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## Female Genital Mutilation: A Disussion of International Human Rights Instuments, Culteral Sovereignty and Dominance Theory

### Keywords

Female Genital Mutilation, Human Rights Law, Sovereignty, Women, International Law: History

# FEMALE GENITAL MUTILATION: A DISCUSSION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, CULTURAL SOVEREIGNTY AND DOMINANCE THEORY

LEIGH A. TRUEBLOOD\*

"African women, now and throughout history, have developed analyses and strategies for action to take control of our own lives in those areas that we have collectively determined for redress."<sup>1</sup>

## I. INTRODUCTION

The foundation of international human rights law is the principle that every State has an obligation to respect the human rights of its citizens.<sup>2</sup> Additionally, the international community has a right and responsibility to protest if there is a violation of this obligation.<sup>3</sup>

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1. Abena Busia, *Issues Around Human Rights and Women in Africa: A Discussion*, in GENDER VIOLENCE AND WOMEN'S HUMAN RIGHTS IN AFRICA 1 (1994).

2. Richard B. Bilder, *An Overview of International Human Rights Law*, in GUIDE TO HUMAN RIGHTS PRACTICES 3-19 (1983); see also Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217, U.N. GAOR, art. 29, para. 3 [hereinafter Universal Declaration]. See generally U.N. CHARTER art. 1, para. 3; art. 2, paras. 2, 4-6 (outlining the purposes and principles of the United Nations to include promoting and encouraging respect for human rights and fundamental freedoms); Vienna Convention on the Law of Treaties, Jan. 27, 1990, U.N. Doc. A/CONF. 39/27, art. 26 (noting the principles of *pacta sunt servanda* and the observance of treaties and internal laws); International Covenant on Civil and Political Rights, Mar. 23, 1976, G.A. Res. 2200, 999 U.N.T.S. 171 (ratified by the United States June 8, 1992) [hereinafter Civil and Political Rights]; International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3 (The United States has not ratified this convention as of Mar. 4, 2000) [hereinafter Economic, Social and Cultural Rights].

3. See generally treaties cited *supra* note 2. See also Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, 19 I.L.M. 33 [hereinafter CEDAW]. Article 5 of CEDAW asserts:

State Parties shall take appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or

Inherent in this principle is the concept that there are, in fact, universal human rights.<sup>4</sup> However, most of the rights enumerated as "universal" are based on Western values, and can be traced directly to the experiences of France, England, and the United States rather than Islamic, Eastern, and African cultures.<sup>5</sup> Many international law scholars acknowledge "the meaning of human rights depends upon the specific cultural context."<sup>6</sup>

Another tenet of international law is the concept of State sovereignty.<sup>7</sup> The concept of sovereignty means a State is "subject to no

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on the stereotyped roles for men and women.

CEDAW, art. 5.

4. The rights enumerated in the Universal Declaration as, "a common standard of achievement for all peoples and all nations" include: freedom of dignity; freedom from discrimination; right to life, liberty and security of the person; freedom from slavery; freedom from torture or cruel and degrading treatment; right to recognition under the law; right to equal protection; right to effective remedy; freedom from arbitrary arrest, detention, or exile; right to a fair trial by an impartial tribunal; right to be presumed innocent until proved guilty; freedom from arbitrary interference in a person's privacy, family, and home; right to marry and found a family and equal right during marriage and at its dissolution; right to personal property, right to freedom of thought, conscience, and religion; freedom of opinion and expression, freedom of peaceful assembly, right to take part in the government; right to vote; and the right of equal access to public service. Universal Declaration, *supra* note 2, arts 1-30. See also Kimberly Younce Schooly, *Cultural Sovereignty, Islam, and Human Rights—Toward a Communitarian Revision*, 25 CUMB. L. REV. 651 (1995) (citing Blackstone's definition of the Law of Personal Status as, "The rights of persons considered in their natural capacities are also of two sorts, absolute and relative. Absolute, which are such as appertain and belong to particular men, merely as individuals or single persons: relative, which are incident to them as members of society, and standing in various relations to each other.").

5. Adamantia Pollis & Peter Schwab, *Human Rights: A Western Construct with Limited Applicability*, in HUMAN RIGHTS - CULTURAL AND IDEOLOGICAL PERSPECTIVES 8-10 (A. Pollis & P. Schwab eds. 1979). See also Younce Schooly, *supra* note 5, at 653 (discussing the development of international human rights during the aftermath of the Holocaust and the Nuremburg Trials. Ms. Younce Schooly asserts that many Islamic cultures do not identify with "universal" rights such as autonomy, equality, and freedom, and, therefore, have reservations to the CEDAW). See also Bilder *supra* note 2, at 1.

6. Ved Nanda, *The Human Rights Era at Fifty: Looking Back and Looking Forward*, 5 WILLAMETTE J. INT'L L. & DISP. RESOL. 69 (1997). But see *What's Culture Got To Do With It? Excising the Harmful Tradition of Female Circumcision*, 106 HARV. L. REV. 1944, 1959 (1993) [hereinafter *What's Culture*] (arguing that culture is not simply based on history and tradition, but is a dynamic notion incorporating social, economic, and political influences, and things both individual and collective. The author asserts that present actions and lifestyles reinforce a notion of culture that comprises the traditional as well as the contemporary. Therefore, practices, beliefs, and lifestyles passed down through several generations of an ethnic group need to be re-examined periodically in light of contemporary values and knowledge, in order to ascertain whether the customs deserve to be perpetuated).

7. JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 28 (1993) (stating that, historically, the idea of sovereignty in international relations dates back to 1648 with the Treaty of Westphalia, which ended the Thirty Year's War).

higher power.<sup>8</sup> Sovereignty not only refers to a States physical border, but also to its choice of political, social, economic, and cultural systems.<sup>9</sup> Connected with the doctrine of sovereignty is the concept of nonintervention.<sup>10</sup> Nonintervention means that one State should not interfere with the internal relations of another State out of respect for its sovereignty.<sup>11</sup> Therefore, according to basic international law principles, States should respect the politics, religions, social structures, and cultures of other States and refrain from interfering with such sovereign rights.

This conflict between international human rights and the doctrine of cultural sovereignty is ongoing and controversial. Critics of international human rights law argue that “the international community utilizes treaties to loosen sovereignty’s rule of restraint.”<sup>12</sup> Some of the most controversial treaties involve the rights of women and children encompassing all aspects of a woman’s life, which differs according to culture.<sup>13</sup>

Today, this conflict exists between societies that practice Female Genital Mutilation (FGM) and the numerous States and Non-Governmental Organizations (NGOs) that protest the practice.<sup>14</sup> In addition to the existing political conflict between States, there exists an immense cultural conflict where victims of FGM support the practice.<sup>15</sup> There is abundant legal support against the practice including the United Nations Charter,<sup>16</sup> the Universal Declaration of Human Rights<sup>17</sup>,

8. *Id.*

9. See U.N. CHARTER art. 2, para. 1. See also Alexander Boldizar, *Out of a Tangled Skein into the International: The Development of Legal Culture*, 5 ANN. SURV. INT’L & COMP. L. 163, 198 (1999) (addressing the traditional meaning of sovereignty to mean the “whole of inviolable rights and privileges of an international actor of the highest rank. Sovereignty ensures that no higher authority can bind the sovereign, deprive it of its equal rights vis-à-vis its peers, nor penetrate its domestic geographical, political, or cultural domain.”).

10. Younce Schooly, *supra* note 5, at 654.

11. *Id.* See also LOUIS HENKIN, *HOW NATIONS BEHAVE* 13-27 (2d ed. 1979).

12. Younce Schooly, *supra* note 5, at 654 (“A treaty is contractual agreement by states to accept certain obligations to other states, that is, specified restrictions on their sovereignty.”).

13. *Id.* at 656.

14. See Laura Reymond et al., *Female Genital Mutilation- The Facts!*, (visited Feb. 13, 2000) <<http://www.path.org/html/fgm.htm>> [hereinafter *FGM- The Facts!*] (discussing the efforts of NGOs to eradicate FGM, and the obstacles they encounter).

15. *Id.*

16. U.N. CHARTER art. 1, para. 3 (includes in the purposes of the United Nations, “To achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”).

17. The Universal Declaration states that, “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food,

and the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>18</sup> However, there is also legal support for the practice based upon the concept of cultural sovereignty.<sup>19</sup> Thus, the conflict centers on the fine line between respecting one's fundamental human rights and the recognition of a State's cultural sovereignty.<sup>20</sup>

This article addresses the conflict between the recognition of international human rights and the principle of cultural sovereignty through an analysis of the cultural, social, and political implications surrounding FGM. Section two introduces the torturous practice of FGM, including the reasons given to justify it, as well as the resulting complications and effects. Section three addresses and evaluates

clothing, housing and medical care and necessary social services . . . Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." Universal Declaration, *supra* note 2, art. 25, paras. 1-2

18. See generally CEDAW, *supra* note 3. The Preamble states:

The Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women . . . [c]onsidering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women, recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity . . .

*Id.* at pmbl. Article 3 declares:

States parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

*Id.* art. 3.

