

Customary laws and practices may conflict with prohibitions in the text of the ICCPR and CEDAW or in the action taken by the bodies created by these treaties. Recall Articles 2(f) and 5(a) of CEDAW that require states to take all appropriate measures to modify or abolish customs, practices, and social and cultural patterns of conduct that constitute discrimination or that are based on the idea of inferiority or on stereotyped roles for women.

This section begins with a reading that explores some problems in developing a feminist perspective on human rights related to gender, problems that bear on the following case studies. It then explores a practice that is variously referred to, with strikingly different political and moral innuendo and sometimes agendas, as female circumcision or female genital mutilation.

### TRACY HIGGINS, ANTI-ESSENTIALISM, RELATIVISM, AND HUMAN RIGHTS

19 Harvard Women's L.J. 89 (1996)

During the Fourth United Nations World Conference on Women [in 1995], cultural differences among women presented a series of practical and theoretical problems. The practical problems arose out of the enormous task of negotiating among a large group of people a single, albeit complex, document that would set an agenda for addressing the problems of women globally. Differences in culture, language, religion, and education presented complications at every stage of the process. As a theoretical matter, such differences presented a less immediate but in some ways more difficult and persistent problem: In the face of profound cultural differences among women, how can feminists maintain a global political movement yet avoid charges of cultural imperialism?

This theoretical dilemma has become a serious political hurdle for global feminism as the challenge of cultural relativism permeates the politics of any discussion of women's rights on the international stage. For example, at the 1994 United Nations Population Conference in Cairo, the Vatican joined with several Muslim governments to condemn what they viewed as the imposition of Western norms of sexual license and individual autonomy on the rest of the world. . . .

Feminist responses to this charge are complicated and sometimes conflicting. On the one hand, feminists note that culture and religion are often cited as justifications for denying women a range of basic rights, including the right to travel, rights in marriage and divorce, the right to own property, even the right to be protected by the criminal law on an equal basis with men. Women have much to lose, therefore, in any movement away from a universal standard of human rights in favor of deference to culture. On the other hand, feminists acknowledge that feminism itself is grounded in the importance of participation, of listening to and accounting for the particular experiences of women, especially those on the margins of power. Indeed, much feminist criticism of traditional human rights approaches has focused on the tendency of international policymakers to exclude women's experiences and women's voices. Thus, the claim that Western concepts of women's equality are

exclusionary or imperialist strikes at the heart of one of feminism's central commitments — respect for difference.

In short, both the move to expand universal human rights to include those rights central to women's condition and the move toward a relativist view of human rights are consistent with and informed by feminist theory. Indeed, the tension between them reflects a tension within feminism itself, between describing women's experience collectively as a basis for political action and respecting differences among women. Addressing this tension, this Article endeavors to sort out the degree to which feminism, by virtue of its own commitments, must take cultural defenses seriously, particularly when articulated by women themselves.

... Despite the general consensus [over the universality of human rights that was reflected in the Universal Declaration], differences have persisted over the scope and priorities of the international human rights agenda, differences that are translated with surprising frequency into the rhetoric of universality versus cultural relativism, imperialism versus self-determination. Notwithstanding the language of universalism, the question remains: To what extent may a state depart from international norms in the name of culture? . . .

The influence of the universalist/relativist divide on the politics of human rights is perhaps nowhere more evident than in debates over women's rights as human rights. Cultural relativists have targeted feminism itself as a product of Western ideology and global feminism as a form of Western imperialism. Ironically, cultural relativists have accused feminist human rights activists of imposing Western standards on non-Western cultures in much the same way that feminists have criticized states for imposing male-defined norms on women. The complexity of this debate has sown confusion among feminist human rights activists, undermining the effectiveness of the global feminist movement . . .

[Higgins considers the criticism of some feminists that the movement in general has been characterized by 'essentialism' — that is, the belief that many categories (like gender) or groups (like women) have a real, true essence, and thus fixed properties that define what they are. Essentialism in this sense is likely to be linked to a universalist position.]

Much incisive and insightful criticism, particularly by feminists of color, has revealed that treating gender difference as the primary concern of feminism has had the effect of reinforcing gendered categories and collapsing differences among women. These critics have argued convincingly that early feminist descriptions of women's experience focused on white, middle-class, educated, heterosexual women. Consequently, the political priorities of the women's movement in the West (e.g., equal access to education and employment, abortion rights) have reflected the most urgent concerns of a relatively more powerful group of women . . . Accused of essentialism, feminists who theorized a commonality among women were criticized for committing the dual sin of reinforcing patriarchal assumptions about women as a group and marginalizing some women along the lines of race, class, and sexual orientation.

Despite its theoretical and political vulnerabilities, the practical appeal of essentialism, like the appeal of universalism, persists. Essentialist assumptions offer the promise of uniting women in a way that transcends or precedes politics...

Much feminist activism on the international level has been premised on two assumptions, both of which may be characterized as essentialist: first, that women share types of experiences and are oppressed in particular ways as women; and second, that these experiences are often different than those of men... [F]eminist progress in reshaping the scope of the international human rights agenda stands as an important example of the power of organizing around assumptions of commonality.

[Higgins explores two views about culture and coercion that are relevant to a response by feminists who are committed to universalism to the criticisms and challenge of cultural relativists and anti-essentialists. The first view has to do with the tendency in some strands of cultural relativism to 'essentialize' the local culture itself and in the process to obscure coercion.]

