

COMMENTS

JOHN TOCHUKWU OKWUBANEGO*

Female Circumcision and the Girl Child in Africa and the Middle East: The Eyes of the World Are Blind to the Conquered

I. Introduction

Recent statistics indicate that an estimated 110 million women and girls have been sexually circumcised¹ in East, West, and Central Africa alone.² The figures

*John Tochukwu Okwubanego received an LL.B. (Hons.) from the University of Nigeria in 1988, a B.L. (Hons.) from the Nigerian Law School, Victoria Island, Lagos in 1989, an M.A. (International Relations) from The Fletcher School of Law and Diplomacy, Tufts University, Medford, Massachusetts in 1993, and a J.D. from the SMU School of Law, Dallas, Texas in 1998. The writer's account of this custom is mostly informed by experience and personal knowledge.

1. This comment employs the phrase "female circumcision," but some writers would prefer more graphic terms. See, e.g., Karen Hughes, Note, *The Criminalization of Female Genital Mutilation in the United States*, 4 J.L. & POL'Y 321 n.1 (1995) (arguing that "female circumcision" is a misnomer because it equates the procedure to male circumcision, a comparatively mild procedure, citing Eugene Ann Gifford, "The Courage to Blaspheme": *Confronting Barriers to Resisting Female Genital Mutilation*, 4 UCLA WOMEN'S L.J. 329, 332 (1994)); FRAN P. HOSKEN, *THE HOSKEN REPORT: GENITAL AND SEXUAL MUTILATION OF FEMALES* 24 (4th ed. 1994) ("female circumcision" is "medically incorrect" and should not be used because a 1990 delegate conference on women's and children's health had unanimously voted to use "genital mutilation" instead. *Id.* at 32.); Harriet A. Washington, *The Rite of Female Circumcision*, EMERGE, Sept. 30, 1996, at 30, available in 1996 WL 15657709 ("female genital mutilation" is in fact a judgmental term). Although "female circumcision" may sound less offensive, it is nevertheless the appropriate term by which this practice is known, at least in southern Nigeria. References to "excision," "mutilation," "castration," and "infibulation" in the text bear the same meaning as "female circumcision" and are used interchangeably.

2. HOSKEN, *supra* note 1.

in the Arabian Peninsula, including Egypt, are equally alarming.³ The World Health Organization's (WHO) estimate is much more conservative.⁴ In Egypt alone, seven out of ten girls are still circumcised,⁵ and as many as 4,000 girls are circumcised daily.⁶ In countries that practice female circumcision,⁷ there is widespread variation in the age at which women and girl children are forced by tradition to undergo this ritual.⁸ For example, in Ethiopia, and among the Yorubas of Nigeria, a girl could be circumcised at any time from birth to puberty.⁹ On the other hand, the Masai of Kenya prefer to circumcise their women on their wedding night.¹⁰

Despite international outcry against this tradition that condemns innocent girl children and women to castration and a lifetime of trauma and psychological pain, female circumcision continues to thrive in some parts of Africa and the Middle East.¹¹ One reason advanced for the continuation of the practice is economic insecurity on the part of women in a male-dominated society.¹² Because the male is the head of the family in a traditional African setting, he is responsible for providing all the female's economic and social needs.¹³ The female is almost entirely dependent on the male, and must endure circumcision to please the male sexually, or risk divorce and ostracization.¹⁴ In communities that practice female circumcision, a girl must be circumcised before she is socially accepted as a

3. An Egyptian government report estimates that ninety-seven percent of Egyptian women are circumcised. *Egyptian Health Minister Vows to Retain Ban on Female Circumcision*, DEUTSCHE PRESSE-AGENTUR, July 11, 1997, available in WESTLAW, Midnews Database.

4. Laurie Kassman, *Female Circumcision: Medical Experts Describe it as Barbaric*, ISR. FAXX, Sept. 7, 1995, available in 1995 WL 10425571 (reporting that WHO sources estimate that 85,000,000 girls between the ages of three and ten have been subjected to the practice of female circumcision in over two dozen African countries, Egypt, and the Arabian Peninsula).

5. *Id.*

6. Pat Lancaster et al., *Standing Up to be Counted: Women's Rights in the Middle East*, MIDDLE E., Sept. 1, 1995, at 5, available in 1995 WL 14950200.

7. Benin, Burkina Faso, Cameroon, Chad, Central African Republic, Cote D'Ivoire, Djibouti, Egypt, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Mali, Mauritania, Niger, Nigeria, Oman, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, and Yemen. See HOSKEN, *supra* note 1, at 43. This list is by no means exhaustive.

8. See Note, *What's Culture Got to Do With It? Excising the Harmful Tradition of Female Circumcision*, 106 HARV. L. REV. 1944, 1947 n.26 (1993) (Concluding that in some parts of Nigeria the rite is performed on babies while in others it is performed as a rite of passage to puberty. Still other communities in the mid-Western part of the country wait until the woman's first pregnancy before circumcising her) [hereinafter *What's Culture Got to Do With It?*].

9. HOSKEN, *supra* note 1, at 35.

10. *Id.*

11. One of the most outstanding studies on female circumcision was conducted by Fran P. Hosken of the Women International Network. See HOSKEN, *supra* note 1.

12. *Id.* at 34.

13. It is customary for the woman to stay at home to look after the children and prepare meals for her husband. With little or no education, her entire future depends on her continued marriage and loyalty to her husband. Western education is changing this traditional balance of power today. This observation is informed by the writer's personal experiences in Africa.

14. See HOSKEN, *supra* note 1, at 34.

member of her ethnic group, free to enjoy all the benefits of membership, including marriage, through which her father extracts a very handsome bride price.¹⁵ Some cultures carry out the practice even on infants, claiming that at that tender age, infants do not "remember the pain."¹⁶ Observers have wondered why mothers could willingly give up their babies and teenage daughters to be carved up in the name of culture, but until the international community helps the Third World woman achieve her economic independence from her man, little, if anything, is likely to change.¹⁷

Women and children exposed to circumcision face several immediate and long-term problems.¹⁸ Because these practices are performed in the remote village huts or under special trees in the woods,¹⁹ transfusions are not readily available, and most girls eventually bleed to death.²⁰ Even if the child were to survive the castration of her sex organ, she might later experience great difficulty in dilating, which makes it even more difficult to have a normal birth.²¹ There is little wonder, therefore, why statistics show that per capita death during childbirth in Africa is the highest in the world.²² Human rights activists in Europe believe that over a million girls have perished from this practice.²³ Few countries in which female circumcision is traditionally practiced have bothered to legislate against it.²⁴ Where such laws exist, they have little impact because mothers and grandmothers who were themselves circumcised continue to insist on it.²⁵ Indeed, female circum-

15. *What's Culture Got to Do With It?*, *supra* note 8, at 1950 (reporting that in Akwa Ibom and Cross River States of Nigeria, uncircumcised women face derision in the hands of their circumcised counterparts). See also Kehinde Bamigbetan, *On a Rescue Mission*, *THE WEEK*, Apr. 15, 1996, at 32, available in 1996 WL 15873556 (citing a Bini culture that derides an uncircumcised girl by pejoratively referring to her as an "Ikpiko" (meaning "avoid because not circumcised")).

16. HOSKEN, *supra* note 1, at 21.

17. See generally *id.* at 34-35.

18. See *infra* Part I.B.

19. See Khadijah F. Sharif, Note, *Female Genital Mutilation: What Does the New Federal Law Really Mean?*, 24 *FORDHAM URB. L.J.* 409 (1997); HOSKEN, *supra* note 1, at 34 (reporting that locations for the operation vary from under special trees to designated woods, inside huts, in the backyard of houses, and that they sometimes furtively occur at dawn).

