigidity, marital conflicts, conversion reactions, or even psychosis. Many women traumatized by their [mutilation] may have no acceptable means of expressing their feelings and fears, and suffer in silence. Unfortunately,

63. *See id.*

Difficulties during childbirth are frequent and lead to an increase in the number of children born with brain damage because of anoxia during delivery. The highest infant mortality rates in the world occur in areas where female genital mutilation is practiced. In addition, twenty-five percent of all infertility is attributable to female genital mutilation.

Annas, *supra* note 40, at 331.

64. *See Ramsey, supra* note 62.

65. *See id.*

66. *See Ontario Consultants on Religious Tolerance, supra* note 44.

67. *See id.*

68. *See Amnesty International, Human Rights Information Packet, supra* note 1, sec.

1.

69. *See Hosken, Strategies for Eradication, supra* note 20.

70. *See id.*

inadequate research exists to establish scientifically the precise magnitude of psychological and social consequences of [female genital mutilation], and its effect on child development.⁷¹

III. JUSTIFYING THE UNJUSTIFIABLE: DEFENDING THE PRACTICE OF FEMALE GENITAL MUTILATION

Female genital mutilation advocates proffer numerous justifications in support of the practice. Such reasons include maintaining tradition and cultural identity, preserving virginity and preventing promiscuity, fulfilling religious requirements and maintaining feminine health and hygiene.⁷² As will be discussed, however, these arguments rely largely on colorful myths and erroneous beliefs and are easily overcome when weighed against biological and religious facts.⁷³

A. Maintaining Tradition and Cultural Identity

"While there are quite a few theories on the origins of [the rite], no one actually knows when, how or why it began."⁷⁴ Female genital mutilation is considered one of the characteristics that define a society or group; this is especially true, for example, when societies utilize the practice as a ritualistic initiation into adulthood.⁷⁵ While it is unquestionably important to preserve a society's history through the practice of cultural rituals, the rationale that purportedly validates the practice does not exist in a vacuum. One must weigh the ritual's cultural value against the harm to the individual victims. Some argue, for instance, that a "tribe's distinct values and structure would probably disappear without the circumcision ceremony . . ."⁷⁶ There are alternative

71. World Health Organization, *supra* note 6.

72. See Robert A. Myers et al., *Circumcision: Its Nature and Practice Among Some Ethnic Groups in Southern Nigeria*, 21 SOC. SCI. & MED. 581, 584-585 (1985).

73. See Hosken, *Strategies for Eradication*, *supra* note 20. See also discussion, *infra* Parts III.A-D.

74. Lightfoot-Klein, *supra* note 59. But see Ontario Consultants on Religious Tolerance, *supra* note 44 (noting that some researchers indicate that female genital mutilation "has probably been performed for at least 1,400 years (some references estimate 2,000 years), and started during what Muslims call 'al-gahiliyyah' (the era of ignorance).").

75. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

76. Robyn Cerny Smith, *Female Circumcision: Bringing Women's Perspectives into the International Debate*, 65 S. CAL. L. REV. 2449, 2470 (1992).

rituals, however, that do not permanently disfigure girls and still satisfy a culture's need for the ceremonial rite of passage.⁷⁷ For example, some villagers in Kenya replaced the archaic mutilation of its young girls with a new ritual that focuses on the joy of the rite of passage, rather than pain and suffering.⁷⁸ Kenya's "circumcision through words" is catching on in other areas;⁷⁹ this is proof that when parents become aware that they can maintain cultural traditions without maiming their daughters, they will choose those alternatives over torturous tradition.⁸⁰

B. Preserving Virginity and Preventing Promiscuity

"F[emale genital mutilation] is often deemed necessary in order for a girl to be considered a complete woman, and the practice marks the divergence of the sexes in terms of their future roles in life and marriage."⁸¹ Moreover, many believe that a mutilated woman will not have the sexual desires of an uncut woman, and thus will be less likely to stray from her husband.⁸² One Kenyan female genital mutilation proponent said that "[c]ircumcision makes women clean, promotes virginity and chastity[,] and guards young girls from sexual frustration by deadening their sexual appetites."⁸³ In some areas, such as the Sudan, the Middle East, and Somalia, uncut women are considered prostitutes.⁸⁴ In his book, *Facing Mount Kenya*, revered leader Jomo Kenyatta wrote that because "marriage is still 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.'"⁸⁵ Extreme forms of female

77. See generally Dr. Cesar Chelala, *New Rite is Alternative to Female Circumcision*, SAN FRANCISCO CHRON., Sept. 16, 1998, at A23.

78. See *id.* See also discussion, *infra* Part VI.

79. For example, a similar ritual is carried out in Uganda. See Chelala, *supra* note 77, at A23.

80. See *id.*

81. Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1. "In many ethnic groups . . . the operation traditionally is performed just before marriage, as a puberty rite; it is claimed that a woman can be accepted into adult society and get married only after she is operated upon." Hosken, *Strategies for Eradication*, *supra* note 20.

82. See RAINBO, *supra* note 45.

83. Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

84. See Hosken, *Strategies for Eradication*, *supra* note 20.

85. *Id.* "As President of Kenya for life, Kenyatta had great influence on Africans well beyond the borders of Kenya, and his much quoted statement is responsible for the

genital mutilation are often performed to ensure that “a bride is intact—the smaller her opening, the higher the bride price. A girl is often inspected by the female relatives of the husband-to-be before the bride price is paid.”⁸⁶

Throughout history, patriarchal societies have utilized various methods to perpetuate the oppression of women by repressing and controlling their sexuality.⁸⁷ Some Europeans ensured chastity through the use of chastity belts.⁸⁸ In ancient Rome, slave owners threaded rings through the labias of female slaves to prevent impregnation.⁸⁹ Under the Code of Hammurabi in ancient Mesopotamia, every father owned his daughter’s virginity as a property asset.⁹⁰ All of these patriarchal societies found ways to dominate women by controlling their sexuality. Chaste women were the “protected class” and considered respectable and marriageable, whereas those who did not conform to the oppressive rituals were disreputable and unmarriageable.⁹¹ Mothers, wanting to ensure their daughters’ safety, submitted their daughters to the same rituals to which they had been exposed.⁹² The same is true for those who practice female genital mutilation. Parents most likely want their daughters mutilated to ensure their daughters’ prominence in society.⁹³ Women in some mutilating cultures are so affected by the belief that their worth is tied to their sexuality, they voluntarily undergo periodic re-mutilation after marriage to appease their husbands.⁹⁴ Only when the members of mutilating societies learn that a woman’s sexuality is not her only asset to the community will this sexual violence end.

mutilation of many thousands of helpless little girls and untold suffering and deaths.” *Id.*

86. *Id.* “The bride price, whereby the husband or his father pays the father of the girl a considerable sum in cash or kind, is still a marriage requirement almost everywhere in Africa and the Middle East.” *Id.* In some cultures, “[t]he family honor depends on making the opening as small as possible because . . . the smaller the artificial passage is, the greater the value of the girl and the higher the bride price.” *Id.*

87. *See id.*

88. *See id.*

89. *See id.*

90. *See id.*

91. *See id.*

92. *See id.*

93. *See* Barrett Breitung, Comment, *Interpretation and Eradication: National and International Responses to Female Circumcision*, 10 EMORY INT’L L. REV. 657, 680 (1996).

94. *See* Hosken, *Strategies for Eradication*, *supra* note 20.

C. Fulfilling Religious Requirements

Although female genital mutilation is frequently perceived as an Islamic religious ritual, the practice actually predates Islam.⁹⁵ Female genital mutilation “is neither practiced by all Muslims nor by all Arabs.”⁹⁶ The Koran⁹⁷ does not mandate that women be genitally mutilated.⁹⁸ Further, in most predominantly Islamic countries, parents do not, for the most part, force their daughters to undergo genital mutilation.⁹⁹

In actuality, the ritual of female genital mutilation is not limited to Islam, but is practiced in other religions as well.¹⁰⁰ For example, the procedure is sometimes forced on girls whose families follow Christianity, Judaism,¹⁰¹ and animistic religions.¹⁰² Education focusing on the inaccurate belief that religion mandates female genital mutilation is an essential step in eradicating the practice.¹⁰³

D. Maintaining Feminine Health and Hygiene

Advocates of female genital mutilation believe the practice carries with it a number of health benefits, including easy childbirth, preventing malodorous vaginal discharge, and avoiding contamination of a mother’s milk.¹⁰⁴ In most practicing cultures, female genital mutilation is directly linked to the perception of a woman’s “cleanliness.”¹⁰⁵ In the Sudan, for instance, the practice of female genital mutilation is called “*tahur*,” which means

95. See Ontario Consultants on Religious Tolerance, *supra* note 44; Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

96. Sami A. Aldeeb Abu-Sahlieh, *To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision*, ch. 1 (visited Sept. 1, 1999) <<http://www.fgmnetwork.org/samialdeeb/Mutilate/Chapter1.html>>.