Feminists have questioned arguments based on a simple assertion of cultural integrity for several reasons. First, cultural relativists may inadequately attend to the degree to which power relationships within the culture itself constrain the ability of individuals to renegotiate cultural norms. Yet, this inattention is inconsistent with a concern about coercion. The relativist cannot criticize Western imperialism and at the same time ignore non-Western states' selective use of the defense of culture in the service of state power. The risk of such intra-cultural coercion seems especially great when that selective invocation of culture has differential effects on groups within the state such as minority ethnic or racial groups or women.

Second, cultural relativist arguments may oversimplify the complexity and fluidity of culture by treating culture as monolithic and moral norms within a particular culture as readily ascertainable. Yet, a single, inward glance at Western culture reveals the absurdity of this assumption. The multiplicity of beliefs in the United States (or even within a single community or family) about the legitimacy of abortion or the role of women in the family illustrates the complexity of translating imperfectly shared assumptions into evaluative standards. Such oversimplification seems inconsistent with the very premises of cultural relativism. Indeed, cultural relativists' tendency to describe differences in terms of simple opposition — Western versus non-Western — without exploring how specific cultural practices are constituted and justified 'essentializes' culture itself.

Treating culture as monolithic fails to respect relevant intra-cultural differences just as the assumption of the universality of human rights standards fails to respect cross-cultural differences. Cultural differences that may be relevant to assessing human rights claims are neither uniform nor static. Rather, they are constantly created, challenged, and renegotiated by individuals living within inevitably overlapping cultural communities.

This oversimplification of culture may lead relativists to accept too readily a cultural defense articulated by state actors or other elites on the international level, actors that tend not to be women. Yet, it seems unlikely that a cultural defense

offered by the state will adequately reflect the dynamic, evolving, and possibly conflicting cultural concerns of its citizens.

Given the complexity and multiplicity of culture, the ability or inclination of heads of state to identify and translate cultural practices into specific defenses against the imposition of Western human rights norms is questionable. Feminists in particular have cited example after example in which culture has been selectively and perhaps cynically invoked to justify oppressive practices.

[The second view about culture and coercion raises the question of the role of private ordering in coercion.]

In contrast to cultural relativists and liberal pluralists, feminist anti-essentialists are centrally concerned with the interplay between culture and self, exploring ways in which culture constructs gendered individuals... [F]eminism emphasizes the role of private power. The most important premise of this feminist view is that the sex/gender system is substantially a product of culture rather than divine will, human biology or natural selection. Implicit in this assumption is the claim that cultural norms — language, law, myth, custom — are not merely products of human will and action but also define and limit the possibilities for human identity.

Connected with this view of cultural limitations on human subjectivity is the notion that cultural norms function as a source of power and control within modern society. Consistent with this recognition, many feminists have rejected a theory of power that posits monolithic control held by a coherent or unified sovereign. Yet, it is precisely this model of power that traditional human rights standards are designed to regulate and to which cultural relativists often defer when exercised within cultural boundaries. In contrast, feminists... have emphasized the degree to which power is exercised both from above, by sovereigns, and within concrete social interactions and relationships — in short, through culture. For feminists, culture itself becomes a source of control and a site of resistance, a form of power that feminist human rights activists must engage directly along with more traditional public and private forms.

### Conclusion

Confronted with the challenge of cultural relativism, feminism faces divergent paths, neither of which seems to lead out of the woods of patriarchy. The first path, leading to simple tolerance of cultural difference, is too broad. To follow it would require feminists to ignore pervasive limits on women's freedom in the name of an autonomy that exists for women in theory only.

The other path, leading to objective condemnation of cultural practices, is too narrow. To follow it would require feminists to dismiss the culturally distinct experiences of women as false consciousness. Yet to forge an alternative path is difficult, requiring feminists to confront the risks inherent in global strategies for change.

Building upon women's shared experiences inevitably entails a risk of misdescription, or worse, cooptation but contains the promise of transforming and

radicalizing women's understanding of their own condition. Emphasizing difference threatens to splinter women politically, undermining hard-won progress, but may simultaneously uncover new possibilities for re-creating gender relations. Forging a combined strategy that respects both commonality and difference requires feminists to acknowledge that we cannot eliminate the risk of coercion altogether, but the risk of inaction is also ever present.

### VIEWS OF COMMENTATORS ABOUT FEMALE GENITAL MUTILATION

World Health Organization, Fact Sheet No. 241 (2000)  
[www.who.int/mediacentre/factsheets/fs241/en/](http://www.who.int/mediacentre/factsheets/fs241/en/)

What is female genital mutilation

Female genital mutilation (FGM), often referred to as 'female circumcision', comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons. There are different types of female genital mutilation known to be practised today. They include:

- Type I — excision of the prepuce, with or without excision of part or all of the clitoris;
- Type II — excision of the clitoris with partial or total excision of the labia minora;
- Type III — excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);
- Type IV — pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue;
- scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts);
- introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition given above.

The most common type of female genital mutilation is excision of the clitoris and the labia minora, accounting for up to 80% of all cases; the most extreme form is infibulation, which constitutes about 15% of all procedures.