19. See U.N. CHARTER art. 2, paras. 1, 4, 7 (asserting that the United Nations itself is based on the principle of sovereign equality of all its members, that members shall refrain from invasion of the territorial integrity or political independence of any state, and that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state). See also BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 587-91 (2d ed. 1995) (discussing foreign sovereign immunity and the act of state doctrine).

20. Compare CARTER & TRIMBLE, *supra* note 19, at 652 (asserting that human rights approaches disrespect the cultural integrity of women outside the West, and proposing a Communitarian approach to human rights discourse), with *What's Culture*, *supra* note 6, at 1959 (arguing that culture is a dynamic notion requiring changes and reexamination in light of contemporary values in order to determine whether customs deserved to be perpetuated), and Boldizar, *supra* note 9, at 198-99 (asserting that the concept of sovereignty makes the international legal system a consensual one where States are influenced through interacting processes of justification, discourse, and persuasion creating a non-culture by virtue of surrendering the pretense of idiomatic virginity).

existing international legal instruments that protest FGM. Section four considers the arguments of both FGM proponents and opponents. Section five addresses enforcement mechanisms of international law concerning FGM, and proposes solutions to rectify these issues. In a day and age where it should be commonplace for society to respect women of all cultures and for all women to have the opportunity to make meaningful choices in their lives, the conflicting issues raised in this article show the difficulty women face daily, simply to obtain their freedom.

## II. DEFINING THE PROBLEM OF FEMALE GENITAL MUTILATION

Female Genital Mutilation is a general term for a variety of surgical operations performed on girls and women primarily in twenty-eight African countries and among some minorities in Asia.<sup>21</sup> FGM is the partial or total removal of the female external genitalia including the clitoris, labia, mons pubis (the fatty tissue over the pubic bone), and the urethral and vagina openings.<sup>22</sup> The practice is often referred to as 'female circumcision', implying that it is similar to male circumcision. However, the cutting is much more severe and extensive, often impairing a woman's sexual and reproductive functions.<sup>23</sup> It is an ancient custom, which is estimated to affect 130 million girls and women around the world, with a rate of increase of about 2 million new cases a year.<sup>24</sup> Recently, the practice has also begun to surface within immigrant communities in Europe, Australia, Canada, and the United States.<sup>25</sup>

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21. See *Female Genital Mutilation: A Fact Sheet*, Research, Action and Information Network for the Bodily Integrity of Women (RAINBO) (visited Oct. 15, 1999) <<http://www.rainbo.org>> [hereinafter RAINBO] (web site of a major advocacy organization striving to eradicate the practice of FGM).

22. *World Health Organization Fact Sheet N 153*, (Apr. 1997) (visited Sept. 1999) <<http://www.who.org>> [hereinafter *WHO Fact Sheet*].

23. See *FGM- The Facts!*, *supra* note 14 (discussing the results of research regarding the immediate and long-term complications of FGM to include increased risk of maternal and child morbidity and mortality due to obstructed labor, increased risk of infertility, increased risk of HIV infection, and repression of women's sexuality). See also Khadija Magardie, *Female Genital Mutilation Shadow Falls on South Africa*, AFR. NEWS SERV., Sept. 10, 1999 (describing the specific complications with childbirth to include extreme difficulty for the doctor to perform internal examinations on labouring women that can have grave consequences for the life of the fetus).

24. *FGM- The Facts!*, *supra* note 14. See also *FGM Research Homepage* (visited Oct. 25, 1999) <<http://www.hollyfeld.org/fgm.html>>.

25. See RAINBO, *supra* note 21. See also, *In re Fauziya Kasinga*, Int. Dec. 3278, available in 1996 WL 379826 (BIA June 13, 1996); Ruth Nabakwe, *The Voice of the Girl Child Asserts Itself*, PANAFRICAN NEWS AGENCY, Feb. 4, 1999 (article published in French newspapers about the sentencing of a 52-year-old Malian woman, Hawa Greou, by a court in Paris for circumcising 50 girls. Female circumcision became a crime in France in 1984,

Most girls undergo FGM when they are between seven and ten years old.<sup>26</sup> However, FGM seems to be occurring at earlier ages in several countries because parents want to reduce the trauma to their children and avoid government interference and/or resistance from their children.<sup>27</sup>

In 1995, the World Health Organization (WHO) defined four types of FGM: (I) Type 1- Clitoridectomy,<sup>28</sup> (II) Type 2- Excision,<sup>29</sup> (III) Type 3- Infibulation,<sup>30</sup> (IV) Type 4- Unclassified, but includes all operations performed on the female genitalia.<sup>31</sup> Eighty-five percent of genital mutilations are Type I and Type II operations.<sup>32</sup> Type III (Infibulation) is common in Djibouti, Somalia and Sudan and in parts of Egypt, Ethiopia, Kenya, Mali, Mauritania, Niger, Nigeria, and Senegal.<sup>33</sup>

#### A. *Complications and Effects of Female Genital Mutilation*

The consequences of FGM on women's health are extensive and range from repeated urinary infections to death.<sup>34</sup> The actual number of girls who die because of FGM is unknown, however, the highest maternal and infant mortality rates are in FGM practicing regions.<sup>35</sup> A

but the first conviction was not handed down until 1991).

26. *FGM- The Facts!*, *supra* note 14 (citing Calverton, *Demographic and Health Survey- Egypt* 175 (1995)).

27. See FRAN HOSKEN, *THE HOSKEN REPORT: GENITAL AND SEXUAL MUTILATION OF FEMALES* 35 (4th ed. 1993) [hereinafter *HOSKEN REPORT*].

28. Clitoridectomy is the partial or total removal of the clitoris. *FGM- The Facts!*, *supra* note 14.

29. Excision is when both the clitoris and the inner lips are cut off so the vagina is not covered. *Id.*

30. Infibulation is when the clitoris is removed; partial or total cutting of the labia minora and incisions are made in the labia majora. The surface is either stitched together or kept in contact by tying the girl's legs together until it heals, covering the urethra and most of the vaginal opening leaving only a tiny opening the size of a matchstick head for the passage of urine or menstruation. *Id.*

31. Carol R. Horowitz & J. Carey Jackson, *Female Circumcision: African Women Confront American Medicine* (visited Jan. 7, 2000) <<http://www.fgm.org/Horowitz-Jackson.html>> (The other operations performed on the female genitalia include: pricking, piercing, stretching, or incision of the clitoris and/or labia; cauterization by burning the clitoris and surrounding tissues; incisions to the vaginal wall; scraping or cutting of the vagina and surrounding tissues; and introduction of corrosive substances or herbs into the vagina).

32. See *FGM- The Facts!*, *supra* note 14.

33. *Id.* See also *HOSKEN REPORT*, *supra* note 27, at 3.

34. *HOSKEN REPORT*, *supra* note 27, at 3. (research contained in the report shows that the highest maternal and infant mortality rates are in FGM-practicing regions, largely due to a lack of antibiotics. In areas in the Sudan where antibiotics are not available, it is estimated that one-third of the girls undergoing FGM will die. Where medical facilities are ill equipped, emergencies arising from FGM cannot be treated. Thus, a child who develops uncontrolled bleeding or infection after FGM may die within hours).

35. *Id.* at 37.



major reason for death is the unsanitary and crude method used by the practitioner combined with the unavailability of antibiotics.<sup>36</sup> Female family members in non-sterile conditions often perform the procedure with instruments including razor blades or broken glass.<sup>37</sup> In regions of West Africa, dirt, ashes, or pulverized animal feces are thrown into the wound to stop the bleeding and contributes to severe infection, shock, and uncontrolled hemorrhaging.<sup>38</sup>

The consequences of FGM on women's health include both short and long-term consequences. Immediate physical problems related to FGM include: intense pain and/or hemorrhaging,<sup>39</sup> wound infection, including tetanus,<sup>40</sup> damage to adjoining organs from the use of blunt instruments by unskilled practitioners, and urine retention from swelling and/or blockage of the urethra.<sup>41</sup> A more recent concern focuses on the possible transmission of the human immuno-deficiency virus (HIV) as a result of using one instrument in multiple operations or the damage to tissue from anal intercourse.<sup>42</sup> However, the connection between HIV and FGM has yet to be fully explored.

The long-term consequences of FGM encompass psychological as well as physical ailments. Long-term consequences of FGM include: painful or blocked menses,<sup>43</sup> recurrent urinary tract infections,<sup>44</sup>

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36. *Id.*

37. *Id.*

38. Robin Maher, *Female Genital Mutilation: The Modern Day Struggle to Eradicate a Torturous Rite of Passage*, 23 HUM. RTS. 12, 13 (1996).

39. *FGM- The Facts!*, *supra* note 14 (Intense hemorrhaging can lead to shock during and after the procedure, as well as anemia. Approximately 50 percent of Kenyan women in 1991 suffered hemorrhaging from FGM).

40. *Id.* (50 to 60 percent of women with tetanus die from this infection).

41. *Id.* (A 1991 survey of 1,222 women in four Kenyan districts indicated that 48.5% of the women experienced hemorrhaging, 23.9% infection, and 19.4% urine retention at the time of the FGM operation).