97. For consistency, “Koran” is used in lieu of other spellings throughout this Comment.

98. See Aldeeb Abu-Sahlieh, *supra* note 96.

99. See TOUBIA, *supra* note 2, at 32.

100. See *id.*

101. See *id.* (noting that some of the mutilating cultures include Egyptian Christians and Ethiopian Jews (*Falachas*)).

102. See Ontario Consultants on Religious Tolerance, *supra* note 44.

103. For further discussion about dispelling religious myths, see *infra* Part VI. As an aside, the belief that female genital mutilation is an Islamic religious tradition has led to increased religious intolerance against Muslims. See Ontario Consultants on Religious Tolerance, *supra* note 44.

104. See Lightfoot-Klein, *supra* note 59.

105. See Hosken, *Strategies for Eradication*, *supra* note 20.

“purity” in Arabic.¹⁰⁶ Members of some cultures believe that female genitals are unclean and will grow until they dangle between a woman’s legs, ultimately competing with a man’s penis if not cut.¹⁰⁷ In other cultures, women who have not been mutilated are considered unclean and are not allowed to handle food or water.¹⁰⁸

Some proponents of female genital mutilation believe that the clitoris is a poisonous organ that must be removed to avoid causing sickness, impotence or death to a man whose penis touches it.¹⁰⁹ Others believe that an uncut woman’s babies will be born hydrocephalic (with excessive brain fluid), and that the mother’s milk will become poisonous if a baby’s head touches an uncircumcised clitoris during childbirth.¹¹⁰ Still others, such as Muslim fundamentalist Sheik Youssef Badri, believe that, “[women] who are not circumcised get AIDS easily.”¹¹¹ The perpetuation of these myths creates a pervasive feeling of disgust in the majority of men living in mutilating cultures; as a result, most will not even consider marrying an uncut woman.¹¹² “[Because] marriage and childbearing are as yet virtually the only options open to most African women (aside from prostitution in the urban areas), this leaves them little choice but to submit to the practice and to impose it on their daughters.”¹¹³

There are numerous methods utilized throughout the history of patriarchal civilizations to keep women subordinate first to their fathers, then to their husbands, and to the rest of the men in their culture.¹¹⁴ Dispelling myths about women’s sexuality through education and community outreach programs is a critical step in the long road to healing the international community.

106. *See id.*

107. *See* Lightfoot-Klein, *supra* note 59.

108. *See* Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

109. *See* Ontario Consultants on Religious Tolerance, *supra* note 44.

110. *See id.*

111. *Id.* *But see* Ontario Consultants on Religious Tolerance, *supra* note 44 (“The fear of AIDS has been used by both sides of the issue. . . . [O]pponents of the practice sometimes claim that AIDS is spread by the unhygienic practices during the procedure itself.”).

112. *See* Lightfoot-Klein, *supra* note 59.

113. *Id.*

114. *See supra* notes 87–92 and accompanying text.

IV. THE INTERNATIONAL HUMAN RIGHTS VIOLATION

A. *The Non-Traditional Human Rights Violation*

Although female genital mutilation is not the human rights violation activists typically target, it should receive the same consideration as other violations of the fundamental rights to be free from bodily invasion and torture.¹¹⁵ Traditionally, international governing bodies and non-governmental organizations have focused on protesting human rights violations either inflicted, sanctioned, or mandated directly by governments.¹¹⁶

Female genital mutilation is quite different, however, because there is no literal "state action" involved.¹¹⁷ The procedure is often performed by private individuals under the guise of "culture" or "religion," and generally with parental, tribal, and societal acquiescence. Despite the distinction from traditional human rights violations, the practice of female genital mutilation should be banned because it violates internationally recognized human rights, such as the right to health,¹¹⁸ the right to be free from torture,¹¹⁹ the right to personal dignity,¹²⁰ the right to be free from discrimination,¹²¹ and the rights of children.¹²²

115. See Lewis, *supra* note 2, at 14–15.

116. See *id.* at 14.

117. Literal state action, however, *can* be found in the governments' acquiescence to the practice of female genital mutilation demonstrated by their failure to affirmatively act to end the practice, despite their knowledge that girls are continually being mutilated.

118. See Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., art. 25, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration]; U.N. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. GAOR, 48th Sess., art. 3(f), U.N. Doc. A/48/629, reprinted in 33 I.L.M. 1049, 1052 (1994) [hereinafter Violence Against Women Declaration].

119. Universal Declaration, *supra* note 118, art. 5. Various international agreements state that torture and other forms of cruel or degrading treatment are violations of fundamental human rights. See Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Feb. 4, 1985, 1465 U.N.T.S. 113 (entered into force June 26, 1987) [hereinafter Convention Against Torture]; Violence Against Women Declaration *supra* note 118, art. 3(h), at 1052.

120. See International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 9, 999 U.N.T.S. 171, 172 (entered into force Mar. 23, 1976); Universal Declaration, *supra* note 118, art. 1.

121. See Violence Against Women Declaration, *supra* note 118, art. 3(e), at 1052.

122. See Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 24, para. 3, G.A. Res. 44/25, Annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/736 (entered into force Sept. 2, 1990), reprinted in 28 I.L.M. 1448, 1448 (stating that

B. Gender-Specific Human Rights

F[emale genital mutilation] is rooted in discrimination against women. It is an instrument for socializing girls into prescribed roles within the family and community. It is therefore intimately linked to the unequal position of women in the political, social, [cultural] and economic structures of societies where it is practiced.¹²³

The international community recognizes some forms of sexual violence as torture in terms of human rights violations. For example, when committed as an act of war, rape is considered "among the worst human rights violations."¹²⁴ Yet, when committed by those who are supposed to protect the girls (for example, their mothers, community elders, traditional birth attendants, etc.),¹²⁵ a barbaric procedure such as genital mutilation becomes a protected tradition. Sexual violence by strangers is deemed a human rights violation worthy of international outrage and intervention,¹²⁶ yet permanent sexual mutilation, often causing life-long disfigurement or death, is a protected practice. The international community has an obligation to protect girls whose young bodies are desecrated in the name of an ancient practice in the most violent of rituals. While declaring that wartime rape is one of the most brutal human rights violations is a step in the right direction, it is not enough.

The motives behind both the wartime rape and the practice of female genital mutilation are likely the same: power and domination. As a war crime,¹²⁷ rape is often committed to purify the conquered people and symbolize dominance.¹²⁸ Likewise, genital mutilation is a ritual of purification that reinforces a woman's subordination by repressing her sexuality and controlling her reproductive functions.¹²⁹ Both appear to be "first and

"[s]tate [p]arties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.")

123. Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 5.

124. Hernandez-Truyol, *supra* note 14, at 650.

125. See Amnesty International, *Working Together for Change*, *supra* note 11.

126. See generally Catherine N. Niarchos, *Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia*, 17 HUMAN RIGHTS Q. 649 (1995).

127. See *id.* at 650. "If rape has always occurred in war, it has also been defined as a war crime since the earliest codifications of the laws of war." *Id.* at 651.

128. See *id.* at 650.

129. See TOUBIA, *supra* note 2, at 5.

foremost . . . act[s] of aggression with a sexual manifestation."¹³⁰ The only difference between the two practices is that wartime rape is a military strategy,¹³¹ a final act of dominance over the conquered people,¹³² whereas female genital mutilation is a preventative tool used to ensure a woman's chastity and reinforce her role as her husband's property.¹³³ The perpetuation of the practice of female genital mutilation is one way men continue to derive power and control over women as a group.¹³⁴ Other women often perform the genital mutilation; nevertheless, it bears noting that practicing cultures are patriarchal.¹³⁵ Often, practicing cultures "regard[] [female genital mutilation] as a patriarchal legacy and any attempt to stop it may incur the wrath of their ancestors."¹³⁶ Both wartime rape¹³⁷ and female genital mutilation are forms of patriarchal domination over women, and thus both should be viewed as violations of fundamental human rights that must be forbidden.