#### Health Consequences of FGM

The immediate and long-term health consequences of female genital mutilation vary according to the type and severity of the procedure performed.

Immediate complications include severe pain, shock, haemorrhage, urine retention, ulceration of the genital region and injury to adjacent tissue. Haemorrhage and infection can cause death.

More recently, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations, but this has not been the subject of detailed research.

Long-term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse) and sexual dysfunction and difficulties with childbirth.

Psychosexual and psychological health: Genital mutilation may leave a lasting mark on the life and mind of the woman who has undergone it. In the longer term, women may suffer feelings of incompleteness, anxiety and depression.

#### Who Performs FGM, at What Age, and for What Reasons?

In cultures where it is an accepted norm, female genital mutilation is practiced by followers of all religious beliefs as well as animists and non believers. FGM is usually performed by a traditional practitioner with crude instruments and without anaesthetic. Among the more affluent in society it may be performed in a health care facility by qualified health personnel. WHO is opposed to medicalization of all the types of female genital mutilation.

The age at which female genital mutilation is performed varies from area to area. It is performed on infants a few days old, female children and adolescents and, occasionally, on mature women.

#### Prevalence and Distribution of FGM

Most of the girls and women who have undergone genital mutilation live in 28 African countries, although some live in Asia and the Middle East. They are also increasingly found in Europe, Australia, Canada and the USA, primarily among immigrants from these countries.

Today, the number of girls and women who have been undergone female genital mutilation is estimated at between 100 and 140 million. It is estimated that each year, a further 2 million girls are at risk of undergoing FGM.

#### World Health Organization, Female Genital Mutilation and Obstetric Outcome

(2006) [www.who.int/reproductive-health/fgm/](http://www.who.int/reproductive-health/fgm/)

A new study published by the World Health Organization (WHO) has shown that women who have had Female Genital Mutilation (FGM) are significantly more likely to experience difficulties during childbirth and that their babies are more likely to die as a result of the practice. Serious complications during childbirth include the need to have a caesarean section, dangerously heavy bleeding after the birth of the baby and prolonged hospitalization following the birth. The study

showed that the degree of complications increased according to the extent and severity of the FGM.

In the case of caesarean section, women who have been subjected to the most serious form of FGM ("FGM III") will have on average 30 per cent more caesarean sections compared with those who have not had any FGM. Similarly there is a 70 per cent increase in numbers of women who suffer from postpartum haemorrhage in those with FGM III compared to those women without FGM.

... The death rate among babies during and immediately after birth is also much higher for those born to mothers with FGM: 15 per cent higher in those with FGM I, 32 per cent higher in those with FGM II, and 55 per cent higher in those with FGM III. ...

#### PLAN, Tradition and Rights: Female Genital Cutting in West Africa

(2006) <http://www.crin.org/resources/infodetail.asp?id=11060>

Each year, an estimated two million girls undergo excision. Most of these girls live in Sub-Saharan and North-eastern Africa. To a lesser extent, female genital cutting is also practiced in some countries in the Middle East and parts of Asia and the Pacific. The practice of excision among immigrant communities in Europe, North America, and Australia has recently drawn much public attention. Female genital cutting is practiced throughout West Africa. ...

#### *The practitioners of excision*

... The act of excision is usually performed by female traditional practitioners who have inherited their role from a relative. ... Recent campaigns to create awareness about the dangers of excision have led to an increasing medicalisation of the practice, especially in cities and larger towns. ... Parents who can afford it may call a nurse to assist the procedure. An ever increasing number of excisions throughout West Africa are performed by health care workers. ...

Most practitioners have an interest in the continuation of female genital cutting. In some areas, the practice is a lucrative business. Most practitioners have no other stable source of income. Some of them work as traditional midwives, others are herbalists or spiritual healers. But financial rewards are not always the main motivation. In some regions of Mali, for instance, the payment is small and symbolic. Performing excisions is a social duty of designated women, something they have to do to contribute to the well-being of society. ...

#### *Motives for Practicing Female Genital Cutting*

By excising their daughters, parents show respect for their culture and to their ancestors. The practice of excision is perceived as a means whereby one can become

aware of cultural and traditional values that are precious to society. Although many parents do not see any benefit in the practice, it would be inconceivable to them to disrespect ancestral customs by not excising their daughters. ...

In communities where female genital cutting is widely practiced, it is the social norm. The pressure to undergo excision is immense. Those who disrespect the norm are likely to be stigmatised, treated as non-adults, or even ostracized from society. Non-excised girls fear being mocked and ridiculed by their peers. Their parents worry that they may not find a husband. It is therefore quite common that young girls demand to be excised in order to be accepted by their peers and their community. ...

In a number of African societies, the practice of excision is an important part of an initiation ritual that marks the transition into adulthood. The initiation is necessary in order to become a "complete" or a "full-grown" woman. Non initiated women (and men) are treated like children, even if they have reached an advanced age. ... Excision is only one part of initiation. Other aspects include training in skills such as cooking, dancing, traditional healing, and taking care of household, husband, and children. Initiation is intended to prepare girls for their future role as household managers, wives, and mothers. The pain endured during excision is seen as part of the girl's education. It is believed to change her into a respectful, calm, and less demanding person who accepts her role as a servant to her husband. This belief reveals the patriarchal social structures that maintain the practice of female genital cutting. ...