42. *Id.* (discussing how the same unsterilized instrument is used on several girls at a time, increasing the chance of spreading HIV or other communicable disease). *See also*, Michael Ntabaazi, *Preventing Female Genital Mutilation Not So Easy*, AFR. NEWS SERV., Aug. 3, 1998, available in 1998 WL 14361837 (article discusses progresses made to eradicate FGM in Uganda, and addresses the long term consequences to include the likelihood of increasing the risk of HIV infection). *See also WHO Fact Sheet*, *supra* note 22 (In some cases where infibulation prevents or impedes vaginal intercourse, anal intercourse is known to be used as an alternative. The damage to tissue from anal intercourse is also a possible route of infection by HIV).

43. *FGM-The Facts!*, *supra* note 14 (in 1983, 55.4 percent of the women surveyed in Baydhaba, Somalia, reported abnormal menstruation).

44. *See FGM-The Facts!*, *supra* note 14 (a 1983 study in the Sudan revealed that 16.4 percent of women who had the operation experienced recurrent urinary tract infections caused by swelling and or blockage of the urethra). *See also UNICEF Joins in Plan Against FGM*, UNICEF Home Page, (visited Sept. 1999) <<http://www.unicef.org/newsline/fgm.htm>>.

abscesses, cysts, and hardened scars,<sup>45</sup> increased risk of maternal and child morbidity due to obstructed labor,<sup>46</sup> infertility, and sexual dysfunction.<sup>47</sup> In addition to these physical problems, mutilated women also suffer psychological consequences.<sup>48</sup> These consequences may be

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45. See Ntabazzi, *supra* note 42 (article describes the scars that are left from FGM to include dermoid cysts and keloid scars, which is a hardening of the scars). See also Florence Bamanyaki, *Where is the Aesthetic Sense in Female Circumcision?*, AFR. NEWS SERV., Oct. 28, 1996, available in 1996 WL 14178071 (interview with Dr. Gerald Aine, a private gynecologist, who explained the complications caused by fibrous, non-elastic scar tissue include severe pain and tearing during childbirth. The scar tissue does not yield during childbirth, thus making labor prolonged and sometimes obstructed. During this period, the second stage of labor, the head of the baby is already in the vagina, but the opening of the birth canal is closed by the unyielding scar tissue of circumcision).

46. See Bamanyaki, *supra* note 45 (Dr. Aine reported that the constant prolonged grinding of the baby's head on the mother's urinary bladder on top and the rectum behind causes fistula, an uncontrollable passing out of urine and feces. Fistula is common in adolescent girls and it is extremely difficult for these women to give birth to a live child if the fistula is not repaired. If by chance they become pregnant, urine poisons the fetus, causing frequent miscarriages). See also Magardie, *supra* note 23 (article documents the increase in the number of mutilated women coming to government hospitals in South Africa for ante-natal care. Trainee doctors are now being taught how to deal with the obstetric and gynecological complications resulting from FGM. One patient had to undergo serious surgery to repair an acute case of necrosis- a rotting of the area between the vagina and the rectum. Infection in the area left a gaping hole. Most mutilated women have to be cut open for childbirth and re-sewn afterward). See also WHO Press Release, *Female Genital Mutilation: World Health Assembly Calls for Elimination of Harmful Traditional Practices* (1993) (visited Oct. 20, 1999) <<http://www.rainbow.org>> (research revealed that women who undergo FGM are twice as likely to die during childbirth and are more likely to give birth to a stillborn child than other women. Obstructed labor also causes brain damage to the infant and complications for the mother).

47. See Magardie, *supra* note 23 (a mutilated woman remembers her wedding night when she was 14 years old and her husband forced his penis into her opening that was the size of the head of a matchstick. Other women had to be 'opened up' with a kitchen knife on their wedding night). See also *How We Were Genitally Mutilated*, AFR. NEWS SERV., (Oct. 6, 1999), available in 1999 WL 25948826 (article about two female legislators in Benin that relive their FGM experiences as the Edo House proposed a law against FGM. One of the legislators, Mrs. Eshoe Jacobs, said the scar left after the mutilation deprived her of a lifetime of sexual satisfaction. Both women agreed that FGM destroys a woman's sensitivity during sex and can lead to severe bleeding and death).

48. Hanny Lightfoot-Klein, *The Sexual Experience and Marital Adjustment of Genitally Circumcised and Infibulated Females in Sudan*, 26 J. SEX RES. 375-92 (1989) (visited Jan. 8, 2000) <<http://www.fgm.org/HLKarticle.html>>. See also WHO Fact Sheet, *supra* note 22 (report from the World Health Organization about the health consequences of FGM. The report includes psychosexual and psychological health, and says that FGM may leave a lasting mark on the mind of the woman). See also FGM- *The Facts*, *supra* note 14 (asserting that FGM destroys much or all of the vulval nerve endings, delaying arousal or impairing orgasm. Also asserting lacerations, loss of skin elasticity, or development of neuroma can lead to painful intercourse. In a 1993 Sudanese study, 5.5 percent of women interviewed experienced painful intercourse while 9.3 percent of them reported having difficult or impossible penetration. In 1981, 1,545 Sudanese women who had undergone the operation were interviewed, and 50 percent said they did not enjoy sex

submerged deep in the child's subconscious and may trigger behavioral disturbances. These female children may lose their trust and confidence in caregivers and, in the long run, may suffer anxiety, incompleteness, depression, chronic irritability and frigidity.<sup>49</sup> Additionally, victims are rarely able to enjoy the physical and mental aspects of sexual intercourse, which may result in marital dysfunction.<sup>50</sup> Research in Sudan revealed that fifty percent of women who had undergone FGM say that they do not enjoy sexual intercourse, but rather they accept it as their duty.<sup>51</sup>

### *B Reasons for Supporting FGM*

There are various rationales in favor of FGM. The reasons can be classified as religious, sociological, aesthetic, mythical, and psychosexual. Supporters of FGM argue the concept of cultural relativism — that FGM is an essential part of their culture. As such, FGM should be preserved, and members of FGM practicing States should be allowed to continue with this cultural practice without interference from other States.

#### 1. Religious Reasons

It is a common misconception that FGM is an exclusively Muslim practice. FGM is also practiced by many secular and religious groups; including Egyptian Christians,<sup>52</sup> Ethiopian Jews, and non-believers.<sup>53</sup> In fact, FGM predates Islam.<sup>54</sup> Some Muslim communities practice

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at all).

49. See *WHO Fact Sheet*, *supra* note 22.

50. *Id.* (WHO report says that mutilated women may experience marital conflicts because of sexual dysfunction in both partners resulting from painful intercourse and reduced sexual activity).

51. *FGM- The Facts!*, *supra* note 14 (citing A. DAREER, AN EPIDEMIOLOGICAL STUDY OF FEMALE CIRCUMCISION IN THE SUDAN 81 (1981)).

52. Sami A. Aldeeb Abu-Sahlieh, *To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision* (visited Jan. 8, 2000) <<http://www.fgmnetwork.org/samialdeeb/Mutilate/index.html>> [hereinafter *Jehovah*].

53. See *WHO Fact Sheet*, *supra* note 22. See also *FGM- The Facts!*, *supra* note 14 (asserting that, until the 1950s, FGM was performed in England and the United States as a common "treatment" for lesbianism, masturbation, hysteria, epilepsy, and other so-called "female deviances"). See also *Female Genital Mutilation: In Africa, The Middle East & Far East*, Female Genital Mutilation Homepage (visited Feb. 15, 2000) <<http://www.fgm.org>> (asserting that FGM is frequently practiced among Christians in Ethiopia and Sudan, as well as by Falachas, or Ethiopian Jews).

54. See *FGM Research Homepage*, *supra* note 24 (article attempting to clarify the misunderstanding that FGM is an exclusively Muslim practice by describing how it is an African cultural practice).

FGM because they believe that their faith demands it.<sup>55</sup> However, religious scholars have confirmed that there is no mention of FGM in the Koran. There are no final statements (*fatwas*)<sup>56</sup> about FGM from an Islamic point of view, only that it is a *rnakrama*, a "third or fourth order duty".<sup>57</sup> This does not, however, stop many religious and secular leaders from claiming that it does have a place in Islam.<sup>58</sup> In 1994, the Sheikh of Al-Azhar, Sunni Islam's highest authority, persuaded the Egyptian Ministry of Health to issue a decree, which permitted hospitals in Egypt to perform the procedure.<sup>59</sup> However, three years later, the Sheikh changed his opinion on the issue, and "reaffirmed" his support for the Egyptian Health Ministry's ban on FGM.<sup>60</sup> Sheikh Mohammed Sayyed Tantawi also made a statement in support of the ban, "I support the Health Ministry's decision to ban excision because it is a medical and not a religious matter."<sup>61</sup> The Sheikh added, "[a]ll the hadith on excision are weak," a reference to the sayings of the prophet Mohammad, one of the foundations of Islamic legislation.<sup>62</sup> However, many clergy continue to support the practice, and religion continues to be a primary motivation for FGM among Muslim populations.<sup>63</sup>

## 2. Sociological Reasons

FGM is an ancient practice cloaked in tradition allowing women to identify with their cultural heritage. The sociological reasons

55. See *Jehovah*, *supra* note 52. See also RAINBO, *supra* note 21 (asserting that contrary to popular belief, FGM is not a religious practice or requirement; it is perpetuated on the bases of custom and tradition. Muslims, Christians, some animists and Ethiopian Jews practice it). *But see FGM Research Homepage*, *supra* note 24 (asserting that in many Muslim countries, such as Jordan and Iran, FGM is nonexistent).