The Universal Declaration of Human Rights (Universal Declaration),¹³⁸ which is the cornerstone of the modern human rights system,¹³⁹ asserts that "[a]ll human beings are born free and equal in dignity and rights."¹⁴⁰ It protects the right to personal security¹⁴¹ and the right not to be subjected to torture or to cruel,

130. Niarchos, *supra* note 126, at 650.

131. *See id.* at 651.

132. *See id.* at 658. "Mass rape in war and the use of rape as a weapon of war are as old as time, and have occurred within the last ten years in El Salvador, Guatemala, Liberia, Kuwait, and the former Yugoslavia." *Id.* at 668.

133. *See generally* Hosken, *Strategies for Eradication*, *supra* note 20.

134. *See id.*

135. *See id.* "Patriarchal religions—there are no others in Africa/The Middle East—provide the intellectual basis for men to keep their power and privileges in society." *Id.*

136. Amnesty International, *Working Together for Change*, *supra* note 11.

137. *See* Niarchos, *supra* note 126, at 669. "War is viewed as an initiation to manhood, a license to destroy The military tends to cultivate patriarchal notions of man as protector; it also fosters exaggerated notions of male sexuality and virility." *Id.* The U.N. recognized that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men . . . and that violence against women is one of the crucial social mechanisms by which women are forced into [submission to] men . . ." Violence Against Women Declaration, *supra* note 118, preamble, at 1051.

138. *See* Universal Declaration, *supra* note 118.

139. *See* Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 5.

140. Universal Declaration, *supra* note 118, art. 1 (emphasis added).

141. *See id.* art. 3.

inhuman, or degrading treatment.¹⁴² These rights are directly relevant to the practice of female genital mutilation, yet the traditional interpretation of these rights has generally failed to include violence against women. "This [oversight] arises from a common misconception that states are not responsible for human rights abuses committed within the home or the community."¹⁴³

Although female genital mutilation is not a *traditional* human rights violation, it is a violation nonetheless. Further, while parents who mutilate their children undoubtedly do so to protect their children from social stigma, this does not lessen the fact that they use physical mutilation as the instrumentality to achieve that goal. The fact that recognition of ancient customs is the impetus for the mutilation does not diminish the fact that it constitutes a human rights violation.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁴⁴ puts the substantive provisions of the Declaration on the Elimination of Discrimination Against Women into the form of a multilateral treaty.¹⁴⁵ Entered into force in 1981, CEDAW calls for an end to all forms of gender-based discrimination and establishes international machinery for the implementation of proclamations such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.¹⁴⁶ CEDAW's underlying philosophy is that "discrimination against women violates the principles of equality of rights and respect for human dignity,"¹⁴⁷ and constitutes an obstacle to the full realization of women's potential; therefore, the rights of women to share equally in improved conditions of life must be advanced.¹⁴⁸ Arguably the strongest international tool created thus far to combat female genital mutilation, CEDAW requires that participating states "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and

142. See *id.* art. 5.

143. Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 5.

144. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

145. See *id.*

146. See *id.* at 14.

147. *Id.* at 15.

148. See generally *id.*

all other practices which are based on the idea of [gender-defined roles]"¹⁴⁹ Unlike gender-neutral declarations of international law, CEDAW seems to acknowledge the discrimination women suffer in a patriarchal world in which men define all societal rules. It imposes a definitive duty on the participating states to reevaluate their cultural traditions and determine whether these traditions discriminate against women and, if so, to abolish them.¹⁵⁰

The practice of female genital mutilation constitutes discrimination against women within the meaning of CEDAW.¹⁵¹ In addition to the plethora of physical and psychological consequences the surgery causes to individual victims, there are far greater consequences that affect women and society in general. Little girls learn that their sexuality and womanhood are dirty, harmful, and wrong. They must undergo mutilation in order to gain acceptance in society. Simply put, they are not considered worthy of marriage unless mutilated.¹⁵² Later, when these girls become mothers themselves, they presumably perpetuate this belief by submitting their own daughters to the knife. This continuing cycle is discriminatory, dangerous, and should be eradicated to conform to international law.

CEDAW, however, is insufficient, on its own, to terminate female genital mutilation. Although it *can be interpreted* as prohibiting the practice, CEDAW does not specifically ban female genital mutilation. CEDAW, like other U.N. documents, seeks to protect individual rights, but fails to directly address the manner in which those rights are violated.¹⁵³ To effectively eradicate the

149. *Id.* art. 5(a), at 17.

150. *See id.*

151. CEDAW defines "discrimination against women" as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Id. art. 1, at 16.

152. *See* Hosken, *Strategies for Eradication*, *supra* note 20.

153. For example, CEDAW mandates that participating states condemn discrimination against women and take all appropriate measures to transform the patterns of conduct that lead to that discrimination based on the inferiority or superiority of either sex. *See* CEDAW, *supra* note 144, art. 5, at 17. The document is unclear, however, about what those specific patterns of conduct are and how they should be terminated. *See generally id.*

practice, the U.N. must do more than create mere non-binding documents. It must openly declare the practice unacceptable and illegal.

The list of so-called justifications for female genital mutilation is long and often outwardly supported by women themselves. Female genital mutilation is a practice that began as, and continues to be, a means by which men control women¹⁵⁴ that has “evolved” to a point where women fervently defend it and actually believe they are doing the right thing in sending their daughters to the butcher’s block.¹⁵⁵ The international community, following the aforementioned legislation’s lead, should take the next step in eradicating this harmful, discriminatory practice by drafting binding international law that specifically prohibits female genital mutilation and prohibits it as a fundamental human rights violation.

C. Gender-Neutral Human Rights

International governing bodies recognize the importance of fundamental human rights and have held countless conferences, created numerous declarations, and written various treaties that address violations of these rights. While the U.N. takes a firm stance against violations of human rights, it has not focused on violations specific to women. For example, Article 3 of the Universal Declaration states that “[e]veryone has the right to life, liberty and security of person.”¹⁵⁶ Female genital mutilation can result in an abundance of potential dangers to a woman’s health, both physical and psychological. Thus, presumably female genital mutilation is prohibited, pursuant to the Universal Declaration, because it deprives women of their fundamental right to security of their bodies.

1. The Right to be Free from Torture and Other Cruel Treatment

Both the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture)¹⁵⁷ and the Universal Declaration appear to

154. See generally Hosken, *Strategies for Eradication*, *supra* note 20.

155. See *id.*

156. Universal Declaration, *supra* note 118, art. 3.

157. See generally Convention Against Torture, *supra* note 119.

prohibit female genital mutilation.¹⁵⁸ Article 1 of the Convention Against Torture defines "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes . . . [including] any reason based on discrimination of any kind."¹⁵⁹ Article 5 of the Universal Declaration states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹⁶⁰ While proponents of female genital mutilation assert several justifications for the practice, they have not, and cannot, declare that the practice of destroying a woman's genitalia, possibly causing permanent damage to both the woman and her potential offspring, is anything less than "torture" pursuant to these declarations of international law. Thus, practitioners and protectors of the surgery are violating pronounced international law.

Proponents of female genital mutilation as a religious rite, however, argue that the Universal Declaration also protects the right to freedom of religion.¹⁶¹ Assuming that female genital mutilation is a violation of the Universal Declaration's mandate that every person be free from torture, there appears to be an issue as to what happens when that right conflicts with another right, namely, the right to freedom of religion. Article 30 clearly states that nothing in the Universal Declaration permits any state or person to engage in activity that is aimed at the destruction of any of the included rights or freedoms.¹⁶² This can be interpreted to mean that no reasons, religious or otherwise, can interfere with the practice of an individual's human rights. Because the Universal Declaration fails to directly address the issue of female genital mutilation, it is insufficient, alone, to serve as the controlling legal document behind the prohibition of the practice. New international law *specifically* banning the procedure as a violation of international human rights, regardless of other civil liberties, is necessary to effectively prohibit the practice.

International law working alone, however, will have no impact on the cessation of female genital mutilation. Individual countries must not only support the tenets of international law prohibiting the torturous practice, but also must implement their

158. See generally Universal Declaration, *supra* note 118.

159. Convention Against Torture, *supra* note 119, art. 1, at 113.

160. Universal Declaration, *supra* note 118, art. 5.

161. See *id.* art. 18.

162. See *id.* art. 30.

own laws to put force behind the international prohibition. The Nigerian Government did just that. The Constitution of Nigeria, Chapter IV, states that “[e]very individual is entitled to respect for the dignity of his person, and accordingly . . . no person shall be subjected to torture or to inhuman or degrading treatment”¹⁶³

Female genital mutilation is a traumatizing and painful surgical procedure, performed on young girls, without the aid of anesthesia to temporarily dull the pain, or proper hygiene to prevent potential infection.¹⁶⁴ Moreover, the procedure is so agonizing that it necessitates forcible physical restraint of the girl in order to proceed. Like Nigeria, other governments must mandate that their people be free from torture. Additionally, individual governments should go one step beyond banning unnamed “torture” and inhuman treatment that violate human dignity by specifically criminalizing the practice of female genital mutilation. In conjunction with international legal pressure, laws like these could effectuate an end to the ritual torture of female genital mutilation.