Some African Muslims believe that excision is recommended, or even required, by Islam. They hold on to the practice of female genital cutting to fulfil a religious obligation. Sometimes this belief is reinforced by local Islamic leaders. ... In fact, no form of female genital cutting is mentioned in the Koran.

Excision in West Africa is practiced by Muslims, Christians, and Animists. It is cultural and not a religious practice that predates both Christianity and Islam. (29,30)

... Some communities consider excision as a tool to control female sexuality and to safeguard the honour of the family. The ablation of the clitoris is supposed to help protect the virginity of the young girl and to ensure the fidelity of the married woman. Another reason cited is to prevent girls from masturbating or experimenting with their body. ... Hence, excision is understood as a means of exercising control over a woman's sexuality.

However, this perception cannot be generalised. In some societies female genital cutting is believed to promote sexual intercourse and fertility. ...

Among women interviewed in the field studies, excision was rarely perceived as a subordination of their sexual life. On the contrary, in some communities it is cherished as a symbol of women's power and freedom from men. It creates a "women's space", a realm over which they have power that cannot be taken away or challenged by men. ...

... [I]nitiations rites during which the excisions are performed present the only opportunity to get away from daily work and to unite female power against the authority of men. During initiation women step out of the reach of male authority and celebrate the legitimacy of female authority, the authority of their mothers and grandmothers....

During the PLAN field studies, the researchers encountered many communities who defended the practice of female genital cutting because of beliefs that were clearly false. These included:

- The belief that excision facilitates sexual intercourse and child birth, or that it enhances fertility.
- The belief that the clitoris is a dangerous organ that can kill or harm men during intercourse or the infant during delivery.
- The belief that the clitoris represents the male part of the body. In order to become a "true" woman, it has to be cut off.

#### TRADITION AND RIGHTS:

Most people are aware that the practise of excision is not without danger. Deaths of girls during initiation ceremonies are quite common....

#### *Laws against Female Genital Cutting in West Africa*

In November 2005, the Republic of Togo became the 15th Member State of the African Union to ratify the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol. This means that the Protocol is now in force, and all African countries are obliged to pass legislation prohibiting excision. Legislation prohibiting female genital cutting already exists in most West African countries.... However, with the exception of Burkina Faso, prosecutions under the laws are rare. In Guinea, for example, almost all girls are excised, yet there has never been a court case.

The practice of excision is severely sanctioned in Burkina Faso since 1996.... The law against female genital cutting is applied rigorously. Between 1996 and 2005 more than 400 convictions have been recorded. However, the application of the law is not the only strategy pursued by the State. The Government, has conducted public information campaigns about excision. Members of the police and the army have been trained to intervene in support of the law. The topic of excision is integrated in school curricula. Women suffering from complications of female genital cutting are treated free of charge in public health care facilities. A telephone hotline has been set up to help the denunciation of planned excisions. It receives approximately 150 calls a year. The Government and civil society actions against excision appear to be effective. The number of girls being excised is falling rapidly....

#### *The Complex Dynamics of Female Genital Cutting*

... The underlying dynamics of excision in West Africa are complex. They are linked to social, cultural, political and developmental issues in the region.

... [A] large proportion of the population practicing excision is illiterate and lives below the line of poverty. National public education campaigns rarely reach these people, and when they do they are not understood....

Talking about genital organs is a sensitive and uncomfortable subject in all cultures. In addition, the subject of female genital cutting is considered taboo in many West African societies. It is only discussed under specific circumstances by selected members of the community.... [I]n communities where the practice of excision is strongly supported by local opinion leaders, campaigners against female genital cutting may be afraid to speak out, fearing for their reputation or even their lives.

The most commonly heard argument in favour of continuing the practice of female genital cutting is: "It is a tradition that we have found with our ancestors". What is hiding behind this statement? ... Excision is often associated with ethnic identity in West Africa. The practice is a heritage of the ancestors and a source of pride. It is understandable that communities react with hostility when outsiders criticise practices linked to their ethnic identity. Traditions are maintained to preserve values. These values allow the individual to be socially accepted. They stand for dignity, security, and a source of identity within the community....

Campaigners against female genital cutting cannot ignore the conflict between human rights and societal norms. Clearly, girls have the right to be protected from harm and the right to have an intact body. But they also have a need to get married and to be accepted members of their community. This conflict needs to be resolved before there can be progress towards the abandonment of female genital cutting.

#### *PLAN'S Work on Female Genital Cutting in West Africa*

For the communities who practice excision, the Government and the international organisations are external actors. Engagement of foreign anti-excision activists has often done more harm than good. In some communities it has created the prejudice that the abandonment of excision is a "project of white people", an attempt to destroy African culture....

An acceptable and frequently used door opener is to start a discussion about the health risks and long-term reproductive health complications of excision. This information is usually of interest to all community members. It is, however, important not to become stuck in the discussion at this point. Information about the risks does not prevent people from excising their daughters. It may lead to an increasing medicalisation of the practice. But tradition and social conformism are much stronger behavioural motivators than information about adverse health outcomes....

The abandonment of female genital cutting is not a priority for communities; it is a priority for development agencies. Community members become easily annoyed when a development organisation appears to have no concern for their daily

problems and insists to speak only about excision. . . . In order to be effective, efforts to promote the abandonment of excision have to be integrated into a development program that is consistent with the needs and demands articulated by the community. This can be an education program, a micro-finance program, a health program or any other program that is seen as a priority. . . .