56. A "fatwa" is "a legal opinion or decree handed down by an Islamic religious leader." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (1996).

57. Amna Hassan, *Sudanese Women's Struggle to Eliminate Harmful Traditional Practices*, (visited Oct. 10, 1999) <<http://www/fgm.org/sudan.struggle.html>> (summarizing the beliefs of modern Islamic scholars in the words of Sheikh Mahmoud Shaltout. "Islamic legislation provides a general principle, namely that certain issues should be carefully examined and if these are proved to be definitely harmful or immoral, then it should be legitimately stopped." Since the harm of excision has been established, excision of the clitoris is not a so-called "Sunna" or duty).

58. See Maher, *supra* note 38, at 13 (Sheikh of Al-Azhar, Sunni Islam's highest authority, publicly proclaimed that FGM has a place in the jurisprudence of Islam).

59. *Id.*

60. *Religious Leader Reaffirms Opposition to Female Circumcision*, AFR. NEWS SERV., Aug. 4, 1997, available in 1997 WL 12809052 (article discussing the Egyptian Health Ministry's ban on female circumcision despite a court decision to allow the practice. The Sheikh declared that the Islamic community should listen to the advice of doctors who say that FGM is unnecessary).

61. *Id.*

62. *Id.*

63. Maher, *supra* note 38, at 13.

supporting FGM are the strongest as they are imbedded in the daily lives of these women. FGM is performed as a rite of passage to womanhood.<sup>64</sup> An elaborate ceremony may surround the event where songs and dance are performed to teach the young girl her duties as a good wife and mother. The girl may even receive gifts, such as gold, clothes and food.<sup>65</sup>

If a girl does not undergo the procedure society may shun her; she may be ostracized from her family, and may never marry.<sup>66</sup> In Kenya, a sixteen-year-old girl, Regina Muakaria, was chased away from her home because she refused to undergo the procedure before entering secondary school.<sup>67</sup> Failure to be circumcised can lead to tremendous social pressure and harassment. In the Sabiny culture in Uganda, an uncircumcised woman cannot speak in front of elders, hold any position of responsibility, or even marry.<sup>68</sup> The impact of social pressure from peers, husbands and other extended family members towards female circumcision is expressed by a nineteen-year old woman who was circumcised the previous year. She explains the social pressures she experienced:

I dropped out of school and decided to get married. I did not like to undergo circumcision, but was compelled to accept it. My friends are circumcised, so I was isolated, a social outcast and not respected. I was told by in-laws that if I did not undergo circumcision, dowry would not be paid.<sup>69</sup>

Another pressure women endure comes from mothers-in-law and other wives in polygamous marriages, who want uncircumcised women to look like them and to be respectable.<sup>70</sup> Interestingly, most women

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64. See *Kuka Fights to Stop Female Circumcision*, MONITOR, June 27, 1998, available in 1998 WL 13213179 (article describing the Uganda Minister of State for Gender and Cultural Affairs' account of her crusade against FGM. Jane Frances Kuka explains that the practice is one of the most fundamental aspects of the Sabiny culture and persisted largely because it is supported by the Sabiny Elders Association and regarded as a source of cultural pride. Female circumcision marks the transition from childhood to womanhood). See also Hassan, *supra* note 57 (explaining the areas where FGM is performed as a rite of passage include Northern Sudan, Somalia, Kenya and Mali). See also Bamanyaki, *supra* note 45.

65. Hassan, *supra* note 57 (however, the article asserts that the ceremonial aspects are disappearing due to eradication campaigns).

66. *Id.* See also Ntabazzi, *supra* note 42 (article describes the harassment women endure if they are not circumcised).

67. John Mwaura, *A Defiant Kenyan Girl Who Said No to Tradition*, PANAFRICAN NEWS AGENCY, Feb. 25, 1999, available in 1999 WL 12923300 (describing how she was assisted by a social welfare officer after a local NGO assisted her. Eventually, the Kenyan government intervened and sponsored her to go to school through its bursary fund).

68. See Ntabazzi, *supra* note 42.

69. *Id.*

70. *Id.*

who have been subjected to FGM strongly favor it for their daughters.<sup>71</sup>

### 3. Aesthetic and Hygienic Reasons

As with every culture, there are distinct physical qualities that FGM practicing societies consider attractive. FGM practicing societies believe that external female genitalia are dirty and unattractive.<sup>72</sup> The female body is viewed as more simple and beautiful without the genitalia, and some argue that circumcision makes the face more beautiful.<sup>73</sup> Therefore, members of society admire women who have their genitalia removed, while those who have their genitalia are scorned or even ostracized.

Hygienic reasons for FGM are based on the idea that the clitoris is dirty, and bad female odors can be eliminated by removing the clitoris and labia minora.<sup>74</sup> Some FGM supporters claim that the clitoris is a poisonous organ, and believe that contact with the clitoris can cause a great deal of harm to men and babies.<sup>75</sup> They further believe that men can become impotent by contacting a clitoris, and that a baby will be poisoned when its head contacts the clitoris during birth.<sup>76</sup>

### 4. Psychosexual Reasons

The psychosexual reasons asserted in support of FGM are connected to the way FGM practicing societies view women. These cultures believe that "women are fundamentally sexual creatures and naturally promiscuous; thus the purpose of FGM is to prevent women from succumbing to these impulses and to protect them from the aggression of others."<sup>77</sup> Some argue that older men may not be able to match their wives sex drive and may have to resort of illegal

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71. *FGM- The Facts!*, *supra* note 14 (research in Egypt reveals that 50 percent of the women surveyed reported that they had at least one daughter who had undergone the procedure, while 38 percent intended to in the future. Most of the women want their daughters to undergo the same type of procedure they had).

72. See *Female Genital Mutilation: In Africa, The Middle East & Far East*, Female Genital Mutilation Homepage (visited Feb. 15, 2000) <<http://www.fgm.org/>> [hereinafter FGM Homepage]. See also, *WHO Fact Sheet*, *supra* note 22.

73. See FGM Homepage, *supra* note 72.

74. *WHO Fact Sheet*, *supra* note 22.

75. *Id.* (asserting that a man could sicken or die if his penis contacts a woman's clitoris).

76. *Id.* See also Ntabazzi, *supra* note 42 (quoting a woman worried that the necessary cleansing ceremonies will not be done on babies who are born to uncircumcised women, and that the babies will die). See also Bamanyaki, *supra* note 45 (interview with Finda Mbriwa, an elder who defends the practice, where she states that if the baby's head touched the clitoris during child birth, it would die).

77. *WHO Fact Sheet*, *supra* note 22.

stimulating drugs.<sup>78</sup> Supporters of FGM believe that they can reduce sexual desire in females by eliminating the sensitive tissue of the outer genitalia, particularly the clitoris. By attenuating women's sexual desire, the women can maintain their chastity and virginity before marriage and fidelity during marriage. Teachers in Gambia blame a recent "baby-dumping" trend among young unmarried girls on their unchecked sexuality because they are uncircumcised.<sup>79</sup> They also believe that removal of female genitalia results in higher male sexual pleasure. As one male member of the Sabin culture explains:

[m]en used to hunt and whenever they left women behind, they were always uncertain of their faith towards going around with other men. To control this, they started circumcising their women. When that thing [the clitoris] is removed, there is a difference. If not removed, the woman will sleep with other men or not allow the husband to sleep. This can cause friction in the home because after a day's work, a man needs to have enough rest. So the woman must be circumcised to reduce her sexual urge.<sup>80</sup>

In summary, the practice of FGM is mired in tradition, culture, and religion. Thus, there exist numerous complexities. Religions may reinforce this practice, tacitly or explicitly. History and poor education about women's reproduction and sexuality combine to make FGM difficult to stop. Solutions are not easy and enforcement is even more difficult.

### III. ANALYSIS OF THE APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS TO FGM

Female Genital Mutilation is an international human rights violation addressed by numerous principles, treaties, and conventions of international law.<sup>81</sup> The most basic argument against FGM is that it is

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78. See *Jehovah*, *supra* note 52.

79. Joseph Kamah-Kanu, *Young Gambian Mothers Dump Their Babies*, PANAFRICAN NEWS AGENCY, July 1, 1999, available in 1999 WL 21216723.

80. *Id.*

81. See Universal Declaration, *supra* note 2, at pmbl, arts. 2, 7, 16, 25; Economic, Social and Cultural Rights, *supra* note 2, arts. 2, 3, 10, 12; Civil and Political Rights, *supra* note 2, arts. 2, 3, 14, 16, 18, 23, 24, 26; Convention on the Rights of the Child, Nov. 20, 1989, available in, 28 I.L.M. 1448, at pmbl, arts.1, 2, 24, 29; CEDAW, *supra* note 3; Declaration on the Elimination of Violence Against Women, Dec. 20, 1993, GAOR 48/104 [hereinafter DEVAW], African Charter on Rights and Welfare of the Child, OAU Doc. CAB/LEQ/24.9/49 (1990), World Conference on Human Rights, Vienna Declaration and Programme of Action, A/CONF.157/23 (1993); and U.N. High Commission on Refugees, Statement Against Gender-Based Violence (1996), available at <<http://www.path.org/html/fgm.html>>.

a clear violation of human rights as stated in the U.N. Charter.<sup>82</sup> Additionally, numerous U.N. conventions and declarations provide for the protection and health of women and girls.<sup>83</sup> In practice, international human rights law can only have effect if each nation makes these rules part of its own domestic legal system.<sup>84</sup> Most governments in FGM practicing countries have ratified these conventions,<sup>85</sup> passed laws of their own, or support the eradication of FGM.<sup>86</sup> However, the practice continues, despite States' acceptance of international human rights conventions, signaling a huge enforcement problem.