2. The Rights of the Child

Female genital mutilation clearly violates the rights of children. The physical, sexual, and psychological effects of the surgery potentially forever plague the mutilated victim.¹⁶⁵ Before addressing the question of justifications for the practice, it is critical to consider that modern legislatures and policymakers agree that custom is not a paramount right when it violates the child’s right to be free from torture.¹⁶⁶

163. NIG. CONST. ch. IV, § 31(1)(a).

164. See generally Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

165. See *id.*

166. See *id.* sec. 5. See also AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE AFRICAN CHILD, O.A.U. Doc. CAB/LEG/24.9/49 (1990) reprinted on African Human Rights Resource Center (visited Nov. 3, 1999) <<http://www1.umn.edu/humanrts/africa/afchild.htm>>. Member States of the Organization of African Unity are required to take measures to ensure protection against the torture and abuse of children. See *id.* States party to the Organization of African Unity “shall take specific legislative . . . measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse” *Id.* art. 16, para. 1.

The U.N. officially recognized the human rights of children when it adopted the Declaration of the Rights of the Child¹⁶⁷ in 1959. Principle 2 of the 1959 Declaration dictates that children "shall enjoy special protection"¹⁶⁸ in order to "develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity."¹⁶⁹ Principle 9 protects children from "all forms of neglect, cruelty and exploitation."¹⁷⁰

The purpose of the Convention on the Rights of the Child¹⁷¹ is to put the principles set forth in the 1959 Declaration into legally binding terms.¹⁷² The Convention on the Rights of the Child requires that local governments "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, . . . maltreatment or exploitation, including sexual abuse . . ." ¹⁷³ It also mandates that "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment . . ." ¹⁷⁴ Article 24 explicitly requires states to take effective action to abolish "traditional practices prejudicial to the health of children."¹⁷⁵

While the Convention on the Rights of the Child stresses the same rights to be free from torture and cruel treatment as the Universal Declaration, it goes one step further. The Convention on the Rights of the Child states that the "[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others."¹⁷⁶ Thus, not only are the participating states required to affirmatively protect children, the Convention on the Rights of the Child also stipulates that states may curtail religious freedom when it interferes with the child's fundamental human rights.

167. See generally DECLARATION OF THE RIGHTS OF THE CHILD, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, at 19, U.N. Doc. A/4354, U.N. Sales No. E.96.I.15 (1959).

168. *Id.* princ. 2.

169. *Id.*

170. *Id.* princ. 9.

171. See Convention on the Rights of the Child, *supra* note 122, at 1448.

172. See Cynthia Price Cohen, Introductory Note, *id.* at 1448.

173. *Id.* art. 19, para. 1, at 1463.

174. *Id.* art. 37(a), at 1470.

175. *Id.* art. 24, para. 3, at 1466.

176. *Id.* art. 14, para. 3, at 1462.

Some pluralists may argue that Principle 2 of the Declaration on the Rights of the Child actually supports female genital mutilation because parents can argue that their uncircumcised girls would be unmarriageable social pariahs in societies that value the tradition.¹⁷⁷ Principle 2, however, provides an important safeguard by declaring that children shall be protected during development “in conditions of freedom and dignity.”¹⁷⁸ It is hardly a “condition of freedom” when little girls are forced to undergo irreversible, maiming surgery before they are old enough to consent.¹⁷⁹ Female genital mutilation is often practiced on girls before they reach puberty.¹⁸⁰ Because the girls are so young, they can neither be informed nor give consent for elective surgery like genital mutilation.¹⁸¹ Rather, the girls are essentially coerced into submission by incredible pressure from their families, friends, and society. Children do not have the mental capacity to knowingly risk their lives or become permanently disfigured. They are vulnerable; they depend on their elders for protection. When those elders fail to save them from harm, it is necessary for the community at large to step in to protect them. In this case, it is the international community that must step in.

This Comment does not intend to imply that parents who subject their daughters to mutilation are unfit parents who intentionally harm their children. It is clear that an approach to eradication that focuses on children’s rights based on parental neglect will not be accepted in practicing cultures.¹⁸² This Comment in no way intends to disrespect any parents who have, because of societal pressure, submitted their daughters to mutilation. It does, however, call for mandated education for those parents, so they will know the harm they cause their daughters and perhaps allow the girls to make their own, informed decisions regarding mutilation. If the Convention on the Rights of the Child were truly respected and adhered to, girls would have

177. See *Breitung*, *supra* note 93, at 679. Principle 2 mandates that “[t]he child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. . . .” DECLARATION OF THE RIGHTS OF THE CHILD, *supra* note 167, princ. 2.

178. DECLARATION OF THE RIGHTS OF THE CHILD, *supra* note 167, princ. 2.

179. See *id.*

180. See Ontario Consultants on Religious Tolerance, *supra* note 44.

181. See *id.*

182. See *Breitung*, *supra* note 93, at 680.

the free choice to decide whether to be circumcised when they are old enough to make *informed* decisions about the procedure. Then they would, essentially, be living under "conditions of freedom."¹⁸³

Like the Universal Declaration, the Convention on the Rights of the Child lacks specific reference to the practice of female genital mutilation.¹⁸⁴ It merely states that states ratifying the Convention on the Rights of the Child must take appropriate measures to abolish traditional practices that are prejudicial to children's health.¹⁸⁵ While genital mutilation seems to fall within the description of practices hazardous to the health of children, an indirect prohibition through various U.N. documents lacks the force necessary to end this violative practice.

In addition to the general laws created to protect children, specific attention must also be paid to the plight of female children in patriarchal societies. The U.N. finally recognized and addressed this special need at the Fourth World Conference on Women in Beijing, China in 1995.¹⁸⁶ The Conference recognized the insufficiency of the Convention on the Rights of the Child by stating that "in many countries available indicators show that the girl child is discriminated against from the earliest stages of life, through her childhood and into adulthood. . . . The reasons for the discrepancy include, among other things, harmful attitudes and practices, such as female genital mutilation"¹⁸⁷ This type of reaffirmation is definitely a step toward global recognition that female genital mutilation is gender-based discrimination that must end.

V. WHICH INTERNATIONAL THEORY SHOULD APPLY?

There is little doubt that the reason people challenge actions arising in other communities is because those actions offend their own personal sense of morality. Everyone has his or her own views about what constitutes right and wrong. Every person is

183. DECLARATION OF THE RIGHTS OF THE CHILD, *supra* note 167, princ. 2.

184. Compare Universal Declaration, *supra* note 118, with Convention on the Rights of the Child, *supra* note 122.

185. See Convention on the Rights of the Child, *supra* note 122, art. 24(3), at 1466.

186. See *Report of the Fourth World Conference on Women*, ch. IV, § L, para. 259 (Beijing, Sept. 4-15, 1995), U.N. Doc. A/CONF.177/20, reprinted in 35 I.L.M. 401, 462 (1996).

187. *Id.*

regularly confronted with situations and behaviors she deems morally reprehensible. When the perceived wrong is practiced in one's own backyard, it is not difficult to articulate one's opposition and outwardly challenge the practice. When the behavior is *not* within one's own communal confines, however, the issue becomes much more difficult. Does one society have the right to impose its morals and beliefs on others? Should every society be judged merely by its own standards? Do societies even have the right to judge other societies in the first place?

Philosophers, legal scholars, and legislators battle over how to reconcile the phenomenon of societal differences with the concept of a greater, global community. Philosophers recognize several potential paths to follow in the quest for morality,¹⁸⁸ but only two address the issue of female genital mutilation: ethical relativism and universalism.

*A. Ethical Relativism*¹⁸⁹

The ethical relativist believes that each culture has the right to set forth its own rules and no one outside that community has the right to interfere.¹⁹⁰ "Ethical relativism is viewed as an attitude of tolerance, and as an antidote to the efforts of cultures who try their best to impose their set of moral rules on other cultures."¹⁹¹ Although the notion of unequivocal tolerance may sound appealing, when carried through to its logical end, it can be incredibly dangerous. For instance, few would argue that the nations of the world overstepped their boundaries by interfering with the Nazi plan to exterminate the Jews. A true ethical relativist would argue that outsiders had no right to interfere and stop the death camps, but should have allowed the genocide to continue. This philosophy is morally repugnant and often reprehensible to non-subscribers.