20. HOSKEN, *supra* note 1, at 23. Official statistics are rare, but at least one girl reportedly bled to death recently in Egypt. See *Female Circumcision Claims More Victims in Egypt*, *DEUTSCHE PRESSE-AGENTUR*, July 14, 1996, available in WESTLAW, Afrnews Database. The American Medical Association confirms that there are no worldwide records, but that four girls have died from the practice in England alone since 1978. See Ridgely Ochs, *A Dangerous Procedure: Female Circumcision is Painful and Sometimes Deadly*, *NEWSDAY*, Apr. 23, 1996, at B06, available in 1996 WL 2519933.

21. See HOSKEN, *supra* note 1, at 23.

22. *Id.*

23. *UK Charity Mobilising to End Female Genital Mutilation*, *AFR. NEWS SERV.*, Sept. 10, 1996, available in 1996 WL 13171431.

24. One striking example is Sudan, which practices one of the severest forms of circumcision, the infibulation. In 1946, the Sudanese government amended its Penal Code to add section 284-A(1)(2) prohibiting circumcision. However, the section itself was swallowed up by its own exception in that it exonerated from punishment those who circumcised merely to remove the *projecting part of the clitoris!* See HOSKEN, *supra* note 1, at 96-97.

25. See *supra* note 23.

cision is so ingrained in the culture of some Africans living abroad that even the educated ones among them continue to send their daughters back home to undergo circumcision.²⁶

Neither the church nor Islam has bothered to intervene to stop this unfortunate practice.²⁷ The international community has not done enough to attempt to eradicate female circumcision, and has continued to ignore its potential adverse effect on international migration and asylum policy.²⁸ Worse, the United Nations (U.N.), which professes in its Charter "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,"²⁹ has done little to even place the issue of female circumcision on its agenda.³⁰ One of its specialized agencies, the United Nations Children's Emergency Fund (UNICEF), has reportedly refused to help the women of Cairo in their efforts to stamp out female circumcision.³¹

Against the background of international apathy to the plight of victims of female circumcision, this article intends to highlight the dangers of this primitive cultural rite. The hope is that through this exercise more people will become aware of the existence of this culture, and the West will follow in the footsteps of the United States in its effort to combat this crisis. The article calls on nations to adopt extraordinary measures in the fight against female circumcision, and to fully involve African and Middle Eastern women in this effort.

Part I examines the meaning and practice of female circumcision, some justifications for its continuance, and its enormous health implications. Part II will examine the international response to female circumcision, the role of the U.N. and its specialized agencies, as well as country-specific measures so far adopted to combat it. Part III looks at ways the organizations and countries examined in Part II may mobilize to completely eradicate female circumcision. The Comment concludes by calling for the empowerment of women, who are much more qualified to deal with female circumcision, and for the U.N. to lead the fight by working out an international document specifically making female circumcision a health and human rights issue.

26. *Id.*

27. *Id.* (arguing that the main reason why the Church has turned a blind eye is for fear of losing its congregations). In Egypt, for example, the Grand Sheik of Al Azhar University, the premier institution for the world's Sunni Muslims, has in fact recommended circumcision as a "duty on every Muslim woman" because it makes her virtuous by checking her sexual desire. See Lancaster et al., *supra* note 6.

28. See *infra* Part II.

29. U.N. CHARTER preamble. The organization also establishes that one of its purposes is to achieve international cooperation in solving international problems of economic, social, cultural, or humanitarian character, and in promoting respect for human rights and fundamental freedoms for all with no distinction as to race, sex, language, or religion. U.N. CHARTER art. 1, para. 3.

30. See *infra* Part II.A.

31. HOSKEN, *supra* note 1, at 20. The author further reports that at a 1991 conference organized by the U.N. Human Rights office in Geneva, UNICEF did not send a representative. See *id.* at 24.

A. WHAT IS FEMALE CIRCUMCISION?

Female circumcision is a type of genital surgery whereby a part or all of the female external genitalia, consisting of the clitoris and its prepuce, the large and small vaginal lips (*labia majora* and *labia minora*), are excised, often with crude unsterilized instruments and without anesthesia.³² Distinguish this practice from male circumcision.³³ The closest form of female circumcision that may resemble male circumcision is the clitoridectomy, which merely involves the removal of the tip of the clitoris.³⁴ Clitoridectomy is the mildest form of female circumcision in regions where this tradition is honored.³⁵ To underscore its gravity, some writers have graphically likened female circumcision to slicing off the penis.³⁶ However, while both male and female circumcision are performed as some form of rites, male circumcision is usually carried out shortly after birth in a sanitized, hospital environment by qualified persons.³⁷ Indeed, universal male circumcision was recently recommended as a public health measure.³⁸ On the contrary, female circumcision is performed on girls for the primary reason of stifling their sexual urge with a view to preserving their virginity prior to marriage.³⁹ Unlike male circumcision, which merely involves the removal of the outer skin without any damage to the organ itself, in female circumcision, a healthy and most sensitive organ is cut off in the name of culture.⁴⁰ Further, unlike male circumcision, there is no recorded health benefit to female circumcision.⁴¹

32. See *What's Culture Got to Do With It?*, *supra* note 8, at 1946. The recent Illegal Immigration Reform and Immigrant Responsibility Act defines "female genital mutilation" for its purposes as "the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora." See 8 U.S.C.A. § 1374(c) (West Supp. 1998).

33. *But cf.* HOSKEN, *supra* note 1, at 32 ("From a biological viewpoint, the genital mutilations performed on females are the equivalent of the amputation of part or all of the penis.").

34. *What's Culture Got to Do With It?*, *supra* note 8, at 1946.

35. *Id.*

36. See Joan Beck, *Mutilation Practice Should not be Tolerated*, CHI. TRIB., Apr. 21, 1996, at 21, available in 1996 WL 2664149 (arguing rhetorically, "Think how public officials would respond if tens of millions of boys were held down and their sex organs cut off, without anesthetic in unsterile conditions, to prevent them from experiencing sexual pleasure."). See also *End Female Genital Mutilation*, CHI. TRIB., Oct. 29, 1996, at 14, available in 1996 WL 2721454 (female circumcision is "more akin to amputation of the penis"); HOSKEN, *supra* note 1, at 32.

37. See Patricia Reaney, *U.S. Doctor Calls for Universal Circumcision* (visited Sept. 26, 1997) <<http://www.customnews.cnn.com/cnews/pna>>.

38. *Id.*

39. HOSKEN, *supra* note 1, at 40.

40. *Id.* at 32.

41. In a report in the Archives of Disease in Childhood, Dr. Edgar Schoen of the Kaiser Foundation Research Institute in Oakland, California, argues that circumcision for newborn boys could help protect against urinary tract infections (UTI), cancer of the penis, and sexually transmitted diseases such as HIV, which causes AIDS. He offers statistics showing that in the United States, of the 1,600 cases of penis cancer in the last fifty years, none had been circumcised since infancy. In addition, a report by the American Society of Pediatrics also indicates that uncircumcised boys have increased risk of UTI because harmful bacteria can grow under the foreskin. See Reaney, *supra* note 37. No such health benefits favor female circumcision.