Men are intimately involved in the issue of female genital cutting. In many communities they play a major role in preserving the practice.<sup>(29)</sup> But the PLAN field studies also found that sometimes men are most interested in abandoning excision because of the burden of having to pay for the ceremony. This points to a common error of anti-excision activists to "feminise" the issue. Female genital cutting is not a "women's problem"; it is a gender and a child protection issue that affects the whole community. . . .

#### UNICEF, Female Genital Mutilation/Cutting: A Statistical Exploration (2005)

##### VIII. Conclusions and Recommendations

In its many and complex cultural meanings, FGM/C is a long-standing tradition that has become inseparable from ethnic and social identity among many groups. As stated by the International Conference on Population and Development, "For women it is not only a painful ordeal but a means of social bargaining and negotiation; for societies it is a collective identity marker — a status symbol in the fullest sense — as well as a creator of cohesion."

The following summarizes five essential points resulting from this statistical analysis.

*FGM/C prevalence rates are slowly declining in some countries.* Evidence of change can be obtained by comparing the experiences of different age cohorts within a given country. The most recent survey data indicate consistently, for all countries, that women aged 15–19 are less likely to have been circumcised than women in the older age groups. In countries with high prevalence rates (particularly in Egypt, Guinea, Mali and Sudan), the difference between the 15–19 and 20–24 age cohorts is less than 1 per cent. Nevertheless, it is believed to indicate the beginning of change.

*Attitudes towards FGM/C are slowly changing as more and more women oppose its continuation.* In almost all countries that have conducted more than one survey during the past decade, data indicate that opposition to the practice is increasing. These results are reinforced by the fact that support for the discontinuation of the practice is particularly high among younger women. As FGM/C is deeply ingrained in the social fabric, and in most countries has been practised for a very long time, any increase in opposition, even a small one, represents a significant indication of change. . . .

*Strategies to end FGM/C must be accompanied by holistic, community-based education and awareness-raising.* As a social behaviour, the practice of FGM/C derives its roots from a complex set of belief systems. . . . In many ways, bringing an end to FGM/C requires changing community norms and societal attitudes that discriminate against women and subjugate their rights to those of men. . . . [T]his study shows the close link between women's ability to exercise control over their lives and their belief that FGM/C should be ended. Programmatic interventions must aim to promote the empowerment of women and girls through awareness-raising campaigns and increasing their access to education, as well as their access to and control of economic resources. . . .

*Programmes must be country specific and adapted to reflect regional, ethnic and socio-economic variances.* . . . [T]he practice of FGM/C differs significantly between and within countries. Any strategy to end FGM/C must address the specific situation for each country and reflect regional and ethnic differences. . . . Furthermore, as the section on attitudes illustrates, FGM/C is practised for a wide variety of cultural reasons. For some communities, it is related to rites of passage. In others, it is considered aesthetically pleasing. Some practise it for reasons related to morality and sexuality. Research into why and how FGM/C is practised among a given group or region is essential for the design of culturally appropriate, effective programmatic interventions.

*Detailed segregation of data by socio-economic variables can significantly enhance and strengthen advocacy efforts at the country level.* Advocacy efforts are instrumental in influencing behaviour change and awareness. In many situations, however, advocacy can be severely hampered by the lack of systematic and accurate data. In the field of FGM/C, the link between advocacy efforts and accurate data is particularly strong due to the availability of such instruments. . . . Programmatic interventions to end FGM/C should continue to draw upon the available measurement tools and use data to better tailor their advocacy messages. By examining the different factors and variables that surround the practice, this study attempts to identify girls most at risk and thus take the first step towards ensuring their protection. FGM/C is no longer a cultural practice alone, removed from the scrutiny of international attention and human rights concerns. Rather, it has become a phenomenon that cannot be independently evaluated without looking at the social and economic injustices surrounding women and girls. Any approach that aims to end FGM/C must incorporate a holistic strategy that addresses the multitude of factors that perpetuate it.

#### Kay Boulware-Miller, Female Circumcision: Challenges to the Practice as a Human Rights Violation

8 Harv. Women's L. J. 155 (1985), at 165

##### A. The Rights of the Child

The Declaration of the Rights of the Child, adopted by the UN General Assembly in 1959, asserts that children must be guaranteed the opportunity to develop physically in a healthy and normal way. . . .

First, to challenge female circumcision as a violation of the rights of the child suggests that women who permit the operation are incompetent and abusive mothers who, in some ways, do not love their children. The success of this approach therefore depends in part on how it is implemented; if African women are offended by the implication that they are poor mothers, they will likely reject the children's rights argument altogether.

The second problem with the rights of the child approach is that it conflicts with parents' desires to rear children independently and their notions of what is in their children's best interests. While women may not wish to see their daughters harmed, they may also feel strongly that they should be able to rear their children according to their own cultural norms and traditions. Besides, if mothers value the economic, social, and cultural benefits of the operation, they are unlikely to be persuaded that it should not be performed on their daughters. Moreover, the strong social and cultural pressures to continue the practice work against parents who would prefer not to submit their daughters to the operation. . . .