People often say, in retrospect, that someone should have protested against or intervened in a particular situation while there was still time. Indeed, one of the arguments in support of

188. See NINA ROSENSTAND, *THE MORAL OF THE STORY: AN INTRODUCTION TO QUESTIONS OF ETHICS AND HUMAN NATURE* 64–65 (1994) (explaining the four approaches to the "phenomenon of moral differences:" moral nihilism, ethical relativism, soft universalism and hard universalism).

189. See *id.* at 70.

190. See *id.* at 65.

191. *Id.*

the brief Gulf War of 1991 was that the world would have another Hitler and another genocide on their hands if Saddam Hussein's invasion of Kuwait was not stopped. Any attempt at armed take overs and genocide, even if it takes place within a country's own borders and is conducted by its own government, seems like a good candidate for justified intervention by the rest of the world—or at least like a good occasion for voicing the opinion that genocide is wrong. *In the eyes of the relativist, though, we are against genocide only because it happens to be against the norms of our own culture; for another culture, genocide may be right.*¹⁹²

Fortunately, the international community asserts that absolute tolerance is insufficient and that there *are* certain standard universal human rights.¹⁹³ The global community has maintained its stance against human rights violations since the atrocities of World War II. “For all its positive elements, ethical relativism has a problem with allowing for a tolerance that objects to nothing, not even crimes against humanity”¹⁹⁴

Opposition to female genital mutilation is not simply a matter of one group imposing its views upon another, but rather, all groups banding together to declare certain harmful behaviors unacceptable. Then, it will merely be a matter of turning those collective declarations into actions and ending the mutilation of millions of girls.

B. Universalism

The universalist believes that, despite physical separation, all people share a basic moral code.¹⁹⁵ There are varying degrees of universalism, but the underlying belief is the same. The “soft universalist”¹⁹⁶ believes that all people share some common morals,¹⁹⁷ the “hard universalist”¹⁹⁸ believes there is but one, unalterable universal code that represents the ultimate values of

192. *Id.* at 71–72 (emphasis added).

193. See Universal Declaration, *supra* note 118. See also Convention Against Torture, *supra* note 119, at 113.

194. ROSENSTAND, *supra* note 188, at 262.

195. See *id.* at 65.

196. See *id.*

197. See *id.*

198. See *id.*

all people.¹⁹⁹ This belief is contrary to the tenets of ethical relativism, which maintain that there is no universal code of morality, but rather, that each culture defines its own morals and nobody else has the right to interfere.²⁰⁰

Female genital mutilation, like most traditional practices, is the embodiment of a society's beliefs and values that outsiders of a culture cannot always understand. Acknowledgment of the social context, however, does not devalue the criticism of the practice. While relativists argue that individual sovereignties have the right to do what they want without threat of interference, this viewpoint is inapposite when it comes to fundamental human rights. Admittedly, societies, for the most part, should be left to their own standards of morality, despite the possibility that others find those standards repugnant. The international community must, however, draw a line when those standards violate universal human rights. "Like the ancient Chinese practice of repeatedly breaking and binding women's feet . . . [the] brutality of [female genital mutilation] speaks louder than any [relativist's] argument."²⁰¹ That line is definitively drawn in the case of female genital mutilation, where human rights are unquestionably and irrevocably violated.

International human rights law codifies this principle. Throughout history, the global community has not tolerated violations of fundamental human rights. The notion of allowing female genital mutilation, an extreme human rights violation, to continue unfettered because it is an untouchable "cultural" issue, is contrary to the lessons the international community has learned from the past. When the world learned of the inhumanities inflicted in the concentration and death camps of Nazi Germany, the international community stepped in to liberate the victims. When the world learned of the Cambodian killing fields after the Vietnam War, it stepped in. The international community stepped in to end apartheid in South Africa and to end racial persecution in Bosnia. On numerous occasions throughout history, the international community has intervened when individual human rights were in jeopardy. It is time again for that same international

199. *See id.*

200. *See id.*

201. Robin M. Maher, *Female Genital Mutilation: The Modern Day Struggle to Eradicate a Torturous Right of Passage*, HUM. RTS. MAG., Fall 1996, available at (visited Nov. 9, 1998) <<http://www.abanet.org/irr/fgm.html>>.

community to step in and demand recognition of the human rights it has traditionally held so valuable.

Various human rights documents have codified this universalist belief "that there are human rights so fundamental to every human being that they transcend all societal, political and religious constraints."²⁰² For example, the Universal Declaration openly states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁰³ Permanently disfiguring a woman's body, without anesthesia or antiseptic, which often leads to serious infection or death, is nothing less than the worst kind of torture. It is the kind of torture that remains with a mutilated woman for the rest of her life, in mind and body, as a daily reminder of the "crime" she committed when she was born female.

VI. WHAT SHOULD THE INTERNATIONAL COMMUNITY DO NOW?

A. Providing Education and Information

Many people who subscribe to the view that female genital mutilation is an acceptable practice are unaware of the practice's potential dangers. In fact, many cultures actually perpetuate the myth that it is more dangerous for a woman to forego the surgery because her clitoris will grow to be the size of a man's penis if uncut.²⁰⁴ The international community need not blame the members of these cultures for passing these stories along to their children. It must, however, fulfill its responsibility by intervening and educating those who are ignorant about the reality of a woman's body and the dangers inherent in female genital mutilation.²⁰⁵

202. *Id.*

203. Universal Declaration, *supra* note 118, art. 5.

204. See Alison T. Slack, *Female Circumcision: A Critical Appraisal*, 10 HUM. RTS. Q. 437, 471 (1988).

205. For example, the governments in countries such as Kenya and Senegal have implemented programs to end female genital mutilation. Both programs, which have proven very successful, began with the education of the members of mutilating communities. Programs like these show unequivocally how effective education and outreach can be. See discussion *infra* Part VI.D.

B. Dispelling Religious Myths

While Islamic cultures are not the only cultures practicing female genital mutilation under the guise of religion, this Comment focuses on the Islamic beliefs because they are the most prevalent.²⁰⁶ Further, while religion is not the most pervasive incentive behind the practice of female genital mutilation, it certainly cannot be ignored as a powerful dynamic. It is, therefore, essential to demystify the religious reasoning that purportedly supports the practice.

Although in some cultures, female elders are among the most conspicuous advocates of the ritual as a religious rite, they may not know the foundations of their own arguments. Many women will not question the express religious beliefs of the men in their tribe or group requiring their wives' and daughters' mutilation.²⁰⁷ The reality, however, is that religion does not support female genital mutilation.²⁰⁸

Lack of knowledge plays a critical role in the perpetuation of female genital mutilation; this is particularly true in cultures that continue the practice because they believe their religions mandate it.²⁰⁹ For example, the Darod, a nomadic Somali tribal group, traditionally practice infibulation, the most severe form of female genital mutilation.²¹⁰ There is no ritual ceremony surrounding the genital mutilation in the Darod culture.²¹¹ Unlike many cultures that genitally mutilate girls as a traditional rite of passage, the Darod are among those who believe they are obeying the commands of their religion, Islam.²¹²

206. See generally Aldeeb Abu-Sahlieh, *supra* note 96. "The practice does seem to be more common among Muslim groups in some countries." Maria de Bruyn, Royal Tropical Institute, Amsterdam, The Netherlands, *Discussion Paper: Socio-Cultural Aspects of Female Genital Cutting*, in Proceedings of the Expert Meeting on Female Genital Mutilation Ghent-Belgium Nov. 5-7, 1998, reprinted on *Rising Daughters Aware* (visited Nov. 3, 1999) <<http://www.fgm.org/ProceedExpert.html>>. For example, statistics show that in Côte d'Ivoire (the Ivory Coast), eighty percent of Muslim women are mutilated; by comparison, only sixteen percent of Christian women undergo mutilation. See *id.*

207. See Hosken, *Strategies for Eradication*, *supra* note 20.

208. See Amnesty International, *Human Rights Information Packet*, *supra* note 1, sec. 1.

209. See generally Hosken, *Strategies for Eradication*, *supra* note 20.

210. See Smith, *supra* note 76, at 2470.

211. See *id.*

212. See *id.*

Islamic law consists of two main sources: the Koran and the *Sunna*.²¹³ The Darod follow the *Shari'a*, which is comprised of both the Koran and the *Sunna*.²¹⁴ Believing they are devoutly following the teachings of the Islamic Prophet, Mohammed,²¹⁵ the Darod, like many nomadic Islamic tribes, practice female genital mutilation because they believe that their religion regards female sexuality as a harmful instinct that must be controlled.²¹⁶ Consequently, a family's honor depends on the chastity of its female members, such that "if women's sexuality is not controlled, the family will be disgraced and the social structure of the tribe will disintegrate, causing social disorder."²¹⁷