The “surgeons” who perform the excision do not actually possess medical training but are usually old women (called the “midwives”⁴²) who have inherited the trade from their lineal ancestors.⁴³ The actual circumcision is performed under unsterile circumstances and without anesthesia. The procedure typically occurs before adolescence, usually between the ages of one week to fourteen years old.⁴⁴ However, the exact age at which girls are subjected to this ritual depends on the custom of the particular society and the wishes of the individual girl’s parents.⁴⁵

1. *Types of Female Circumcision*

There are three different types of female circumcision practiced in different cultures, but all three types have been inappropriately reduced into one operation.⁴⁶ The first and the mildest form is the *sunna*, which involves the removal of the prepuce and the tip of the clitoris.⁴⁷ Depending on the society, only the tip or half of the clitoris is removed, often by very crude methods,⁴⁸ leaving intact the labia minora.⁴⁹ The second type of female circumcision is the excision or clitoridectomy, which involves the removal of the clitoris and its adjacent parts, parts of the labia minora, and oftentimes all exterior genitalia.⁵⁰ This form is the most common type of circumcision, and is preferred in Egypt, Oman, Yemen, and most of the countries of Central and West Africa.⁵¹

The third and most severe form of female circumcision is called infibulation.⁵²

42. HOSKEN, *supra* note 1, at 33. Among the Ibos of eastern Nigeria, this title also refers to traditional women birth attendants.

43. In Egypt and northern Nigeria, barbers carry out the operations instead. *Id.*

44. Ochs, *supra* note 20.

45. See Julie Dimauro, Note, *Toward a More Effective Guarantee of Women’s Human Rights: A Multicultural Dialogue in International Law*, 17 WOMEN’S RTS. L. REP. 333, 335 (1996) (citing FEMALE CIRCUMCISION, EXCISION AND INFIBULATION 3 (Scilla McLean ed., 1980)), reporting that in Ethiopia and Sudan, the operation is performed on infants only a few days after birth, while in Egypt and Central Africa, the usual age is seven. In parts of Nigeria that practice female circumcision, the practice occurs at adolescence. However, among the Esan, Etsako, and the Ijaw groups of the present-day Edo state of Nigeria, circumcision is a premarital ritual, while among the Urhobos and the Isokos of neighboring Delta state, circumcision is done during a woman’s first pregnancy. See *What’s Culture Got to Do With It?*, *supra* note 8, at 1948 (citing Robert A. Myers et al., *Circumcision: Its Nature and Practice Among Some Ethnic Groups in Southern Nigeria*, 21 SOC. SCI. & MED. 581, 587 (1985)); Sam Eferaro, *Why We Circumcise Our Pregnant Women*, VANGUARD, Jan. 19, 1993, at 10).

46. Washington, *supra* note 1, at 30 (citing Corrine Kratz of the Institute of African Studies at Emory University).

47. HOSKEN, *supra* note 1, at 33.

48. For example, some communities methodically apply a heated piece of stone or pearl to the prepuce of the clitoris to burn it away. See Sharif, *supra* note 19, at 414 (citing EL ASHMA DAREER, WOMAN WHY DO YOU WEEP?: CIRCUMCISION AND ITS CONSEQUENCES 1, 2 (1982)).

49. *Id.*

50. HOSKEN, *supra* note 1, at 33.

51. *Id.* at 43.

52. The term was derived from the Roman practice of fastening a fibula through the lips of women’s genitalia to forestall illicit sexual behavior. See Sharif, *supra* note 19, at 413 (citing RAQIYA HAJI DUALEH ABDALLA, SISTERS IN AFFLICTION: CIRCUMCISION AND INFIBULATION OF WOMEN IN AFRICA 10 (1982)).

This method involves the removal of the clitoris, labia minora, and portions of the labia majora, and the closing of the two sides of the vulva over the vagina, often by fastening with thorns, catgut, or some other adhesive substance.⁵³ This severe form of circumcision is most prevalent in the Sudan, Somalia, Mali, and among some Moslem populations in northern Nigeria.⁵⁴

2. *The Practice of Female Circumcision*

Female circumcision is a form of torture.⁵⁵ Among the Israeli Bedouin community of the southern Negev desert,⁵⁶ the girl is not even informed in advance of the plan to perform the *tohoor al-banat* ("the purification of the girls") on her.⁵⁷ Female relatives of the victim generally forcibly hold her down, spreading her legs wide apart while the "midwife" performs the actual circumcision.⁵⁸ The cutting instrument varies from a sharp razor to a sharp stone.⁵⁹ Depending on the culture, the "midwife" could circumcise as many girls as are brought before her one after the other—using the same instrument, which is not sterilized.⁶⁰ In Somalia, the ages of the victims range from five to eight, and the operation may be done on an individual or group basis.⁶¹ Strong women pin the child down to a stool or a mat while the "village midwife" performs the excision.⁶² At the end of the operation, the midwife places some preselected thorns on the wound and a mixture of cloth, powder, gum, sugar, and myrrh to stop the bleeding.⁶³ The child is then immobilized with strings tied from her waist to her toes and forced to lie on a mat; also, she is placed on a restricted diet to avoid frequent bowel movements.⁶⁴ This severe form of circumcision is more prevalent in Moslem countries where virginity is emphasized.⁶⁵

53. HOSKEN, *supra* note 1, at 33.

54. *Id.* at 43.

55. Compare the Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, art. 2, O.A.S. Treaty Ser. No. 67, O.A.S. Doc. OEA/Ser. P, AG/doc. 2023/85 rev. 1, at 46, reprinted in 25 I.L.M. 519 (1986) (defining "torture") with the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture to mean, *inter alia*, any act by which severe physical or mental pain or suffering is intentionally inflicted on a person for any reason based on a discrimination of any kind. See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art. 1, U.N. G.A. Res. 39/46 Annex, 39 U.N. GAOR, Supp. (No. 51) 197, U.N. Doc. E/CN.4/1984/72, Annex (1984), reprinted in 23 I.L.M. 1027 (1984). The African Charter on Human and Peoples' Rights does not define "torture."

56. See Risa Lynn Nesselroth, *Cries and Whispers: Actress Tackles Issue No One Wants to Talk About*, CHI. TRIB., Apr. 28, 1996, at 3, available in 1996 WL 2666643.

57. *Id.* This custom is prevalent only among the Bedouins of the southern Negev desert. *Id.*

58. See Beck, *supra* note 36.

59. Catherine L. Annas, *Irreversible Error: The Power and Prejudice of Female Genital Mutilation*, 12 J. CONTEMP. HEALTH L. & POL'Y 325, 329 (1996) (citing Lawrence P. Cutner, *Female Genital Mutilation*, 40 OBSTETRICAL & GYNECOLOGICAL SURV. 437, 440 (1985)).