Several international organizations, nongovernmental organizations (NGOs) and other interested parties have been working toward the elimination of FGM.<sup>87</sup> The United States Congress passed legislation against FGM making it a crime to perform it on a person under the age of eighteen years old.<sup>88</sup> As a result, the Immigration and Naturalization Service (INS) must provide information on the harmful effects of FGM as well as on the legal consequences of FGM under criminal or child protection statutes to all aliens issued United States visas.<sup>89</sup>

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82. U.N. CHARTER art. 1, para. 3 (the United Nations shall promote "respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion . . .").

83. See *supra* notes 2-3 and accompanying text.

84. Bilder, *supra* note 2, at 9-10.

85. See *Chart of Ratifications of Four Human Rights Conventions*, in *The Human Rights of Women - A Reference Guide to Official U.N. Documents*, Mar. 1998 (visited Oct. 20, 1999) <<http://www.umn.edu/humanrts/instrree/women/engl-wmn.html>>.

86. Countries that support the eradication of FGM, or with laws or regulations against FGM include: Benin, Burkina Faso, Cameroon, Central African Republic, Cote d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Niger, Senegal, Sudan, Tanzania, Togo, and Uganda. *FGM- The Facts!*, *supra* note 14.

87. Organizations working toward the elimination of FGM include: UNICEF, the World Health Organization (WHO), United Nations Population Fund (UNFPA), U.S. Agency for International Development (USAID), the Inter-African Committee on Traditional Practices, The comite National de Lutte contre la Pratique de l'Excision in Burkina Faso, the National Association of Nigerian Midwives, the Maendeleo Ya Wanawake Organization in Kenya, the National Research Network in senegal, the National Union of Eritrean Youth, the Seventh Day Adventist Church in Kenya, Program for Appropriate Technology in Health (PATH), Research, Action and Information Network for the Bodily Integrity of Women (RAINBO), Equality Now, the Centre for Development and Population Activities (CEDPA), Population Council, Wallace Global Funds, and the Women's International Network. *Id.*

88. H.R. 11829, 104<sup>th</sup> Cong. § 645 (1996).

89. See Center for Reproductive Law and Policy, *Legislation on Female Genital Mutilation in the United States* (visited May 22, 2000) <<http://www.crlp.org/0717/legonfgm.html>>.



### 1. U.N. Charter<sup>90</sup>

According to the introduction of the U.N. Charter, one of the primary purposes for the formation of the United Nations is to reaffirm faith in fundamental human rights and in the equal rights of men and women.<sup>91</sup> Additionally, Article 55 of the U.N. Charter states that Member States shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>92</sup> Thus, the foundation of all international legal discussions is the assertion that States shall respect and promote the rights and dignity of all humans. However, FGM practicing societies do not protect a woman’s right to choose whether she wants her genitals mutilated. Although women support the practice, women do not have the freedom to decline the procedure without repercussions, such as being ostracized, cast out from their home, or discriminated against. Some States are beginning to implement programs to support women who do not wish to undergo FGM,<sup>93</sup> however, the majority of States are violating the fundamental principle of equal protection for both sexes in allowing the continued practice of FGM.

Supporters of FGM use Article 2(1) of the UN Charter to argue that each State is sovereign and has a right to its culture, religion, customs and traditions without interference from other States.<sup>94</sup> However, Article 2 must be read in its entirety. The second part of Article 2, Article 2(2), requires that “[a]ll members . . . shall fulfill in good faith the obligations assumed by them in accordance with the present charter,” thereby clarifying that each State has a right to sovereignty unless it violates international law.<sup>95</sup> A basic principle essential to the effective operation of international law is that international law, which includes a myriad of relations and voluntary consensus,<sup>96</sup> overrules

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90. See generally U.N. CHARTER.

91. U.N. CHARTER introduction. (asserting “the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .”).

92. *Id.* art. 55.

93. See Mwaura, *supra* note 67.

94. U.N. CHARTER art. 2, para. 1 (stating “[t]he Organization is based on the principle of the sovereign equality of all its Members.”).

95. *Id.* art. 2, para 2.

96. HENKIN, *supra* note 11, at 14-15 (defining international law as more than a few prohibitory rules; law includes the structure of that society, its institutions, forms and procedures for daily activity, the assumptions on which the society is founded and the concepts which permeate it, the status, rights, responsibilities, obligations of the nations which comprise that society, the various relations between them, and the effects of those relations).

States' right to sovereignty. Without this principle, international law would be meaningless. A State could pick and choose when to adhere to the law and when to violate it in the name of sovereignty.

## 2. The Universal Declaration of Human Rights<sup>97</sup>

The Universal Declaration of Human Rights specifies that, "all are equal before the law and are entitled without any discrimination to equal protection of the law."<sup>98</sup> As argued above, women in FGM practicing societies do not have equal protection under the law. Article 25 of the Universal Declaration of Human Rights states that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself" and that "[m]otherhood and childhood are entitled to special care and assistance."<sup>99</sup>

Women who undergo FGM receive no care or assistance that is beneficial. In fact, persons perform FGM with no medical or surgical training, or medications to treat infections. Mortality rates are high for women after the procedure, especially during childbirth. In fact, FGM practicing societies use this fact to scare women so they will not risk extra-marital pregnancy.<sup>100</sup> Women and girls in FGM practicing societies suffer terrible health problems that men and boys do not have to endure as a result of FGM. Male circumcision is a mere removal of the foreskin of the penis. To compare this to the mutilation and removal of the entire outer genitalia with broken glass or razor, and then stitched shut, is ludicrous. According to Dr. Trudy Smith of South Africa, male circumcision makes physiological sense, but FGM makes no sense whatsoever.<sup>101</sup>

Societies practicing FGM violate many norms of international law. These States refuse to: treat genders equally; provide women equal opportunities to work, in marriage, or in regard to their own body; or to provide equal rights to adequate health and well-being as required by the Universal Declaration of Human Rights. These societies especially do not afford motherhood and childhood special care and assistance, as required by the Declaration. Instead, FGM makes motherhood and childhood extremely difficult, painful, and deadly. FGM practicing societies are guilty of violating the Universal Declaration of Human Rights by failing to provide women and children with 'special care' as

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97. See generally Universal Declaration, *supra* note 2.

98. *Id.* art. 7.

99. *Id.* art. 25.

100. *The Scars of a Crude Custom*, INDEPENDENT, Apr. 6, 1999, available in 1999 WL 14355674 (article tells of a fifteen year old girl who lived with years of psychological torment fearing the inevitable procedure).

101. Magardie, *supra* note 23.

stipulated in the Declaration. These violations constitute a breach of international law.

### 3. International Covenant on Economic, Social and Cultural Rights<sup>102</sup>

The International Covenant on Economic, Social and Cultural Rights stipulates that the rights enunciated will be “exercised without discrimination of any kind as to race, colour, sex, language, religion . . . or other status.”<sup>103</sup> Article 3 provides for men and women to have equal right “to the enjoyment of all economic, social and cultural rights.”<sup>104</sup> Both sides, both for and against FGM, argue this article in support of their position. Supporters of FGM argue that the practice of FGM is a cultural and social right that they choose to practice. Since many supporters of FGM are women, this argument seems convincing. Under the International Covenant on Economic, Social and Cultural Rights, they have a right to enjoy their cultural rights, including FGM.

However, opponents of FGM argue that every woman has the right to equal economic, social, and cultural opportunities, and FGM is admittedly performed to take away women’s equal status in society.<sup>105</sup> Supporters argue that FGM is necessary to ensure women remain subservient to men. Article 12(1) states that parties to the Covenant recognize the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and that the “steps to be taken . . . to achieve the full realization of this right shall include those necessary for . . . the reduction of the stillbirth-rate and of infant mortality.”<sup>106</sup> Women do not have the same rights as men regarding circumcision, for they cannot choose to have a safer, less damaging procedure, or forgo the procedure altogether. The fatal consequences of FGM described above clearly violate this Convention and international law.

As a result of economic dependence, women have no free choices regarding FGM. Women’s choices are not truly meaningful, but rather are shaped by a male dominated culture over thousands of years. FGM robs women of equal enjoyment of their economic, social, and cultural rights, and this is a clear violation of the International Covenant.

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102. See generally Economic, Social and Cultural Rights, *supra* note 2.

103. *Id.* art. 2.

104. *Id.* art. 3.

105. See notes 77-80 and accompanying text.

106. *Id.* art. 12.