The third problem with this approach is that it almost exclusively focuses on the physical harm done to a child when she is circumcised and does not address the positive feelings she may have as a circumcised woman. In African communities with strong cultural and traditional ties, the perceived need to be circumcised mitigates the hellish remembrances of the event. Little girls who are initially hurt, betrayed, and degraded by the operation later come to feel socially and morally acceptable because they have been circumcised. As the girls grow into women they may forget the pain and argue that the practice need not be banned. Furthermore, it is difficult to attack a practice as harmful to children when it later gives them both social and economic benefits.

A final problem with approaching this issue from the rights of the child perspective is that many young girls believe that they want to be circumcised. The stigma associated with not being circumcised attaches early, virtually compelling a choice to undergo the operation. . . .

#### Isabelle Gunning, Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries

23 Colum. Hum. Rts. L. Rev. 189 (1991-1992), at 238

Arguably, most of the activity reviewed and criticized by the human rights system is not culturally based. In cases of torture or forced disappearances, accused governments generally deny the fact or any knowledge thereof. With a cultural practice, the condemned act is acknowledged and defended: the practice is viewed 'as conduct which has evolved for a specific purpose within a culture and is endorsed as a legitimate expression of that purpose'. However governments may not be actually involved in the practice, because private citizens willingly nurture their cultural norms.

One problem therefore is whether human rights which, like the rest of international law, is aimed at public or government actions can be used to alter the

behavior of private parties. Feminists have argued persuasively that the public-private distinction is a false one and that the real question is not whether law, in this case human rights law, should apply to the private as well as the public, but rather 'what types of private acts are and are not protected'. If one can decide that a particular act is a violation, even if performed by private citizens, one can hold governments responsible. For example, when one reviews the international definition of torture one sees that it is not only active or direct government participation which is prohibited, but also government 'consent or acquiescence'.

It may be argued that that language is designed to hold accountable governments that are believed to be responsible for torturous acts but who have created sufficient 'plausible deniability' to make it difficult to prove complicity. Still, it reflects a willingness to pressure governments to do something about 'private' acts. The practical problem is that if governments really do not have control over private actions, then the primary tool of human rights enforcement, governmental embarrassment, will not be nearly as effective. This is particularly true with a practice like female genital surgeries, where the governments involved may either refuse to be embarrassed or become angry at the attack on the culture; thus they reject the interference. Moreover, even if a government is embarrassed, the cost of implementing an eradication law, as has been explained, could be enormously socially disruptive and ineffective.

. . . One is not stuck between choosing 'universal standards' and 'everything is relative'. It is not that there are 'universals' out there waiting to be discovered. But through dialogue, shared values can become universal and be safeguarded. The process by which these universal standards are created is important. A dialogue, with a tone that respects cultural diversity, is essential. From that dialogue a consensus may be reached, understanding that as people and cultures interact they do change and learn from each other.

#### CEDAW, Female Circumcision

General Recommendation. No. 14, 9th Sess., 1990

Un Doc. A/45/38/1 Int. Hum. Rts. Re. 21 (No. 1, 1994)

[The Committee on the Elimination of Discrimination against Women (see p. 192, *supra*), created by the Convention on the Elimination of all Forms of Discrimination against Women, is authorized to make general recommendations based on reports that it receives from the states parties.]

#### Recommends that States parties:

(a) Take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include:

- (i) The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices;

- (ii) The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women;
- (iii) The encouragement of politicians, professionals, religious and community leaders at all levels, including the media and the arts, to co-operate in influencing attitudes towards the eradication of female circumcision;
- (iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision;
- (b) Include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel, including traditional birth attendants, to explain the harmful effects of female circumcision;
- (c) Invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices;
- (d) Include in their reports to the Committee under articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.

#### Female Genital Mutilation, 18 U.S.C.A. §116

Section 116 of this federal criminal statute was enacted in 1996. It reads:

- (a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.
- (b) A surgical operation is not a violation of this section if the operation is — [Clauses (1) and (2) refer to the operation's being necessary for health/medical purposes and being performed by a licensed medical practitioner.]
- (c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual.

#### K. Hayter, Female Circumcision — Is There a Legal Solution?

J. of Soc. Welf. L. (U.K.) 323 (November 1984), at 355

[These remarks concerned a pending bill in Parliament to prohibit female circumcision in the UK]

Clearly the effects of female circumcision and the enforced suppression of female sexuality is to be abhorred. The overall response of members of the House of Lords

reflects this view, as summarised in the speech of Baroness Gaiaskell's where she states, 'The primitive attitude to female circumcision rests not only on tradition, but on the male desire for the female to be pure for him ... That is not only the most cruel, but also ... the most primitive, and the most important aspect of the matter which we should reject'. But is this moral indignation sufficient to justify legal intervention to prohibit consensual acts performed on women over 16 in accordance with the cultural requirements of a minority group? ... It is interesting to note here that clitoradectomies were openly performed on children and women in England and the United States as late as 1945 as a 'cure' for masturbation and 'promiscuity'. The demise of this practice in recent years may indicate a general change in attitudes towards female sexuality. If this is correct then, it is suggested, the legality of certain western practices will also require review. Purely elective cosmetic surgery is an obvious case where the right of the individual to consent to treatment is not seriously questioned. Breast reduction, for example, is an unnecessary and mutilating operation involving considerable pain and scarring to the patient. If justification for its performance were called for, medical evidence of anxiety and depression brought on by the woman's dissatisfaction with her body would undoubtedly be sufficient to outweigh the injury inherent in the treatment. Indeed, the Government's proposed amendment to the Bill which would safeguard the right of western women to undergo surgery on mental health grounds reinforces this view. Precisely the same justification would be pleaded in support of the legality of female circumcision and should, by analogy, in the absence of further justification for its prohibition, be sufficient. In both cases the women's perception of themselves reflects the demands of the social group to which they belong. This justification is the greater in the case of female circumcision where its necessity extends beyond mere aesthetic appeal, being crucial to the women's status within the group.