In groups like the Darod, women occupy a secondary position to men.²¹⁸ The Darod continue to practice female genital mutilation as one form of "violent oppression [that] is meant to maintain female subservience to Darod men."²¹⁹ By eliminating the women's sexual desires and purportedly guaranteeing their chastity through female genital mutilation, the social structure and order of the tribe is maintained.²²⁰

There is, however, a fatal flaw in the belief that practicing female genital mutilation complies with Islamic law. Islam does not require female genital mutilation. Additionally, it is not a personal right under the *Shari'a*.²²¹ Furthermore, the Koran, the holiest book in the Islamic religion, does not authorize infibulation, the extreme form of genital mutilation that the Darod practice.²²² Many devout Islamic societies, such as those in Saudi Arabia, do not practice any form of female genital mutilation, let

213. See Aldeeb Abu-Sahlieh, *supra* note 96.

214. See Smith, *supra* note 76, at 2470. The *Sunna* are traditions believed to have come from the works of the holiest Islamic prophet, Mohammed.

215. There are several different ways to spell the Islamic Prophet's name; for consistency, Mohammed is used herein.

216. See Smith, *supra* note 76, at 2471.

217. *Id.* In some cultures, such the Samburu in Kenya, younger brothers of uncut girls may not be allowed to be initiated as warriors. See Meuwese & Wolthuis, *supra* note 15. In other communities, such as the Burkinabe, the community views complications following the mutilation as direct evidence that the girl's family sinned. See *id.*

218. See RAOIYA HAJI DUALEH ABDALLA, SISTERS IN AFFLICTION 33 (1982).

219. Smith, *supra* note 76, at 2486.

220. See *id.* at 2471.

221. See American Association for the Advancement of Science & Human Rights Action Network, *Progress in the Elimination of Female Genital Mutilation* (visited Sept. 12, 1998) <<http://shr.aaas.org/aaashran.nsf/04dc54bddccd95a38525637b005c82b1/5315fcd9b>>.

222. See *id.* See also Aldeeb Abu-Sahlieh, *supra* note 96.

alone the extreme form the Darod practice.²²³

Further, some Muslim opponents of the practice argue that the Koran actually promotes the theory of sexual fulfillment for both husbands and wives.²²⁴ Thus, some Muslims argue that the practice of female genital mutilation is, in fact, “un-Islamic.”²²⁵

C. Implementing and Enforcing a Cooperative Effort by International and Local Governments

African nations banded together to forbid human rights violations in drafting the African (Banjul) Charter on Human and Peoples’ Rights (African Charter).²²⁶ While the African Charter recognizes the significance of traditional practices, its primary purpose is to protect human rights.²²⁷ The African Charter contains several provisions that may be interpreted as forbidding female genital mutilation. Article 5 prohibits “[a]ll forms of exploitation and degradation of man[,] particularly . . . torture, cruel, inhuman or degrading punishment and treatment”²²⁸ Article 6 entitles “[e]very individual . . . to the right to liberty and to the security of his person.”²²⁹ Article 16(1) posits that “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health.”²³⁰ If women are entitled to the rights listed in the African Charter, as they presumably are, then female genital mutilation is a clear violation thereof because women potentially suffer a plethora of physical and mental harms as a result of the practice. The procedure is discriminatory, anatomically intrusive, violative of bodily integrity, and extremely harmful to the victims’ health.

223. See Slack, *supra* note 204, at 444.

224. See Ontario Consultants on Religious Tolerance, *supra* note 44. For example: [G-d] apparently created the clitoris for the sole purpose of generating pleasure. It has no other purpose. Thus[, G-d] must approve of its presence. And so, it should not be removed or reduced in size or function. . . . The [Koran] promotes the concept of a wife being given pleasure by her husband during sexual intercourse. Mutilated genitalia reduce or eliminate a woman’s pleasure during the act.

Id. The term “G-d” is used herein as a reference to the Lord’s name.

225. *Id.*

226. AFRICAN [BANJUL] CHARTER ON HUMAN AND PEOPLES’ RIGHTS, *adopted* June 27, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev.5 (entered into force Oct. 21, 1986).

227. See generally *id.*

228. *Id.* art. 5.

229. *Id.* art. 6.

230. *Id.* art. 16(1).

Article 18 of the African Charter declares that the state must "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child *as stipulated in international declarations and conventions.*"²³¹ This is where the U.N. and other international legal entities must intervene. For example, the international community expressed its dedication to children by adopting the Convention on the Rights of the Child, which recognizes the importance of nurturing and protecting children to promote, to the fullest extent possible, both the health and well being of all children.²³² Now, local state governments must apply that international law to their own individual legislation that criminalizes the practice of female genital mutilation. By overlapping local and international legislation, this harmful practice is stoppable.

It is clear that international governing bodies, such as the U.N., must work with individual countries' governments to end the practice of female genital mutilation. Legislators must be extremely careful, however, because legislation banning female genital mutilation can be counter-productive, actually forcing the practice underground, and thereby greatly increasing the health risks to the victimized girls.²³³ Members of western society cannot simply demand that other countries abandon local traditions that have existed for hundreds or thousands of years in order to impose western cultural norms. This could potentially lead members of the communities to resist, and thus is not the way to effectuate change. Change can only occur if the global community embraces the laws of individual nations, works with those laws, and coordinates them with international legislation. Such efforts will help to eradicate the practice of female genital mutilation.

Non-governmental agencies are often critical components in affecting that change. In 1989, the thirty-ninth session of the World Health Organization Regional Committee for Africa, a non-governmental organization, adopted a resolution on the traditional practices affecting women and children.²³⁴ The

231. *Id.* art. 18 (emphasis added).

232. *See generally* Convention on the Rights of the Child, *supra* note 122, at 1448.

233. For example, the girls may be unable to seek medical treatment for fear that their parents could face criminal charges for allowing the mutilation. *See Ontario Consultants on Religious Tolerance, supra* note 44.

234. *See Traditional Practices Affecting Women and Children*, Reg'l Comm. for Africa, 39th Sess., Sept. 1989, WHO Res. AFR/RC39.R9, *reprinted on Female Genital Mutilation*

resolution recommends that participating governments “adopt appropriate policies and strategies in order to eliminate female circumcision,”²³⁵ “prohibit the medicalization of female circumcision and discourage health personnel from performing this operation,”²³⁶ and “include in training programmes [sic] for health personnel and traditional birth attendants relevant information on the dangers of female circumcision”²³⁷ The Regional Committee also called for intensification of general public education and the establishment of national commissions to coordinate and follow the progress of other governing bodies involved in the eradication of female genital mutilation.²³⁸

In 1994, the forty-seventh World Health Assembly adopted a resolution that recognized that “although some traditional practices may be . . . harmless, others, particularly those relating to female genital mutilation . . . cause serious problems in pregnancy in childbirth and have a profound effect on the health and development of children”²³⁹ The resolution further urged member states to “establish national policies and programmes [sic] that will effectively, and with legal instruments, abolish female genital mutilation”²⁴⁰ This type of non-governmental guidance and commitment to the implementation of legal policy is precisely what is necessary to effectively eradicate the harmful practice of female genital mutilation.

Many individual countries heeded the international calling and realized that practicing certain ancient religious traditions interferes with universal human rights. Some of these countries are taking action to change those traditions. For example, the Government of Côte d’Ivoire (the Ivory Coast) implemented the Law Concerning Crimes Against Women in December 1998,²⁴¹

Report of a WHO Technical Working Group, Geneva, July 17–19, 1995 (visited Oct. 27, 1999) <http://www.who.int/frh-whd/FGM/Tec...nglish/Technical_Working_Group.htm>.

235. *Id.* para. 1(i).

236. *Id.* para. 1(iii).

237. *Id.* para. 1(iv).

238. See Hosken, *Strategies for Eradication*, *supra* note 20.

239. *Maternal and Child Health and Family Planning: Traditional Practices Harmful to the Health of Women and Children*, World Health Assembly, 47th Sess., May 1994, WHA47.10, para. 2(2), *reprinted on Female Genital Mutilation Report of a WHO Technical Working Group, Geneva, July 17–19, 1995* (visited Oct. 27, 1999) <http://www.who.int/frh-whd/FGM/Tec...nglish/Technical_Working_Group.htm>.