#### 4. International Covenant on Civil and Political Rights<sup>107</sup>

In addition to the right of freedom from discrimination, the International Covenant on Civil and Political Rights states that everyone has the right to freedom of thought, conscience and religion.<sup>108</sup> Article 18(4) further provides that parties must respect the liberty of parents to practice their religious beliefs and enforce them on their children.<sup>109</sup> Supporters of FGM use this argument to defend their right to practice what they consider a religious custom. However, as previously noted, many of these supporters are mistaken in their belief that the Koran requires FGM.<sup>110</sup> Rather, FGM is a custom that has developed in male dominated societies without any input from women and girls. The International Covenant on Civil and Political Rights asserts that everyone has a right to their thoughts, conscience, and religion.<sup>111</sup> Women in these societies were not free to form the belief that FGM is a religious dictate or understand that FGM was instituted to curb their own sexuality. In fact, women are restricted from refusing to succumb to this practice, and if they do, they may be beaten, raped, shunned, or ostracized.<sup>112</sup>

The International Covenant on Civil and Political Rights also asserts equality of rights and responsibilities of spouses regarding marriage,<sup>113</sup> and to children for protection on the part of her family, society and the State.<sup>114</sup> FGM is part of a system that operates to keep women subservient to the men in society. First, women are subservient to their father, and then they are subservient to their husband. A woman who has not undergone FGM may never be able to marry and may have to fend for herself.<sup>115</sup> Additionally, there is no equality of rights for children who must undergo FGM. No one is protecting the child from this painful procedure. By allowing the practice of FGM on young girls, the State violates its obligation to protect women and children under this Covenant.

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107. See generally Civil and Political Rights, *supra* note 2.

108. *Id.* art. 2.

109. *Id.* art. 18, para. 4 ("The State parties to the present Covenant undertake to have respect for the liberty of parents, and when applicable, legal guardians to ensure the religious and moral education of their children in conformity of their convictions").

110. See *supra* notes 52-63 and accompanying text.

111. Civil and Political Rights, *supra* note 2, art. 18.

112. See Mwaura, *supra* note 67.

113. Civil and Political Rights, *supra* note 2, art. 23.

114. *Id.* art. 24.

115. See Hassan, *supra* note 57; Ntabazzi, *supra* note 42.

### 5. Convention on the Rights of the Child<sup>116</sup>

As with the other conventions, the rights stipulated here include the right to freedom from discrimination based on sex.<sup>117</sup> Article 24 of the Convention on the Rights of the Child recognizes the right of the child to the enjoyment of the highest attainable standard of health, and to facilities for the treatment of illnesses and rehabilitation of health.<sup>118</sup> The Convention further requires that States take measures to diminish infant and child mortality<sup>119</sup> and to ensure appropriate pre-natal and post-natal health care for mothers.<sup>120</sup>

As described above, FGM greatly threatens the health of mothers and daughters.<sup>121</sup> This threat is illustrated in almost every woman's experience with FGM. The story of Waris Dirie, a Somalian woman modeling in the United States, is typical.<sup>122</sup> Dirie was infibulated at the age of five, and survived, but her younger sister did not. Two of her cousins also died of complications from FGM. Dirie says that their deaths were not unusual.<sup>123</sup> Dirie's story reveals the threat to women and children's lives from FGM, and therefore, a clear violation of the Convention on the Rights of the Child's protections against discrimination based on sex.

The Convention on the Rights of the Child further lays out the guidelines for educating children. Education should be in the spirit of understanding, peace, tolerance, and equality of the sexes. This spirit is void in societies that subject girls to FGM without a choice, and is a clear violation of international law.

### 6. Convention on the Elimination of All Forms of Discrimination Against Women<sup>124</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women notes that the U.N. Charter reaffirms faith in fundamental human rights, the dignity and worth of the human person, and the equal rights of women.<sup>125</sup> The Convention further defines the term 'discrimination against women' to mean:

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116. *See generally* Convention on the Rights of the Child, *supra* note 81.

117. *Id.* at pmb1.

118. *Id.* art. 24.

119. *Id.* art. 24, para. 2(a).

120. *Id.* art. 24, para. 2(d).

121. *See supra* notes 34-51 and accompanying text.

122. *See* Maher, *supra* note 38, at 14.

123. *Id.*

124. *See generally* CEDAW, *supra* note 3.

125. *Id.* at introduction.

[a]ny 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 or other field.<sup>126</sup>

FGM practicing societies single out women based on their sex to suffer tremendous physical pain and psychological consequences. FGM practicing societies do not believe that men's sexuality must be 'kept under control' by circumcision or mutilation. Women are excluded from enjoying a full, pleasurable, and natural sex life.<sup>127</sup> Women have the fundamental right to enjoyment of their sexuality as a human being, the same as men. FGM supporters justify the difference in treatment by asserting that women are more promiscuous than men are, therefore, their enjoyment of sex must be diminished.<sup>128</sup> One could argue that such an irrational argument is based on fear and ignorance, and violates the Convention on the Elimination of All Forms of Discrimination Against Women.

There are numerous statements in the CEDAW requiring States to take action to protect equal rights of men and women.<sup>129</sup> Article Five directly addresses the issue of social and cultural patterns.<sup>130</sup> Specifically, Article Five states that parties to the Convention shall take appropriate measures:

[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority of either of the sexes or on stereotyped roles for men and women.<sup>131</sup>

The reasons described above in support of FGM reveal mythical stereotypes and extreme prejudicial treatment of women in obvious violation of the Convention.<sup>132</sup> Therefore, this Convention provides a strong legal argument justifying the modification of injurious, discriminatory, and ancient prejudicial practices such as FGM:

The Convention also addresses a woman's right to participate in the formulation of government policy and implementation.<sup>133</sup> If women

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126. *Id.*

127. See *WHO Fact Sheet*, *supra* note 22.

128. See *id.*

129. CEDAW, *supra* note 3, arts. 2-16.

130. *Id.* art. 5.

131. *Id.*

132. See *supra* notes 52-80 and accompanying text

133. CEDAW, *supra* note 3, art. 7.

in FGM practicing societies had more opportunity to voice their opinions, government policy would reflect their voices and lead to improvements. Even if these women decide to continue the practice, the practice would likely be performed in a safer and more sanitary manner.

#### 7. Declaration on the Elimination of Violence Against Women<sup>134</sup>

The Declaration on the Elimination of Violence Against Women (DEVAW) is the most direct and comprehensive statement of the “rights to be applied to ensure the elimination of violence against women in all its forms.”<sup>135</sup> The DEVAW is important because it acknowledges on a universal scale that violence against women is an “obstacle to the achievement of equality, development and peace.”<sup>136</sup> Additionally, the DEVAW defines for the international community what the term ‘violence against women’ encompasses. Article 1 defines ‘violence against women’ as “[a]ny act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”<sup>137</sup>

This definition of violence against women addresses the harms that can result from FGM, including sexual and psychological harm, and codifies them. Therefore, FGM practicing societies cannot assert that FGM does not harm women if she has no physical complications. Additionally, Article 2 specifies that violence against women *includes female genital mutilation and other traditional practices harmful to women*.<sup>138</sup> Thus, the DEVAW expressly ensures that FGM practicing societies cannot argue that FGM is not an act of violence against women.

The DEVAW goes farther than just defining violence against women; it also codifies actions that should be taken to eliminate it. Article 4 requires that States condemn violence and “should not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination.”<sup>139</sup> Thus, the DEVAW rejects the religious and cultural justifications for FGM. Article 4 also outlines the appropriate actions that States should take to eliminate violence against women, including FGM.<sup>140</sup> Additionally, the DEVAW specifies

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134. See generally DEVAW, *supra* note 81.

135. *Id.* at pmb1.

136. *Id.*

137. *Id.* art. 1.

138. *Id.* art. 2 (defines violence against women as encompassing physical, sexual and psychological violence occurring in the family, including female genital mutilation).

139. *Id.* art. 4.

140. *Id.* (the appropriate actions are: ratify or accede to the Convention, punish acts of

the actions that the organs and specialized agencies of the United Nations system should take to contribute to the recognition and realization of the rights and the principles set forth in the Declaration.<sup>141</sup> The DEVAW makes it clear that FGM is an act of 'violence against women' that States have an obligation to eliminate. Article 6 further declares that the DEVAW contains the minimum level of protection for women, and "any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a state" shall apply.<sup>142</sup>

#### 8. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment<sup>143</sup>

Article 1 defines "torture" as:

[a]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>144</sup>

Although FGM is not practiced for the purpose of obtaining a confession or punishment, it can be argued that it is practiced to

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violence against women, develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress wrongs caused to women who are subjected to violence, develop national plans for action to protect women against any form of violence, make sure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate, and punish violence against women receive training to sensitize them to the needs of women and children, adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns or conduct of men and women to eliminate prejudices, customary practices and all other practices based on the idea of superiority or inferiority of either of the sexes and on stereotyped roles for men and women, encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration, recognize the important role of the women's movement and non-governmental organizations and cooperate with them at local, national, and regional levels, and encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programs, as appropriate).

141. *Id.* art. 5.

142. *Id.* art. 6.

143. See generally Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, June 26, 1987, 23 I.L.M. 1027 [hereinafter Convention Against Torture]. Ratified by the United States in 1994.