60. *Id.*

61. HOSKEN, *supra* note 1, at 49.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 34.

The primary force that continues to sustain this tradition is the bride price. The smaller a bride's opening, the higher the bride price she will fetch for her father.⁶⁶ Among the Masai tribe of Kenya, female circumcision marks the coming of age of daughters, and this occasion is marked with an elaborate celebration.⁶⁷ Generally, the healing period takes between ten days to one month, depending on the severity of the wound, and the girl's legs must remain bound together during this period.⁶⁸

3. *Justifications for the Practice of Female Circumcision*

Societies that practice female circumcision often have similar justifications for its continuance.⁶⁹ Although most of the teenage girls facing circumcision are aware of its inherent dangers, they still submit themselves to be circumcised because circumcision offers them the only choice for cultural acceptance, and few are willing to give that up.⁷⁰ Under the Masai tribal custom, for example, uncircumcised women cannot get married or be allowed to have children.⁷¹ In male-dominated African and Middle Eastern countries where female circumcision is the norm, marriage is absolutely essential to a woman's survival.⁷² Further, a woman who successfully avoids circumcision, or who is not properly circumcised, is sure to be ridiculed by her peers,⁷³ and she is almost certain to remain single, or if married, she faces a certain divorce and an uncertain economic future. She is a disgrace to her family honor.⁷⁴

Although neither the Bible nor the Holy Koran specifically mandates female circumcision,⁷⁵ most of the Islamic countries that practice female circumcision

66. *Id.*

67. See Rita Ciolli, *A Woman's Ritual of Anguish: A Look at the Pulitzer-Winning Photos of the Rite of Female Circumcision in Kenya—Which for Family and Village, is a Time of Celebration—And at the Syracuse Student Who Took Them*, *NEWSDAY*, Apr. 23, 1996, at B04, available in 1996 WL 2519980 (reporting that the father would accept gifts of cows and goats from members of his tribe and use the occasion to get himself drunk, even as his daughter lay bound and bleeding from the incision).

68. Deliah Setareh, Note, *Women Escaping Genital Mutilation—Seeking Asylum in the United States*, 6 *UCLA WOMEN'S L.J.* 123, 127 (1995).

69. See HOSKEN, *supra* note 1, at 39.

70. Ciolli, *supra* note 67, at B04.

71. *Id.*

72. Setareh, *supra* note 68, at 130 (arguing that it is only the woman's struggle to survive that forces her to submit to circumcision and to impose the practice upon her own daughters).

73. Among the Binis of Nigeria, an uncircumcised girl is an avoidable "Ikpiko," and an uncircumcised Ijaw woman's corpse cannot be buried. See Bamigbetan, *supra* note 15, at 32.

74. HOSKEN, *supra* note 1, at 40 (such a girl is called a "prostitute").

75. In his covenant with the Israelites, however, God specifically instructed Abraham as follows: "Every man child among you shall be circumcised. And ye shall circumcise the flesh of your foreskin; and it shall be a token of the covenant betwixt me and you." *Genesis* 17:10,11 (King James) (emphases supplied). There is no reference to female children. In fact, the New Testament appears to specifically discourage circumcision as a formal religious doctrine:

Behold, I Paul say unto you, that if ye be circumcised, Christ shall profit you nothing.
For I testify again to every man that is circumcised, that he is a debtor to do the whole

observe the tradition as "a duty on every Muslim woman."⁷⁶ According to this view, female circumcision makes a woman virtuous by checking her sexual drives.⁷⁷ An Egyptian court recently overturned a two-year ban on female circumcision placed by that country's health minister, citing both sayings by prophet Mohammed that purported to justify the operation and unproven "scientific research demonstrating that failure to perform circumcision results in grave health harm to female children."⁷⁸

In general, female circumcision in Egypt is performed in order to hygienically cleanse the female genitalia, and to stifle the demon flesh of sexual desire.⁷⁹ Similarly, the Israeli Bedouin community of the southern Negev desert insist that female circumcision is a means of purifying the girl child who, prior to this ritual, is essentially an "unclean animal."⁸⁰ Preserving the female honor is a collective responsibility, and female circumcision is a preventive medicine that ensures that a Bedouin man can safely leave his wife at home while he is away grazing the flocks.⁸¹

Female circumcision serves as a formal initiation of girls into womanhood, protecting them from their inherently "oversexed" nature and saving them from yielding to temptations and disgracing their families.⁸² It is seen as being necessary to remove the clitoris, an intrinsically "aggressive organ" that

law. For in Jesus Christ neither circumcision availeth any thing, nor uncircumcision; but faith which worketh by love.

Galatians 5:2-3, 6 (King James) (emphases supplied).

76. Lancaster et al., *supra* note 6, at 5 (quoting the Grand Sheik of Al-Azhar). Indeed, the late Grand Sheik Gad ul Haq had, before his death in 1996, decreed that Moslems wage a jihad (holy war) if necessary to sustain the practice of female circumcision in their societies. See *Egyptian Court Overrules Government Ban on Female Circumcision*, DEUTSCHE PRESSE-AGENTUR, June 24, 1997, available in WESTLAW, Midnews Database.

77. *Id.*

78. See *Egyptian Court Overrules Government Ban on Female Circumcision*, *supra* note 76. The court, however, failed to mention the opposing views of Grand Sheik Mohamed Sayid Tantawi, which cast doubts on the interpretation of the prophet's alleged "sayings." *Id.* It is patently tough to justify female circumcision on religious grounds in the absence of a specific reference to it by the Holy Koran. Besides, such practice is rare in other traditionally Islamic countries, such as Jordan and Syria. See *Sheik Sued Over Female-Circumcision Stance*, ORANGE COUNTY (CAL.) REG., Apr. 14, 1995, available in 1995 WL 5844734.

79. *Id.*

80. Nesselroth, *supra* note 56, at 3.

81. *Id.*

82. Dimauro, *supra* note 45, at 335 (citing HANNY LIGHTFOOT-KLEIN, *PRISONERS OF RITUAL: AN ODYSSEY INTO FEMALE GENITAL CIRCUMCISION IN AFRICA* 80-84 (1989)). The unanswered question remains why these responsible societies insist on excision of girls to control men's sexual irresponsibilities. Couldn't the same ends be served by adopting measures strictly restricting the liberty of men to sleep with girls before they attain majority? In the small eastern Nigerian town of Nimo (which does not practice female circumcision), for example, illicit sexual activities with single girls are strongly discouraged, and guilty boys or men are traditionally bound to marry those they impregnate. This unwritten customary law goes a long way toward checking male sexual attitudes toward females, and recognizes that both boys and girls—or men and women—have corresponding duties and responsibilities to maintain high moral standards.

could grow into the size of a penis and injure the baby during delivery.⁸³ In southern and mid-western Nigeria, communities that circumcise their female children justify the practice by citing reasons of culture, prevention of promiscuity, preservation of virginity, cleanliness, enhancement of fertility, and promotion of social and political cohesion.⁸⁴

Most societies that glorify female circumcision invoke cultural autonomy; they accuse the West of cultural imperialism in an attempt to maintain the status quo and continue shielding themselves from the growing international criticisms against the practice.⁸⁵ However, the justifications that those societies advance in defense of female circumcision and the helplessness of female children and women exposed to the practice go to show that men's patriarchal sexual dominance over women in these societies is not about to let up.⁸⁶ It is difficult to justify this form of violence against women and little girls on cultural grounds.⁸⁷ Fran Hosken has appropriately described female circumcision as "a social burden of sexual violence"⁸⁸ on young innocent girl children, which no ancestral decree should justify.

B. THE EFFECTS OF FEMALE CIRCUMCISION

The primary goal of female circumcision is to discourage sexual activity on the part of a woman or girl.⁸⁹ The actual ritual is graphic enough to shock even a reader. The traumatic and psychological pain for the unsuspecting, innocent young girls who do not yet understand why their beloved mothers and relatives would put them through such an ordeal is beyond imagination.⁹⁰ Because the general objective is to make the vaginal opening as small as possible, it is extremely difficult for a cir-

83. *Id.* Ethiopians actually believe that the clitoris must be excised to prevent it from growing into the size of the penis. *Id.* (citing McLean, *supra* note 45, at 6).