Additionally, the imposition of the moral values of the majority onto minority groups would seem inappropriate in a multiracial society in which the current trend is towards tolerance of others' cultural practices. An analogy can be drawn here between female circumcision and the circumcision of Jewish males, which does receive social and legal tolerance. Clearly nice distinctions can be drawn between a mere custom in the case of female circumcision and a strict religious requirement in the latter case. But is this really the criteria to be used to limit the bounds of tolerance? The essential element in both appears to be the unquestioned and entrenched nature of the practices which are part of the social fabric of the groups concerned. Arguably both should, *prima facie*, be tolerated on this basis alone. A valid distinction between the two practices, however, is the degree of injury involved in female circumcision which is not associated with male circumcision.

... Legal intervention is, however, justified to protect persons from what is offensive or injurious, particularly where the individual is young, weak in body or mind or in a state of particular physical or economic dependence. Arguably the practice of female circumcision bears characteristics which bring it within these exceptions thus justifying legal intervention, which are not present in other forms of elective surgery. Clearly it is applicable to the circumcision of female children and this approach has been taken to prohibit indigenous practices, notably the tattooing of minors. To subject women over 16 to the same degree of legal paternalism appears,



prima facie, to be a denial of their right to self-determination and a slight on the intellectual capacity of the women members of these groups. This issue underlies objections to legal limitations on a woman's right to elect for abortion. It is possible, however, that the cloistered lifestyle and acute state of economic dependence in which the women practising female circumcision find themselves may provide some justification for a paternalistic approach here. Access to research findings and wider views which refute the necessity for female circumcision are denied to them and the traditional view of the practice is enforced within the closed environment. They are not, therefore, in a position to form a balanced judgment in their own best interests. By criminalising female circumcision the law may assist in freeing women who are powerless to help themselves by reducing the social pressure to conform.

#### AAWORD, A Statement on Genital Mutilation

Miranda Davies (ed.), *Third World-Second Sex: Women's Struggles and National Liberation* (1983), at 217

[The Association of African Women for Research and Development (AAWORD) is a group of African women researchers dedicated to doing women's research from an African perspective. They are based in Dakar, Senegal, where their first official meeting was held in December 1977.]

This new crusade of the West has been led out of the moral and cultural prejudices of Judaeo-Christian Western society: aggressiveness, ignorance or even contempt, paternalism and activism are the elements which have infuriated and then shocked many people of good will. In trying to reach their own public, the new crusaders have fallen back on sensationalism, and have become insensitive to the dignity of the very women they want to 'save'. They are totally unconscious of the latent racism which such a campaign evokes in countries where ethnocentric prejudice is so deep-rooted. And in their conviction that this is a 'just cause', they have forgotten that these women from a different race and a different culture are also *human beings*, and that solidarity can only exist alongside self-affirmation and mutual respect.

AAWORD, whose aim is to carry out research which leads to the liberation of African people and women in particular, *firmly condemns* genital mutilation and all other practices — traditional or modern — which oppress women and justify exploiting them economically or socially, as a serious violation of the fundamental rights of women.

However, as far as AAWORD is concerned, the fight against genital mutilation, although necessary, should not take on such proportions that the wood cannot be seen for the trees....

... [T]o fight against genital mutilation without placing it in the context of ignorance, obscurantism, exploitation, poverty, etc., without questioning the structures and social relations which perpetuate this situation, is like 'refusing to see the sun in the middle of the day'. This, however, is precisely the approach taken by many Westerners, and is highly suspect, especially since Westerners necessarily profit from the exploitation of the peoples and women of Africa, whether directly or indirectly.

Feminists from developed countries — at least those who are sincerely concerned about this situation rather than those who use it only for their personal prestige — should understand this other aspect of the problem. They must accept that it is a problem for *African women*, and that no change is possible without the conscious participation of African women....

#### Merwine, Letter to Editor

*New York Times*, November 24, 1993, at A24

To the Editor:

A. M. Rosenthal condemns female circumcision, a traditional practice common to many African and Arabic peoples, as 'female mutilation'... From the Western liberal tradition, and certainly from a feminist perspective, Mr. Rosenthal is correct.

However, from the African viewpoint the practice can serve as an affirmation of the value of woman in traditional society.

This tradition has long been a source of conflict between Western and African values.

...

The operation completed, a fee was provided by the young women, usually in the form of a cooked meal, to their moriuthia. At this point, they became full members of the Kikuyu and were no longer considered girls.

The importance of the ceremony among traditional Kikuyu cannot be understated, for each girl showed by her act of courage that she was ready to be married. Of equal importance, she now became a member of an age-set. An age-set is a group of people of similar age who tend to act together in their society for the rest of their lives. To the Kikuyu, female circumcision is much more than a mere physical act.