144. *Id.* art. 1.



intimidate a person based on one's sex by controlling women's sexuality by limiting their enjoyment of sex.<sup>145</sup> The brutal practice of cutting away the labia minora with a razor or broken glass is clearly cruel, inhuman, and degrading, despite the fact that women support the practice.<sup>146</sup> Recently, more women have been using Article 3 of this Convention to seek asylum in other countries relying on Article 3, which states:

[n]o party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. For the purposes of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>147</sup>

There have not been many awards of asylum based on this Convention in the United States because the Immigration and Naturalization Service (INS) is afraid that it will open the floodgates to all kinds of new categories of people seeking protection.<sup>148</sup> One of the first cases brought under the Convention involves a woman, Virginia Anikwata, from Nigeria.<sup>149</sup> Anikwata came to the U.S. on her now deceased husband's student visa, and sought asylum under this Convention because she never sought asylum under one of the five established groups as a refugee.<sup>150</sup> Anikwata asserted that her daughter would be subjected to FGM, and her deceased husband's relatives would rape her, if she was sent back to Nigeria.<sup>151</sup> Anikwata chose to fight under the convention because it forbids deportation when there are substantial grounds for believing a person would be in danger of torture in their home country. Although the Convention does not grant formal refugee status, it enabled Anikwata to stay for the time being.<sup>152</sup>

In 1996, the INS issued a decision stating "under certain circumstances, [FGM] . . . may form the basis for asylum."<sup>153</sup> The case

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145. See *WHO Fact Sheet*, *supra* note 22.

146. See *FGM- The Facts!*, *supra* note 14.

147. Convention Against Torture, *supra* note 143, art. 3.

148. Jenna Greene, *Making a New Case for Asylum*, *LEGAL TIMES*, Jan. 11, 1999 (visited Jan. 5, 2000) <<http://www.lawnewsnetwork.com/stories/jan/e011199.html>>.

149. *Id.* at 2.

150. The five grounds for refugee status include: persecution based on race, religion, national origin, political opinion, or membership in a particular social group. Telephone Interview with Marilyn Aiten, Colorado Refugee Services, Denver, CO. (Jan. 5, 2000).

151. Greene, *supra* note 148.

152. *Id.*

153. Maher, *supra* note 38, at 13.

involved Fauziya Kasinga from Togo.<sup>154</sup> Ms. Kasinga was seventeen when she was forced into a polygamous marriage with an older man in Togo.<sup>155</sup> Ms. Kasinga was not circumcised because her father had protected her from the practice.<sup>156</sup> However, after his death, and her forced marriage, she was confined to a storage room to wait for a circumciser to arrive.<sup>157</sup> She managed to escape and fled to the United States to seek political asylum.<sup>158</sup> When she arrived in 1994, she was promptly incarcerated by the Immigration and Naturalization Service (INS) to wait extradition.<sup>159</sup> Ms. Kasinga remained there for 16 months, where she endured repeated strip searches and a tear gassing during a riot over living conditions at the facility.<sup>160</sup> Ms. Kasinga's first claim as a refugee was denied.<sup>161</sup> However, her case drew the attention of Rep. Pat Schroeder, and women's rights groups like Equality Now, who arranged for new legal representation.<sup>162</sup> The publicity caused international outrage that forced the INS to release her while her appeal before the Board of Immigration of Appeal (BIA) was pending.

Ms. Kasinga won asylum because the court found she met her burden of proof through submission of credible testimony and supporting documentary evidence, which included letters from her family concerning her flight from FGM and the law.<sup>163</sup> Ms. Kasinga also submitted into evidence two extensive reports on female genital mutilation, which confirmed that it was practiced in Togo and that there were no laws in Togo to protect women from the deadly practice.<sup>164</sup> In an extraordinary decision, the BIA recognized women as a social group. The BIA held that a reasonable person in Kasinga's circumstances would fear persecution in Togo because of her membership in a recognized social group.<sup>165</sup> Ms. Kasinga had established a well-founded fear of persecution.<sup>166</sup> Additionally, the court noted that, "most African women can expect little government protection from FGM."<sup>167</sup> Despite this victory, however, the preferable way to gain asylum is still by claiming refugee status because it is difficult to prove torture under the Convention and the asylum granted

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154. In re Fauziya Kasinga, *supra* note 25.

155. *Id.*

156. *Id.*

157. Maher, *supra* note 38, at 12.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 12-13.

163. In re Fauziya Kasinga, *supra* note 25.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

is usually only temporary.<sup>168</sup>

#### IV. ANALYSIS OF FGM CONSIDERING CULTURAL SOVEREIGNTY, INTERNATIONAL LAW, AND FEMINIST THEORY.

Where is the line between a State's right to sovereignty and humanitarian intervention for violations of international human rights? The practice of FGM is deeply rooted in the culture of the societies practicing it, making prevention and enforcement extremely difficult. In fact, it is a widely accepted cultural practice, and many FGM practicing societies do not want to change, nor do their women. This leads one to question how a State can enforce international human rights law on another State and force it to change its entire way of thinking and its societal structure.

##### 1. Universal and Fundamental Human Rights

When considering whether a State has committed a human rights violation, one must consider whether the act in question violates a human being's fundamental right to liberty, dignity, and the security of the person.<sup>169</sup> However, not all cultures have the same understanding of each person's right to liberty.<sup>170</sup> In fact, the substantive rights protected in Islam are different from the West.<sup>171</sup> Although Islam recognizes a right to individual freedom, it does not mean the same as it does in the West because Islam does not promote the concept of free will.<sup>172</sup> Therefore, according to Islam, liberty has limits. Rather than individual rights, Islam focuses on group identity as a fundamental right. Islamic law is divided into two categories: duties to God and duties to others.<sup>173</sup> Therefore, those who justify FGM on religious grounds believe they are asserting their fundamental rights according to their duty to God and society.

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168. Greene, *supra* note 148 (article about a woman claiming asylum to protect her daughter from undergoing FGM).

169. See Universal Declaration, *supra* note 2, art. 3 (asserting that everyone has the right to life, liberty and security of person). See also *What's Culture*, *supra* note 6, at 1960-61 (asserting that, although human nature is necessarily defined by cultural contexts, the decisions regarding which customs will be preserved in the name of culture or tradition must be oriented toward promotion and protection of universal human rights in order to have legitimacy in contemporary society).

170. See Younce Schooly, *supra* note 5, at 666 (explaining that the term "rights" has a completely different meaning in Islamic countries than in Western societies).

171. *Id.* (the rights in Islam include: 1) dignity and brotherhood, 2) equality among members of the community, without distinction of race, color, or class, 3) respect for the honor, reputation, and family of each individual, 4) the right of each individual to be presumed innocent until proven guilty; and 5) individual freedom).

172. *Id.*

173. *Id.* at 667.

## 2. Cultural Sovereignty and the Meaning of Culture

In addition to considering differing definitions of human rights, it is also necessary to consider the definition of "culture." African culture is a *mélange* of "pre-colonial, colonial, and contemporary, as well as things social, economic, and political, and things both individual and collective."<sup>174</sup> Supporters of FGM argue that culture is history and tradition.<sup>175</sup> However, present actions and lifestyles also affect culture by either reinforcing history and tradition or changing them. For a culture to survive, it necessarily must be responsive to change, or risk extinction.<sup>176</sup> Customs with contemporary legitimacy survive because of practical utility that reinforce shared values of modern society without being physically or mentally injurious.<sup>177</sup> Practices, beliefs, and lifestyles that are not supported by contemporary values or factual legitimacy, but inflict harm on adherents must be abandoned.

## 3. FGM and Feminist Theory

According to the leading feminist dominance theorist, Catherine MacKinnon, sexuality is the sphere by which men exert control over women, and FGM is a prime example.<sup>178</sup> Catherine MacKinnon views equality as a question of the distribution of power and centers her theory on the domination of women in the sexual sphere — emphasizing male dominance is sexual and sexuality is a social construct of male power. She asserts that sexuality is defined by men, forced on women, and constitutes the meaning of gender.<sup>179</sup> Therefore, "the gender issue . . . becomes the issue of what is taken to be "sexuality"; what sex means and what is meant by sex, when, how, with whom, and with what consequences to whom."<sup>180</sup> Gender would not mean difference if it did not have social consequences of power and reflect the social hierarchy of men over women. The definitions of male and female are created through the erotization of dominance and submission, and these differences define each other.<sup>181</sup>

All women are sexually objectified and choose to be; they have no

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174. *What's Culture*, *supra* note 6, at 1959.

175. *See supra* notes 52-80 and accompanying text.

176. *See What's Culture*, *supra* note 6, at 1960 (asserting that practices, beliefs, and lifestyles passed down through several generations of an ethnic group need to be re-examined periodically in light of contemporary values and knowledge, in order to ascertain whether the customs deserve to be perpetuated).

177. *Id.*

178. *See* CATHERINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 113 (1989).

179. *Id.* at 128.

180. *Id.*

181. *Id.* at 113.

alternative. Catherine MacKinnon asserts that women have been deprived of their own terms to define their experiences, including their own sexual reality.<sup>182</sup> An analysis of the “sexual objectification of women—first in the world, then in the head, first in visual appropriation, then in forced sex, finally in sexual murder”<sup>183</sup> will provide insight to how gender is socially created. She defines sexual objectification as “having a social meaning imposed on your being that defines you as to be sexually used, according to your desired uses, and then using you that way.”<sup>184</sup>

In the case of FGM, a woman, especially a child, does not have a meaningful right to choose whether to undergo this painful and harmful practice. She has two choices, succumb to the mutilation, or refuse and suffer banishment from her family and from society, with a great chance that she will die. This is not a real choice, rather a decision which evil to suffer. A vital element of liberty is that men and women have ‘meaningful choices’ in their lives, not that they be forced to make a decision between two horrible consequences.