240. *Id.*

241. See U.S. Department of State, *Cote d’Ivoire Country Report on Human Rights Practices for 1998* (visited Nov. 1, 1999) <<http://www.state.gov/www/global/>

which is a local law that civilly and criminally punishes those who practice female genital mutilation.²⁴² In analyzing the success of measures like these, it is critical to notice the impact they have on sister countries that observe their neighbors outlaw certain practices historically deemed permissible. Countries have united to oppose the practice of female genital mutilation.²⁴³ The Somali Women's Democratic Organization, in conjunction with the Italian Association for Women in Development, established a national campaign to end female genital mutilation in Somalia.²⁴⁴ Although the project is completely funded by the Somali Government, the hard work and dedication of its Italian neighbors also fuel the project.²⁴⁵ Thanks to international involvement, "[t]he secrecy surrounding [female genital mutilation] has . . . recently begun to be lifted in Somalia."²⁴⁶

Laws that simply ban female genital mutilation are ineffective if unaccompanied by local and global support. In Egypt, for instance, the government passed a ban on female genital mutilation in July 1996.²⁴⁷ Shortly thereafter, however, Muslim

hu...ghts/1998_hrp_report/cotedivo.html> [hereinafter Law Concerning Crimes Against Women].

242. See The Feminist Majority Foundation Online, *Feminist News—June 5, 1998: Cote d'Ivoire to Punish FGM, Forced Marriage, & Sexual Harassment* (visited Sept. 10, 1999) <<http://www.feminist.org/news/newsbyte/june98/0605.html>>. Practitioners will be forced to pay fines and medical personnel caught performing mutilations could lose their licenses to practice medicine for a period of time. See *id.* Further, severe criminal sanctions will be imposed; for example: when the victim dies as a result of the surgery, perpetrators will face up to twenty years in prison; between one and five years imprisonment will be imposed if the victim survives the mutilation. See *id.* The U.S. Department of State reports that the Law Concerning Crimes Against Women "specifically forbids [female genital mutilation] subject to criminal penalties of imprisonment for up to [five] years and a fine of from roughly \$650 to \$3,500 . . . double penalties apply for medical practitioners." Law Concerning Crimes Against Women, *supra* note 241.

243. See Hosken, *Strategies for Eradication*, *supra* note 20.

A ground-breaking International Seminar on 'Strategies to Bring About Change' was held in June 1988, in Mogadishu, to draw world attention to the Somalian [campaign] Delegates from several countries, including Egypt, Sudan, The Gambia and Nigeria presented outlines about the successful campaigns and strategies to eradicate female child genital mutilations in their countries.

Id.

244. See *id.*

245. See *id.*

246. *Id.*

247. See Ontario Consultants on Religious Tolerance, *supra* note 44. *The Loyola of Los Angeles International & Comparative Law Review* was unable to obtain some of the Egyptian source material cited in this Comment. Accordingly, the *Review* relies on the

fundamentalist Sheik Youssef Badri forced the Egyptian Health Minister to defend its position in court, claiming that the ban exceeded governmental authority and violated the legal rights of medical professionals.²⁴⁸ Sheik Badri stated that the practice “is Islamic; the court has said that the ban violated religious law. There’s nothing which says [it] is a crime, but the Egyptians came along and said that Islam is a crime.”²⁴⁹

No one can change ancient practices overnight. Rather than simply imposing a western belief system on African culture, the international community must first change public perception about the practice, and then employ African law to strengthen the movement to abolish this barbaric ritual. If people are not educated about the truth of female genital mutilation, outspoken fundamentalists like Sheik Badri will be the ones making the decisions, thereby perpetuating the barbaric ritual.

The Egyptian Government, disgusted with Sheik Badri’s impact on Egyptian laws and society as a whole, appealed the case to Egypt’s supreme administrative court,²⁵⁰ the State Council.²⁵¹ The court, upholding the ban,²⁵² ruled that “female circumcision is not a personal right according to the rules of Islamic Sharia (law)[,]”²⁵³ thus, the practice is subject to Egyptian law.²⁵⁴ Moreover, the court proceeded to outlaw female genital mutilation even in cases where the child and the parents consent.²⁵⁵ Small victories such as this can ultimately change girls’ lives throughout the world. Currently, Burkina Faso, Central African Republic, Djibouti, Ghana, Guinea-Conokry, Senegal, and Togo have passed laws banning female genital mutilation.²⁵⁶

aforementioned source as to the accuracy of these sources.

248. *See id.*

249. *Id.*

250. *See id.*

251. Feminist Majority Foundation, *Feminist News, Ban on Female Genital Mutilation Upheld in Egypt* (visited Nov. 3, 1999) <<http://www.feminist.org/news/newsbyte/january98/0105.html>> [hereinafter *Feminist News*].

252. *See id.*

253. *Id.*

254. *See* Ontario Consultants on Religious Tolerance, *supra* note 44.

255. *See id.* “Violators of the law may be incarcerated for up to three years, regardless of whether permission to perform the procedure was granted by the patient or the patient’s parents.” *Feminist News, supra* note 251.

256. *See* UNICEF, *Senegal Bans Female Genital Mutilation* (visited Sept. 23, 1999) <<http://www.unicef.org/newsline/99pr1.htm>>. *The Loyola of Los Angeles International & Comparative Law Review* was unable to obtain the Burkina Faso, Central African

D. Presenting Alternative Methods

1. Kenya: "Circumcision Through Words"

A new alternative to genitally mutilating young girls for tradition's sake is increasingly practiced in areas of Kenya and Uganda.²⁵⁷ This new rite, known as "*ntanira na mugambo*" or "circumcision through words," blossomed out of a collaborative effort by a Kenyan group called the "*Maendeleo Ya Wanawake Organization*" and the Program for Appropriate Technology in Health (PATH), an international, non-profit organization dedicated to improving the health of women and children in developing countries.²⁵⁸ The primary goal of these groups is to "substitute cutting with a non[-]cutting coming-of-age ritual for young women."²⁵⁹ The Kenyan approach consists of a week-long program of counseling and educating young women about issues such as human sexuality, anatomy, health and hygiene, gender-related issues, self-esteem, respect for one's elders, and dealing with peer pressure.²⁶⁰ "To overcome the fear of a social stigma, which strongly inhibits resistance to female [genital mutilation], PATH enlisted local policy and religious leaders as advocates, used peer educators and folk media, and formed support groups in the community."²⁶¹

Because the ritual signifies a coming-of-age-rite in most cultures, the Kenyan program culminates with a day of celebration for the girls, during which they receive gifts, including "books of wisdom" written by their parents²⁶² and certificates of passage, and are treated with extra respect for the day.²⁶³ Every day, more people learn about alternatives like this, and thereby potentially save their daughters' lives.²⁶⁴

Republic, Djibouti, Ghana, Guinea-Conokry, Senegal, and Togo source material cited in this Comment. Accordingly, the *Review* relies on the aforementioned source as to the accuracy of these sources.

257. See Chelala, *supra* note 77, at A23.

258. See *id.*

259. Measure Communication, *Symposium*, *supra* note 8.

260. See Chelala, *supra* note 77, at A23.

261. Measure Communication, *Symposium*, *supra* note 8.

262. See Chalkley, *supra* note 2.

263. See Chelala, *supra* note 77, at A23.

264. "A similar ritual, in which the girl is declared a woman without maiming her for life, is being carried out in Uganda among the Sabinu, a tribe of farmers. What makes the Uganda case particularly interesting is that it is being promoted by the elders in the clan . . .

2. Senegal: The Power of the Collective Declaration

Some who read this Comment might believe that the changes it proffers are unrealistic dreams, and that although changing the world is a venerable aspiration, it is an impossible task. Non-believers, however, cannot argue with proof.