84. See *What's Culture Got to Do With It?*, *supra* note 8, at 1949.

85. Anna Funder, *De Minimis Non Curat Lex: The Clitoris, Culture and the Law*, 3 *TRANSNAT'L L. & CONTEMP. PROBS.* 417, 418 (1993).

86. *Id.* at 436 (arguing that economic and social factors compel women to consent to this procedure).

87. See Beck, *supra* note 36 ("Americans—especially women and African-Americans—should not buy the argument that female mutilation is okay because it's a social and cultural tradition. So were slavery and Chinese foot-binding. No civilized nation should condone it.").

88. HOSKEN, *supra* note 1, at 31 ("To defend such practices on cultural grounds, as is done too often, is a distortion of the meaning of culture.').

89. *Id.* at 46 (quoting Dr. Salah Abu Bakr, "Excision and infibulation results [sic] in destruction of the nerve supply of the vulva; consequently, sexual arousal cannot take place." According to the doctor, the operation results in the removal of the Pacinian corpuscles (touch organs) which make the genital area insensitive to touch. Therefore, it is physically impossible for circumcised women to be sexually stimulated by intercourse or to respond to touch in the genital area).

90. Eyewitness account of an actual excision of a sixteen-year-old girl among the Masai tribe of Kenya reports of the helpless girl's fruitless invitation to her mother for help. See Ciolli, *supra* note 67. See also *What's Culture Got to Do With It?*, *supra* note 8, at 1949 (victims feel betrayed afterwards by the mothers or relatives who induced them to undergo the procedure).

cumcised woman to consummate her marriage or have a safe delivery.⁹¹ Consequently, another incision is often necessary to open up the woman.⁹² The size of the opening may give rise to prolonged and difficult labor, which could in turn result in infants being stillborn.⁹³ Alternatively, the smallness of the vaginal opening could cause obstructed labor, which in turn could result in hemorrhaging, tearing of the perineal tissue, and a prolapsed uterus.⁹⁴ If the infant survives at all, the lack of oxygen during labor may cause it to suffer irreversible brain damage.⁹⁵ Sub-Saharan Africa today has the highest per capita childbirth death rate in the world, and it is attributed to female circumcision.⁹⁶

In general, female circumcision has immediate and very far-reaching consequences on the girl child and the woman.⁹⁷ These include the immediate risk of death as well as physical and emotional trauma, including the risk of infection and long-term psychological effects.⁹⁸

1. *Risk of Death*

Human rights activists in Europe estimate that over one million girls have perished from the practice of female circumcision worldwide.⁹⁹ About thirteen thousand girls of immigrant parents from Ethiopia, Kenya, Somalia, Sudan, and Uganda living in the United Kingdom alone are at risk.¹⁰⁰ The difficulty of estimating the exact number of girls that die from this practice stems from its secretive nature, and the fact that the operations are usually not performed in health institutions.¹⁰¹ In 1982, the three-month-old daughter of a Malian couple living in France bled to death after circumcision.¹⁰² In Egypt, a ten-year-old girl died from heavy bleeding in 1996 after her father had taken her to the local barber to have her genitals excised.¹⁰³ Countries that practice

91. See *What's Culture Got to Do With It?*, *supra* note 8, at 1948.

92. *Id.* (Citing OLAYINKA KOSO-THOMAS, *THE CIRCUMCISION OF WOMEN: A STRATEGY FOR ERADICATION* 26 (1987)).

93. *Id.*

94. *Id.*

95. *Id.*

96. HOSKEN, *supra* note 1, at 21. Even so, the author points out that a 1987 Safe Motherhood Conference in Nairobi, Kenya, sponsored by the World Bank and co-sponsored by the World Health Organization (WHO) and the United Nations Fund for Population Activities (UNFPA), failed even to mention female circumcision as a possible cause of childbirth deaths.

97. See *What's Culture Got to Do With It?*, *supra* note 8, at 1948-49.

98. *Id.*

99. See *UK Charity Mobilising to End Female Genital Mutilation*, *supra* note 23.

100. *Id.*

101. See *supra* note 20.

102. See *UK Charity Mobilising to End Female Genital Mutilation*, *supra* note 23. Her parents were given only suspended sentences by the French authorities.

103. See *Female Circumcision Claims More Victims in Egypt*, DEUTSCHE PRESSE-AGENTUR, July 14, 1996, available in WESTLAW, Afrnews Database (reporting that a second eleven-year-old girl was in serious condition after a barber had used a contaminated razor to excise her genitals).

female circumcision have the highest infant mortality rates in the world.¹⁰⁴ The American Medical Association believes that it is impossible to obtain a worldwide record of the number of girls that bleed to death as a result of female circumcision.¹⁰⁵

Because the operations are done in rural areas where there are no health clinics or hospitals with blood transfusion facilities, some of the girls inevitably bleed to death.¹⁰⁶ Aside from immediate deaths resulting from uncontrolled bleeding, there is also the risk of acquiring diverse blood-borne infections, which can ultimately lead to death or deformity of the victim.¹⁰⁷

2. *Physical Trauma and Exposure to Infection*

Tools used during female circumcisions are not sterilized, and the barber or "midwife" does not use any anesthesia.¹⁰⁸ Consequently, immediate results to the girl or woman include shock due to blood loss and pain, blood poisoning, damage to the urethra or the anus, keloid scar formation, epidermoid cysts, tetanus and septicemia, bladder infections, risk of contracting HIV and/or Hepatitis B,¹⁰⁹ retention of urine due to occlusion or pain during urination,¹¹⁰ injury to adjacent tissues including the rectum, and chronic infection resulting from the inability of the wounds to heal.¹¹¹

In addition to the pain of actual circumcision, a circumcised woman or child goes through a lifetime of pain and suffering, experiencing pain during urination,

104. See Patricia Dysart Rudloff, *In Re Oluloro: Risk of Female Genital Mutilation as "Extreme Hardship" in Immigration Proceedings*, 26 ST. MARY'S L.J. 877, 883 (1995) (arguing that because of scar tissues that develop around the vagina as a result of circumcision, and which can block the baby's oxygen supply during birth, stillbirths and brain-damaged children are common, citing Linda Cipriani, *Gender and Persecution: Protecting Women Under International Refugee Law*, 7 GEO. IMMIGR. L.J. 511, 526 (1993)).

105. See Ochs, *supra* note 20, at B06.

106. See HOSKEN, *supra* note 1, at 23.

107. See *id.* at 24 (arguing that the high rate of HIV/AIDS cases in Sub-Saharan Africa is connected to female circumcision).

108. The most commonly used tools are razor blades, kitchen knives, scissors, and even sharp stones. Barbers in most of Egypt and northern Nigeria use their unsterilized barbering tools, while midwives who practice circumcision as a form of trade use the same kitchen knives over and over, usually wrapping up the knife after each operation. Where a group circumcision occurs on predetermined days, the girls line up to be circumcised, and the operator does not wash the instrument until all the girls have been circumcised. She merely wipes off the blood with a dirty rag. See generally *id.* at 33; *What's Culture Got to Do With It?*, *supra* note 8, at 1947; Annas, *supra* note 59, at 329.

109. Ochs, *supra* note 20, at B06.

110. HOSKEN, *supra* note 1, at 37. Women or girls who were tightly sewn up can only urinate "drop by drop so that the average time of urination is 10 to 15 minutes. Not surprisingly, chronic urinary tract infections are also a problem. Menstruation can take up to 10 more days and can be more painful than usual." Ochs, *supra* note 20, at B06.