It is true that every culture creates its own unique idea of beauty. In the United States thousands of women willingly suffer terrible pain from cosmetic surgery to live up to what they believe is society’s standard of beauty. No matter how warped that may be, they are not forced to make a decision whether to undergo cosmetic surgery or be cast out of society. Women in the United States are free to choose, in the physical sense, whether or not to undergo excruciating pain for a perceived benefit.

The practice of FGM is a custom developed over thousands of years in societies where women’s voices were not heard. Women did not participate in any decisions, especially decisions regarding their own bodies. Even today, African women’s voices are rarely heard.<sup>185</sup> Therefore, in order to have liberty for all members of society as required by the U.N. Charter and the other human rights instruments, each citizen must first have a voice in the formation of society’s customs, traditions, and beliefs — otherwise there is no liberty. The women in FGM practicing societies do not have a meaningful choice whether to subject themselves to the potentially fatal practice, and never have. If they at least had an opportunity to question the practice and refuse it, then the cultural relativist argument of the right to practice whatever

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182. *Id.* at 129.

183. Catherine MacKinnon, *Sexuality*, in *THE SECOND WAVE, A READER IN FEMINIST THEORY* 158 (Linda Nicholson ed., 1997).

184. *Id.* at 168.

185. Molaria Ogundipe-Leslie, *Invite Tyrants to Commit Suicide: Gender Violence, Human Rights, and African Women in Contemporary African Nation States*, in *GENDER VIOLENCE AND WOMEN’S HUMAN RIGHTS IN AFRICA* 1 (1994).

customs a person chooses would have some merit. However, as it stands, the women and children in FGM practicing societies do not have a meaningful choice, therefore FGM is a clear violation of these women and children's fundamental right to dignity, liberty, and security of their person.

## V. ENFORCEMENT OF INTERNATIONAL LAW CONCERNING FGM

Enforcement is the next big obstacle. How does one change the thinking of an entire society to allow its members to question itself and change? The issue is no longer one of passing judgment on another's traditions, rather enabling it to raise its own awareness, reconsider its values, practices, and traditions, and then alter them if it so decides.

### 1. Humanitarian Intervention

The principle of humanitarian intervention is to intervene to save lives in response to egregious violations of human rights, often using force.<sup>186</sup> Criteria suggested to evaluate whether humanitarian intervention is required include the severity and necessity of the act, the nature of the act, the purpose of intervention, whether the intervention be collective or unilateral, and balancing the factors considering the outcome.<sup>187</sup>

The principles of customary international law recognize nonintervention, founded on respect for sovereignty, and allow intervention only when utilized as self-defense.<sup>188</sup> It is difficult to use force to change a society's way of thinking, so many NGOs and international organizations have taken the lead in fighting FGM through advocacy and education. International organizations, NGOs, and other interested partners have been working toward the elimination of FGM. The heads of three UN agencies, the World Health Organization (WHO), the United Nations Population Fund (UNFPA), and the United Nations Children's Fund (UNICEF) have developed a well-designed and well-coordinated campaign against the practice.<sup>189</sup> These organizations emphasized a multi-disciplinary approach both within the States where FGM is practiced, as well as at the regional and global levels. This approach brought together governments,

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186. See generally Ved Nanda, *The Validity of United States Intervention in Panama Under International Law*, 84 AM. J. INT'L L. 494 (1990).

187. *Id.* at 495-96.

188. See, e.g., *Corfu Channel (UK v. Alb.)*, 1949 I.C.J. 4, at 34 (Apr. 9); U.N. CHARTER art. 51 (Customary rules of international law are well-established state practices to which a sense of obligation is attached).

189. *Agencies Call For an End to Female Genital Mutilation*, UNICEF press release, Apr. 9, 1997 (visited Oct. 3, 1999) <<http://www.unicef.com>>.

political and religious institutions, international organizations, NGOs and funding agencies in their efforts to eliminate FGM.<sup>190</sup>

The UN interagency approach is to educate the public and law-makers on the need to eliminate FGM; to attack FGM as a violation of human rights as well as a danger to women's health; and to work with the entire United Nations system to encourage every State where FGM is practiced, to develop a national, culturally-specific plan to eradicate FGM.<sup>191</sup> The interagency teams' efforts are directed at changing public opinion in the States still practicing FGM. They educate and raise awareness about the harmful physical and psychological effects of FGM. The teams target all levels of society including the general public, medical professionals, decision-makers, governments, political, religious and village leaders, and traditional healers.<sup>192</sup>

This approach has found success within the international community. Many countries, including Cameroon, Egypt, Kenya, Sudan, Burkina Faso, and Ivory Coast have passed legislation to stop the practice.<sup>193</sup> However, enforcement of this legislation poses a problem because many of these countries simply passed the legislation only to "please American sensitivities" and never intended to enforce it.<sup>194</sup> In fact, some say that by criminalizing the practice, the government is in effect undermining the local efforts.<sup>195</sup> Criminal law works only when the criminals are the minority. When the entire society participates in the criminal activity, it is impossible to enforce the law without mass terror.<sup>196</sup>

The most effective measures are those at the grass-roots level working with the African women themselves to raise their awareness of the harmful effects of FGM.<sup>197</sup> Because there are various reasons for supporting FGM, the multi-disciplinary approach succeeds in addressing them equally. However, political actions at higher levels send a message to society that FGM is harmful, and that it should be reconsidered and stopped.

## VI. CONCLUSION

FGM cannot be truly eliminated without changing the societies

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190. *Id.*

191. *UNICEF joins in plan against FGM*, UNICEF press release, Mar. 20, 1997 (visited Oct. 3, 1999) <<http://www.rainbow.org>>.

192. *Id.*

193. See *FGM Research Homepage*, *supra* note 24.

194. *Female Genital Mutilation. Is it Crime or Culture?* *ECONOMIST*, Feb. 13, 1999.

195. *Id.*

196. *Id.* (quoting Gerry Mackie, a political scientist from Oxford University).

197. *WHO Fact Sheet*, *supra* note 22.

that practice it — but what right do other States have to do this? The right lies in international law, which continues to gain more credence as the consciousness of the world is raised and the mechanisms are put in place. Increasingly, the argument that there is no such thing as universal human rights weakens in comparison to the growing recognition of fundamental human rights.<sup>198</sup> The U.N. Charter declares that the purpose of its formation is to reaffirm the international community's faith in fundamental human rights.<sup>199</sup> The Universal Declaration of Human rights specifies that all persons are equal before the law and entitled to equal protection.<sup>200</sup> In the DEVAW, the UN General Assembly recognizes the urgent need for the universal application to women of rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.<sup>201</sup> Considering the bounty of international human rights agreements and, there can be no doubt as to the legitimacy and universality of international human rights.

Unfortunately, resistance to change is strong because it is rooted in fear — fear of change and its consequences. Societies wonder what will happen to their power structure, and the possible ramifications in daily life. The same could be said of all human rights violations because they are all rooted in cultural, religious, or societal customs and traditions. However, this does not mean that change should not occur. It does indicate that change must begin at the heart of society's structure. Societies must continuously change to evolve or risk extinction. In fact, the customs they cling to are the result of changes made in the past, instead of absolute truths.

Therefore, FGM is a symptom of a bigger problem, an oppressive mentality that must be changed in order to eliminate it. However, care must be taken not to dictate change from outside because such forced alteration of a society will not last. Change must come from within, considering the particular context of the unique culture and values of the society. Otherwise, there will be an upheaval in society and chaos will result. Therefore, it is necessary to use an educative and politically inclusive approach so change does not appear to be a mandate from outside. Women need to be supported, educated and involved in the political structure in order to stop FGM. There must be an inherent

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198. See CEDAW, *supra* note 3 (as of Jan. 19, 1998, 161 States were parties to the convention). See also Economic, Social and Cultural Rights, *supra* note 2 (as of Jan. 19, 1998, 137 States were parties to the Covenant), and Convention on the Rights of the Child, *supra* note 80 (as of Jan. 19, 1998, 191 States were parties to the Convention); and Civil and Political Rights, *supra* note 3 (as of Jan. 19, 1998, 140 States were parties to the Covenant).

199. U.N. CHARTER introduction.

200. Universal Declaration, *supra* note 2, art. 7.

201. DEVAW, *supra* note 81.



change in the social position of women. As opportunities become available outside of marriage, FGM will lose much of its importance to these women.

However, the structure, as it exists, will not change without pressure from outside. This is the role of international conventions and organizations. If there is to be any change in the practice of FGM, it must come internally with external pressure for political change. International Organizations, NGOs, and States operate to raise awareness and consciousness of violations to influence the power structures of those countries and to generate change from within at the grassroots level. Most importantly, women must be educated and allowed to participate in politics to be able to represent the voices of women. The structure now does not provide for this opportunity, so International Organizations assume that role with the hope that someday they will no longer be needed.