In July 1997, the women of Malicounda, a small village in the West African country of Senegal, set a stellar example for the rest of the world to follow by being the first village to officially stop female genital mutilation.²⁶⁵ Dr. Winnie Tay, the Country Director of Plan International in Sierra Leone, organized the country's first conference to educate the locals about female genital mutilation in May 1996.²⁶⁶ The symposium participants sat in awe-stricken silence as they watched a film portraying the horror of an Ethiopian girl being mutilated on her eighth birthday.²⁶⁷

Her mother takes her by the hand and leads her to a hut at the edge of the village. Inside the hut she is tied to a chair, her legs splayed apart. An old woman clutching a rusty razor tells her to be brave and not to make a noise. Then she grasps the skin above the child's clitoris and begins cutting. The child screams in agony while the woman slices off piece after piece. . . . She closes the gaping bloody wound with three thorns and slathers it with what looks like herbs and raw eggs. The child is removed to a mat, her legs are tied together and she's told that now she is a woman. If she doesn't bleed to death, if she doesn't die from shock or pelvic infection or tetanus, she faces a lifetime of pain. . . . She'll adopt the expression so many women before her have learned, 'The first one always dies. It is making a passage for the other children.'²⁶⁸

The male attendees at the Sierra Leone Conference claimed they had no idea that their wives and daughters were being subjected to this torturous practice.²⁶⁹ The women were shocked because they were able to actually discuss the procedure publicly for the first

. . . *Id.*

265. See Sally Armstrong, *Not My Daughter*, *HOMEMAKER'S MAG.*, Nov.–Dec. 1998, at 66, 68.

266. See *id.*

267. See *id.*

268. *Id.* at 69–70.

269. See *id.* at 70.

time.²⁷⁰

This remarkable event all started because one woman wanted to make a change. In 1991, Molly Melching, an American woman who visited Senegal as an exchange student twenty-four years earlier and remained there to live,²⁷¹ began a non-governmental organization called *Tostan*, which means "breakthrough" in the native Senegalese Wolof language.²⁷² Melching created a six-part educational program for women to teach them about hygiene, literacy, and other issues.²⁷³ Her goal was to give women a forum in which they could candidly discuss anything and everything they could not otherwise talk about.²⁷⁴ The participating women encouraged Melching to talk about female genital mutilation, but warned her that she could not change the practice.²⁷⁵ The women learned that non-mutilated women did not require fifteen minutes to urinate or endure between three and five days of excruciating labor to deliver a child.²⁷⁶ "When women in Melching's classes began to realize that other women didn't have the health problems they had, the floodgates opened. Women shared their stories and began to draw an inevitable conclusion: they needed to make a change."²⁷⁷

In July 1997, reports of the village's decision to tear down the ancient tradition became front-page news.²⁷⁸ Like all revolutionaries, the people of Malicounda faced substantial backlash.²⁷⁹ Religious leaders scorned the women; the ritual's adamant supporters cursed them; and their own husbands shunned them for turning such a private cultural issue into a public affair.²⁸⁰ The Malicounda women stood fast in their decision, though, and declared that they would never return to the ancient torture; they collectively vowed, "Never again. Not my daughter."²⁸¹

270. *See id.*

271. *See id.* at 72.

272. *See id.* at 74.

273. *See id.*

274. *See id.*

275. *See id.*

276. *See id.*

277. *Id.*

278. *See id.*

279. *See id.* at 74, 76.

280. *See id.* at 76.

281. *Id.*

The Malicounda women traveled to other villages to share their newly found knowledge and teach what they had learned to other women.²⁸² Within a few months, twelve more villages united with the Malicounda and adopted the Malicounda oath.²⁸³ In June 1998, eighteen more villages joined the ranks and declared a ban on female genital mutilation.²⁸⁴ This wildfire has started to spread; over seventy villages in the north of the country have moved toward publicly denouncing the practice since 1997.²⁸⁵

Knowing that educating women was not enough, the Malicounda women enlisted the help of the men, the village elders, and the Muslim leader of each area (the *Imam*).²⁸⁶ On November 20, 1997, Senegalese President Abdou Diduf proclaimed an oath of his own.²⁸⁷ "I want all the villages of Senegal to follow the example set by the women of Malicounda."²⁸⁸ In February 1998, President Diduf began drafting the legislative ban on female genital mutilation.²⁸⁹ On January 13, 1999, the Parliament of Senegal approved the legislation.²⁹⁰

Although she has received some hostility in response to her devoted actions to end female genital mutilation,²⁹¹ Molly Melching, along with the village of Malicounda and the country of Senegal, also receives considerable praise for her efforts.²⁹² UNICEF (United Nations Children's Fund) Executive Director Carol Bellamy said, "Senegal's action shows the tremendous effect that investment in education and attention to girls' and women's rights can have in bringing about positive change and helping to end suffering for millions of women worldwide."²⁹³ Because of one person's motivation to end the needless suffering, there is hope for millions of girls. This woman is not alone, and she is proof that it is possible. "By taking a stand, the women of

282. *See id.* For example, the women traveled sixty kilometers to Kër Simbara, a neighboring village preparing for its annual mutilation rites, to share the information they learned and tell them why the people of Malicounda chose to end the tradition. *See id.*

283. *See id.* at 72.

284. *See id.*

285. *See id.*

286. *See id.* at 76.

287. *See id.* at 78.

288. *Id.*

289. *See id.*

290. *See UNICEF, supra note 256.*

291. *See Armstrong, supra note 265, at 80.*

292. *See id.* at 78.

293. UNICEF, *supra note 256.*

Malicounda have fired a shot at gender apartheid[,] a shot that's being heard through-out Africa—and around the world.”²⁹⁴

VII. CONCLUSION

Female genital mutilation is a ritual of torture that permanently disfigures thousands of women, both physically and psychologically, every day. The U.N. and individual countries must unite to declare that female genital mutilation is a violation of fundamental human rights that is no longer tolerable. The time has come to protect children from this life-long torture.

Some argue that the only way to end the custom is through grassroots intervention: literally entering villages that mutilate women and explaining why the practice is wrong. Female genital mutilation, however, is not wrong to those who practice it. A mother who sends her child to be mutilated is doing what her elders have taught her is best for her child. She is not intentionally harming her child or her potential grandchildren. Thus, this Comment does not propose that the international community step in to teach people how to be good parents. There is a need, however, to teach communities that a woman's sexuality is not her only asset to the community and that there are other, non-mutilating ways to commemorate a girl's introduction to womanhood. Rather than preaching to parents, the international neighborhood must appeal to the sense of love and protectiveness they have proven they have for their daughters.

Changing the attitudes of those who live in mutilating societies is essential to truly effectuate change. Societal beliefs are shaped through a people's laws, the community, and their beliefs. The only way things will change is to attack the problem on all fronts: first by uniformly taking a stand and declaring that female genital mutilation is a violation of fundamental human rights; then through public education programs, international and local law; and finally, through outreach to educate communities about the feasible alternatives that their peers have already started implementing. By realizing that it is not an issue of relativism versus universalism, or East versus West, perhaps the global community can unite to combat this ancient evil. Hopefully, someday, future generations will view female genital mutilation

294. Armstrong, *supra* note 265, at 83.

simply as an ancient ritual of torture, rather than as a current way of life.

Just denouncing the practice can make some of us feel better and self-righteous but it certainly does not solve the problem. Our purpose should not be to criticize and condemn. Nor can we remain passive, in the name of some bland version of multiculturalism. . . . People will change their behaviour [sic] only when they themselves perceive the new practices proposed as meaningful and functional as the old ones. Therefore, what we must aim for is to convince people, including women, that they can give up a specific practice *without* giving up meaningful aspects of their own cultures. . . . Parents are much the same everywhere: given the chance, they want the best for their children. They will accept the changes proposed once they realize that these are in the best interests of their children and that, together with better health, their daughters are more likely to enjoy a successful social and economic future.²⁹⁵

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295. World Health Organization, *supra* note 6.

* J.D. candidate, Loyola Law School, Los Angeles, 2000; B.A., San Diego State University, 1996. I dedicate this Comment with tremendous love, respect, and admiration to the women who inspired me and taught me to become the extraordinarily caring, generous, and powerful women they are: Baba and Mom. Baba, you are my confidante and my hero. You have taught me what it means to be genuinely good and to have true compassion for others. Mom, you are my guide in life and my best friend. You have taught me how to be a powerful, yet caring woman, and shown me how to best use my own voice to turn my compassion into effective change. I also want to convey my deepest love and thanks to Poppy, who, through his words and actions, has involved himself in my legal studies and shown me how proud he really is. I owe a special debt of gratitude to Gil, my soul-mate and the love of my life, who stimulates and challenges me in every way, supports me, and always encourages me to stand up for what I believe in. I also want to express my heartfelt thanks to Dad, my greatest fan and supporter, and Grandma, Jonathan and Samantha, for the unconditional love and support they have always given me throughout my life endeavors. Each of you provides the wonderful inspiration that gets me through life. I could not have made it to where I am today without each and every one of you. Finally, I would like to thank the members of the *Loyola of Los Angeles International and Comparative Law Review* for their valuable assistance in readying this Comment for publication.