111. *Id.* (reporting that in some areas, including parts of West Africa, operators throw dirt into the wound, or use pulverized animal feces, to stop the bleeding).

menstruating, sexual intercourse, and childbirth.¹¹² In addition, incontinence could result from internal injuries due to obstructed labor.¹¹³ Further infection can result from excrement trapped in the bandages which bind a circumcised child's legs and toes when she is immobilized during the healing period.¹¹⁴ Female circumcision can also lead to infertility.¹¹⁵ Further, studies have also revealed that female circumcision results in complete lack of orgasm for women subjected to it, while painful coitus during sexual intercourse is a permanent reminder of the original pain of circumcision.¹¹⁶

3. *Psychological Effects*

The "intense pain in an extremely delicate, complex and vital physical area, when experienced by young girls in their formative years, could result in substantial psychological problems."¹¹⁷ Girls forever feel betrayed by their own families.¹¹⁸ Moreover, anxiety may result from the bare anticipation of circumcision—even before the actual event—and emotional reactions to chronic infections from circumcision, persistent physical pain during urination, menstruation, sexual intercourse, or childbirth could lead to chronic irritability, anxiety, or depressive episodes.¹¹⁹ In addition, circumcision could have far-reaching effects on the personality development of the girl child.¹²⁰

112. Ochs, *supra* note 20, at B06. During sexual intercourse, penetration by the husband is almost impossible and extremely painful, such that a "midwife is often called upon on the wedding night to cut it open." *Id.* (quoting an AMA source). A circumcised woman confessed that while urinating, menstruating, having sex, and having children were all very painful events, "she would never forget that pain [of excision]." And she was sixty-five years old. *Id.*

113. HOSKEN, *supra* note 1, at 12 (permanent "wait list" of hundreds of Kenyan and ethnic Somali women at Nairobi's Kenyatta Hospital for fistula operations as a result of widespread practice of infibulation). Ironically, former Kenyan President Jomo Kenyatta, a Kikuyu by tribe, had boasted that "no proper Kikuyu [man] would dream of marrying a girl who has not been circumcised." *Id.* at 39 (quoting JOMO KENYATTA, *FACING MOUNT KENYA* (1965)).

114. Funder, *supra* note 85, at 435. The child is immobilized for several days to allow the wound to heal properly. During this time, she stays on a restricted diet to minimize frequent bathroom visits, but her waste inevitably remains trapped in the cloth with which she is tied up.

115. See Annas, *supra* note 59, at 331 (twenty-five percent of female infertility is attributed to female circumcision).

116. See HOSKEN, *supra* note 1, at 37.

117. See Hughes, *supra* note 1, at 330 (quoting Alison T. Slack, *Female Circumcision: A Critical Appraisal*, 10 *HUM. RTS. Q.* 437, 454 (1988)).

118. See *id.* at 329.

119. See *id.* at 330. Circumcised women no longer become partners in marriage, but mere sex toys of their husbands. Sexual acts are only beneficial to the husband (the wife having lost all erotic pleasure to circumcision), and the wife perpetually dreads every moment of it due to the accompanying pain. Moreover, circumcised girls who end up growing up in other cultures may forever feel inferior and inadequate to their uncircumcised counterparts, boyfriends, or husbands.

120. HOSKEN, *supra* note 1, at 38 (arguing that "it is clear that the permanent deprivation of a human being's most powerful instinct has deeply depressing psychological results, especially since in Africa and the Middle East a female's purpose in life is to serve the sexual satisfaction of her husband, to bear 'his' children and to provide food.").

The physical, emotional, and psychological pain experienced by the helpless woman or child in African and Middle Eastern societies that practice female circumcision has been aptly summarized as follows:¹²¹

Mental complications begin to affect the female child from an early age, and remain with her throughout her life. Well before the child is operated on, she hears tales of horror relating to the act of infibulation. At the same time, girls who have undergone [female circumcision] taunt those who have not with insults and call them 'unclean.' In this frame of mind, of fear mixed with a sense of inferiority, the girl reaches her turn for surgery. Many of the physical wounds will heal; their pain and discomfort subside. But at each stage of her later life, further mental injuries are added. The slow trickle of urine (as opposed to the strong jet of urine coming from her bladder) reminds her constantly of the operation. The onset of menstruation, with its accompanying discomfort and odors, forces her to recall her agony. Marriage and the opening up of the infibulation to permit consummation of the marriage is an ordeal. The birth of the first child and the knowledge that subsequent deliveries are not going to be any easier on her scar-riddled genitals, haunt every woman constantly. In spite of her own suffering due to infibulation, the knowledge that she will have to subject her daughters to the same ordeal adds further to her mental agonies.¹²²

No woman or child should have to go through such an agonized life on account of her culture.

II. International Response to Female Circumcision

The practice of female circumcision affects millions of women and children in Africa and the Middle East, but the international community as a whole has not done enough to put the issue on the world agenda. With the exception of the United States, Western nations have not gone beyond their immediate borders in formulating policies aimed at eradicating female circumcision.¹²³ The subject has been ignored by virtually all international family planning and health programs that work in conjunction with the specialized agencies of the U.N. and derive financial assistance from the West.¹²⁴ Although Africa has the highest AIDS infection rate, programs designed to fight this disease tend to ignore its link to female circumcision and African sexual habits.¹²⁵ Even U.S. aid agencies, such as the United States Aid for International Development (USAID), have pretended to run efficient family planning programs in Africa and the Middle East while ignoring female circumcision.¹²⁶ Private agencies that run safe motherhood programs in Africa and the Middle East have been accused of deliberately ignoring the prevalence of female circumcision within their areas of authority and the fact

121. *Id.* at 50.

122. Report of the World Conference of the U.N. Decade for Women: Equality, Development and Peace, Copenhagen, July 14-30, 1980, UN Doc. A/CONF. 94/35, at 34 (quoted in HOSKEN, *supra* note 1, at 50).

123. *See infra* Part II.B. and Part II.C.

124. HOSKEN, *supra* note 1, at 8.

125. *See id.*

126. *See id.* at 21.

that it is the leading cause of childbirth mortalities, while pretending to work toward achieving safe motherhood for Third World women.¹²⁷

Amnesty International also does not appear to have responded strongly enough against the practice of female circumcision. The London office of the human rights group has recently been quoted as declaring female circumcision to be outside its mandate, although its various national groups have continued to get involved in some countries.¹²⁸ The West, which must work together with African feminists and leaders if female circumcision has any chance of being eradicated, oftentimes unfortunately contents itself with "grandstanding in the media," an attitude that greatly infuriates African feminists.¹²⁹ On the other hand, African and Middle Eastern political and religious leaders have failed to come up with any solution on how to stop this negative cultural practice.¹³⁰ In fact, most of them have told well-meaning American and European activists to stay away, citing cultural imperialism.¹³¹

A. THE UNITED NATIONS

One of the purposes of the U.N. is to solve international problems of an economic, social, cultural, or humanitarian nature, and to encourage respect for human rights and fundamental freedoms for everyone regardless of race, sex, language, or religion.¹³² Female circumcision is one such international problem of a cultural and humanitarian nature.¹³³ Unfortunately, so far the U.N. appears to lack the political will to tackle this problem directly.¹³⁴ The organization has, either directly or through one of its specialized agencies, studied female circumcision "with care and sensitivity" for thirty years without taking a definitive stand against it.¹³⁵ The WHO considers female circumcision as "a social and cultural

127. See *id.* (citing New York-based Family Care International's consistent refusal to distribute literature on the subject that the author claims to have sent the organization).