...

The sentiments expressed long ago in Kenya are almost certainly shared by the peoples who practice the custom today. To demand, as Mr. Rosenthal does, that economic aid be used to force a change in a tradition central to many Africans and Arabs is the height of ethnocentrism.

A better approach would be for Western peoples to try to understand the importance of these traditions to those who practice them. The West could encourage Africans to have the surgical part of the ceremony performed by competent medical practitioners. That would eliminate potential infection and restrict the extent of

excision. This is being done in many African states. Such a policy would allow the West to uphold its values while avoiding the appearance of arrogance.

### Richard Shweder, Moral Realism without the Ethnocentrism

in A. Sajo (ed.), *Human Rights with Modesty: The Problem of Universalism* (2004) 65, at 100

... [T]he following points need to be addressed and debated, if there is to be a serious evenhanded non-ethnocentric discussion of the topic:

1. Despite claims to the contrary, the practice of genital alteration is a rather poor example of gender inequality or of society picking on women. If one surveys the cultures of the world, one finds very few cultures where genital surgeries are done to girls but not to boys, although there are many cultures where they are done only to boys or to both sexes. ... [S]ocial recognition for both boys and girls of their ritual transformation into a more mature status as empowered men and women is not infrequently a major point of the ceremony. ... [F]emale circumcision, when and where it occurs in Africa, is much more a case of a society treating boys and girls equally. ...

2. The practice is also a rather poor example of patriarchal domination. Many patriarchal cultures in Europe and Asia do not engage in genital alterations at all or ... exclude girls from participation. ... Moreover, the African ethnic groups that circumcise both females and males are very different from each other. ...

3. ... [T]he practice is almost always controlled, performed, and most strongly upheld by women, although male kin often do provide material and moral support. Typically, however, men have rather little to do with these female operations, may not know very much about them, and may feel it is not really their business to butt in. ... It is the women of the society who are the cultural experts in this intimate feminine domain. ...

4. Imagine an African mother living in the United States who [believes for several reasons in the importance of circumcision for her daughter by a modest surgical procedure that is] no more substantial from a medical point of view than the customary male circumcision operation. Why should we not extend that option to (e.g.) the Kono parents of daughters as well as to (e.g.) the Jewish parents of sons? Principles of gender equity, due process before the law, religious and cultural freedom, and family privacy would seem to support the option.

### Yael Tamir, Hands off Clitoridectomy

31. Boston Review 21 (Summer 1996)

Clitoridectomy is obviously a deplorable practice. It is, among other things, an extremely painful, traumatizing mutilation of young girls that leaves them permanently disfigured and deprived of sexual enjoyment. We should express no sympathy toward those who practice it, and support those who struggle to end it.

But we also should be suspicious about the role of clitoridectomy in current political debate. Despite their liberal appearance, references to clitoridectomy commonly reveal a patronizing attitude toward women, suggesting that they are primarily sexual beings. Moreover, those references involve a certain degree of dishonesty. They intentionally widen the gap between our culture and those in which clitoridectomy is practiced, thus presenting those other cultures as incomprehensible with ours. The effect of this distancing is to disconnect criticism of their practices from criticism of our own, and turn reflection on other cultures into yet another occasion for celebrating our special virtues. We should resist such self-congratulation. And if we do, the debate about clitoridectomy takes on an entirely different cast.

... Moreover, we are all aware of painful practices of body piercing, tattooing, and abnormal elongation of lips, ear lobes, and necks. National Geographic runs cover photos of women and men who have undergone such severe malformations, not in protest but as a neutral representation of other ways of life with their different conceptions of beauty. So hostility to clitoridectomy is not driven principally by concerns about physical suffering. Those who object to it would be no less hostile if it were performed in hygienic conditions under anesthesia.

It might be said that these examples are all irrelevant as they do not include the mutilation of the body. But when is the body improved and when is it mutilated? Are parents who force their children to wear braces mutilating their children's teeth or improving them? In most cases, the answer depends on one's conception of beauty. ... To be sure, parents say (sincerely) that these treatments will improve their children's life chances, self-image, and social standing. But parents who perform clitoridectomy on their daughters invoke precisely the same arguments.

Furthermore, it seems clear that Western conceptions of female beauty encourage women to undergo a wide range of painful, medically unnecessary, and potentially damaging processes — extreme diets, depilation, face lifts, fat pumping, silicone implants. Of course, adult women do these things to their own bodies, and, it is said, their decisions are freely made. But would our gut reaction to female circumcision be very different if it were performed on consenting adults? It is not unlikely that girls at the age of 13 or 14, who are considered in traditional societies as adults mature enough to wed and bear children, would 'consent' to the mutilation of their bodies if they were convinced that marriage and children were contingent on so doing. Many women who followed the tradition of Sati seemed to do it as a matter of choice. Did their 'consent' make this tradition defensible? Women 'consent' to such practices because the alternative is even more painful — a life of solitude, humiliation, and deprivation.

... Perhaps, then, we object to clitoridectomy because it is performed on minors. But think of the parents in our culture who foster in their daughters bad eating habits that might destroy their teeth or their vital organs, or, in more tragic cases, lead to life-threatening eating disorders. Are we ready to judge these parents as harshly as we judge parents who require clitoridectomies?