128. See *id.* at 25. See *UK Charity Mobilising to End Female Genital Mutilation*, *supra* note 23.

129. See Dimauro, *supra* note 45, at 339 n.78 (criticizing women for submitting themselves and their daughters to circumcision without taking into account the enormous amount of pressure their societies heap on them is as insensitive as it is judgmental). See *id.*

130. See *infra* Part II.D.

131. See Beck, *supra* note 36, at 21; Hosken, *supra* note 1, at 51 (reporting that at the 1980 U.N. Mid-Decade Conference for Women in Copenhagen, a group of African women deliberately shouted down the author while she was presenting a paper on female circumcision).

132. U.N. CHARTER art. 1, para. 3.

133. *But cf.* *What's Culture Got to Do With It?*, *supra* note 8, at 1954-55.

134. *But cf.* Funder, *supra* note 85, at 434.

135. *Id.* The author argues that although a Special Rapporteur appointed by the United Nations in 1991 to study the practice of female circumcision recommended local health and education measures to eradicate the practice, nothing further was done, because the Special Rapporteur's report lacked the necessary bite. The report made reference to "cultural self-determination and the right of the individual," and concluded that the issue "merits further study." *Id.* (citing Kay Boulware-Miller, *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, HARV. WOMEN'S L.J. 155, 164 (1985)); Halima Embarck Warzazi, Special Rapporteur, Study on Traditional Practices Affecting the Health of Women and Children, Final Report to the Subcommission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1991/6 (1991)).

matter not within its competence.”¹³⁶ The Massachusetts-based Women’s International Network, a not-for-profit organization, has collected signatures on a worldwide scale and sent letters and representations to the United Nations’ Secretary-General, and the Geneva-based United Nations Human Rights Commission on the subject of female circumcision, but the organization has paid only lip service to the issue.¹³⁷ Although the organization is best equipped to deal with female circumcision through its several specialized agencies that maintain very strong ties with the local grassroots population throughout Africa and much of the Third World, it has not done very much to take advantage of this situation.¹³⁸ In fact, research¹³⁹ revealed that female circumcision continued to be practiced even with the knowledge of camp administrators of the United Nations High Commissioner for Refugees in refugee camps housing Somalian and Ethiopian refugees.¹⁴⁰

One major reason why international organizations in general and the U.N. in particular have appeared to be insensitive to female circumcision is culture.¹⁴¹ The organization is wary of being accused of replacing African and Middle Eastern cultural ideals with its invasive Western culture.¹⁴² Proponents of the practice, including, unfortunately, some of Africa’s best-educated people, also cite cultural autonomy, arguing that claims for asylum in the United States based on well-founded fear of female circumcision by African and Middle Eastern women are only a ploy by those asylum seekers to enter and remain in the United States while “maligning and demonizing Africa[n]” culture.¹⁴³ Although women

136. *Id.*

137. See HOSKEN, *supra* note 1, at 25. WIN treats female circumcision as a violation of the human rights of women in general, and of female children in particular.

138. Some U.N. specialized agencies with very strong grassroots ties worldwide are the Children’s and Emergency Fund (UNICEF), the Educational, Scientific and Cultural Organization (UNESCO), the Food and Population Agency (UNFPA), and the World Health Organization (WHO). This writer has personal knowledge of the success of various programs established by these U.N. agencies in eastern Nigeria. Eradication of female circumcision could equally succeed using these very same agencies, which have retained the respect and confidence of the local population.

139. Sandra Gove & Laura Diamondstone, *Medical Team Interaction with Female Circumcision in a Refugee Camp, Bo’, Somalia, presented at the National Council for International Health*, Washington, D.C., 1984 (cited in HOSKEN, *supra* note 1, at 17 n.15).

140. See HOSKEN, *supra* note 1, at 17. The camp officials justified their tacit approval of female circumcision by claiming that the culture of the refugees permitted the practice. *Id.*

141. See *supra* Part I.A.3.

142. See Funder, *supra* note 85, at 437.

143. See, e.g., Benjamin O. Anosike, *Claims of “Genital Mutilation” A New Ploy for Gaining United States Asylum*, N.Y. BEACON, May 20, 1996, at 11, available in 1996 WL 15800335. Mr. Anosike writes:

[W]hile the customary rite of circumcision and yes, I know the Eurocentric, [C]aucasian-world-view news media prefers the more sensationalized term, “genital mutilation”! may be widespread in many African nations, they are, however, *virtually always performed on the subjects while they are in their infancy, indeed in the first few days or even hours of a child’s life*. . . . And it is a certain bet that with each claimant [for United States asylum] who comes out of the woodwork, the story she’ll tell will be more and yet more ‘sexier’ and ‘sexier,’ more and yet more sensationalized and fantasized. Most will, like Ms. Kasinga’s case, grossly misrepresent the facts and

and children constitute an overwhelming majority of today's refugee populations,¹⁴⁴ and female children and women are in the majority of the nutritionally, sexually, psychologically,¹⁴⁵ and culturally abused peoples of the Third World, various United Nations' instruments do not include gender as a protected class.¹⁴⁶ Indeed, the organization did not define "violence against women" to encompass sexual abuse of female children (including female circumcision) until 1994.¹⁴⁷ At the 1994 U.N. Populations Conference in Cairo, Egypt, the U.N. urged governments "to prohibit female genital mutilation wherever it exists and to give vigorous support to efforts among nongovernment and community organizations and religious institutions to eliminate such practices."¹⁴⁸ Clearly, the U.N. must rise above mere nonbinding declarations or principles and positively lead the fight to end female circumcision, a scourge that has been called "the most widespread existing violation of human rights in the world" today.¹⁴⁹

mislead the US immigration authorities and the American people about the African culture, customs and peoples simply for the selfish objective of getting an immigration visa. But, what is most unfortunate, they shall have inflicted grave, and undeserved damage to the image and well-being of Africa and its *rich, long, illustrious culture!*

Id. (emphases supplied).

Mr. Anosike shares the same ethnic origin as this writer. Natural justice, equity, and good conscience would appear to suggest that a culture that sacrifices little girls' genitals for its men's sexual gratifications is bereft of the element of "illustriousness." Therefore, the author's defense of this aspect of African culture as "illustrious" appears to be grounded in pure tragic sophistry. Not even cultural identity should justify this enormous sacrifice. Compare Funder, *supra* note 85, at 437 ("[G]enital mutilation is the price, paid by women, for cultural integrity. This price is too high."); Annas, *supra* note 59, at 353 ("When the effects of female genital mutilation are honestly faced, nothing can justify it. Not culture. Not tradition. Not parental rights. *Nothing.*") (emphasis supplied); and A.M. Rosenthal, *On My Mind: A Victory in Cairo*, N.Y. TIMES, Sept. 6, 1994, at A19 (African rulers and the international community have all stood idly by and allowed female circumcision to continue for fear of interfering with local customs).

144. See Robin Morgan, *Planetary Feminism: The Politics of the 21st Century*, in *SISTERHOOD IS GLOBAL—THE INTERNATIONAL WOMEN'S MOVEMENT ANTHOLOGY* 1-3 (Robin Morgan ed., 1984).

145. See *id.*

146. See, e.g., Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150; art. 2 of the Universal Declaration of Human Rights, Dec. 10, 1948, U.N.G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948) ("Race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" are the protected classes); U.N. CHARTER art. 1, para. 3 ("Race, sex, language, or religion").

147. See United Nations General Assembly Resolution 48/104 Containing the Declaration on the Elimination of Violence Against Women art. 1, Feb. 23, 1994, *reprinted* in 33 I.L.M. 1049, 1050 (1994). The Declaration defines "violence against women" to include "Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, *female genital mutilation* and other traditional practices harmful to women, non-spousal violence and violence related to exploitation." (emphasis supplied). This Resolution was adopted without a vote.

148. See Rosenthal, *supra* note 143, at A19 ("Nobody expects the sentence urging prohibition of genital mutilation to wipe it out. But generation after generation, the world would not even consider the idea of international prohibition. The declaration at least will give the grassroots workers status and authority.").

149. See Julie Flint, *The First Cut: Is it a Form of Torture or an Inalienable Rite of Passage?*, THE GUARDIAN (London), Apr. 25, 1994, at T010, *available* in 1994 WL 9291100 (quoting columnist A.M. Rosenthal).

Two of the U.N.'s most important documents for the protection of women and children—the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁵⁰ and the Convention on the Rights of the Child¹⁵¹—both seek to protect the rights of women and children in general without directly addressing cultural practices such as female circumcision.¹⁵² CEDAW merely mandates that States Parties take appropriate measures to modify all social and cultural patterns of conduct of men and women with a view to eliminating all customary and related practices rooted in the idea of male superiority to females, or vice versa.¹⁵³ States Parties should eliminate discrimination against women and protect their health and safety, including safeguarding the function of production.¹⁵⁴

Similarly, the Convention on the Rights of the Child, which opened for signature only a few years ago, made no specific reference to female circumcision or related customary practices.¹⁵⁵ On the contrary, the U.N., through the Convention, asks States Parties to respect the responsibilities, rights, and duties of parents in accordance with the applicable local custom.¹⁵⁶ However, States who ratify the Convention must take appropriate measures to abolish traditional practices which are prejudicial to children's health.¹⁵⁷ Clearly, female circumcision falls within the class of traditional practices that are prejudicial to the health of children, but an indirect prohibition of the practice through expansive reading of various United Nation's instruments does not carry the same measure of force and attention as would an international regime solely devoted to condemning and outlawing female circumcision. Perhaps the strongest statement in favor of the child is the prohibition by the Convention of torture or other cruel, inhuman, or degrading treatment.¹⁵⁸ However, this prohibition is only in the context of punishment or

150. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, U.N.G.A. Res. 34/180 (XXXIV), 34 U.N. GAOR, Supp. (46) 194, U.N. Doc. A/34/830 (1979), reprinted in 19 I.L.M. 33 (1980) [hereinafter CEDAW].

151. Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 25 (XLIV), U.N. GAOR, Supp. (No. 44), U.N. Doc. A/RES/44/25 (1989), reprinted in 28 I.L.M. 1457 (1989).

152. CEDAW mainly focuses on dismantling barriers to equality of status between men and women, while effectively ignoring notorious cultural practices such as honor-killing in the Middle East, female circumcision in Africa, the Middle East, and parts of the Asian continent, and marriage by capture, also prevalent in parts of Asia. On the other hand, the Convention on the Rights of the Child, which only recently opened for signatures, merely directs State Parties to take appropriate legislative or other measures to save the child from injury or other abusive treatment and to protect her from torture or other cruel, inhuman or degrading treatment, while skating around the subject of female circumcision. See *id.* arts. 19, 37(a).

153. See *id.* art. 5(a).

154. See *id.* art. 11(1)(f).

155. See Convention on the Rights of the Child, *supra* note 151. The Convention opened for signature on Jan. 26, 1990.

156. See *id.* art. 5.

157. See *id.* art. 24(3).

158. See Convention on the Rights of the Child, *supra* note 151. Article nineteen obligates States Parties to take all appropriate legislative, administrative, social, and educational measures to protect children from all forms of physical and mental violence, injury, or abuse—including sexual abuse—committed on children by persons who care for them.

deprivation of liberty following a suspicion for crime.¹⁵⁹ Moreover, it applies with equal force to male and female children.¹⁶⁰ Because of the unique position of the girl child in patriarchal societies, special rules must apply to protect them over and above the general rules laid down by the organization in its international instruments protecting children in general.¹⁶¹ The United Nations' Fourth World Conference on Women's Declaration and Platform for Action rightly recognized the disadvantaged position of the girl child.¹⁶² Therefore, the U.N. must recognize that girls deserve special protections over and above those accorded to boys.¹⁶³

Although the U.N. as a system has not done enough in the fight to eradicate female circumcision, the organization has made considerable progress in the last few years in placing the issue in the international limelight, as evidenced by its recent call for international support to facilitate a global ban on the practice of female circumcision.¹⁶⁴ In September 1997, the organization followed up with the appointment of a Somalian supermodel, a former victim, as its special ambassador for the Population Fund's campaign to eradicate female circumcision.¹⁶⁵ The U.N. hopes to send her all over Africa to speak out against female circumcision.¹⁶⁶ The organization must give her tools to work with by empowering grassroots women through its local specialized agencies, because no fundamental change in attitudes is possible without close cooperation of rural women.¹⁶⁷

The Beijing Declaration and Platform for Action also went a step further in drawing attention to the issue of female circumcision.¹⁶⁸ The Platform for Action recognized the divisive nature of the subject and sought thereby to draw strength from its diverse delegates by respecting their different conditions and circum-

159. See *id.* art. 37(a).

160. The Convention defines a "child" for its purposes to mean "[E]very human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." See *id.* art. 1.

161. In male-dominated African societies, for example, under this writer's Ibo succession laws, the rule is one of primogeniture. Female children have no succession rights. Moreover, the tradition encourages male-issue preference, because only male children can carry on the family name long after the passing of their father (since women tend to lose their identity after marriage). However, preference for male issues is not achieved by scientific or artificial methods.

162. See *United Nations Report of the Fourth World Conference on Women* para. 259 (Beijing, Sept. 4-15, 1995), U.N. Docs. A/CONF.177/20 of Oct. 17, 1995, and A/CONF.177/20/Add.1 of Oct. 27, 1995, reprinted in 35 I.L.M. 401, 460-61 (1996) [hereinafter Beijing Declaration].

163. Girls are more likely victimized by all kinds of violence, especially sexual violence—including rape, sexual abuse, exploitation, trafficking, and forced labor—as a result of youth, social pressures, lack of protective laws, or failure of authorities to enforce those laws. See *id.* para. 269.

164. See *UN Calls for International Support to End Female Genital Mutilation*, available in LEXIS, Hot Topics Library, Hot Law File (Int'l Law).

165. See *Supermodel Dirie in UN Genital Mutilation Campaign*, REUTERS, Sept. 18, 1997, (visited Sept. 26, 1997) <<http://www.customnews.cnn.com/cnews/pna>>.

166. *Id.*

167. An example is the grassroots efforts of the women of Burkina Faso in educating local women under the auspices of a National Committee Against Excision. See *infra* Part II.D; HOSKEN, *supra* note 1, at 244.

168. See, e.g., Beijing Declaration para. 259, *supra* note 162, at 460-61.

stances while acknowledging that some women face unique barriers to their empowerment.¹⁶⁹ It encouraged governments to support nongovernmental organizations in their efforts to promote changes in negative attitudes and practices towards girls, and to set up educational programs aimed at sensitizing and informing adults of the harmful effects of certain traditional or customary practices on girl children.¹⁷⁰ Further, governments must take steps to ensure that tradition and religion and their expressions are not a basis for discrimination against girls.¹⁷¹ They must develop policies and programs that emphasize formal and informal education programs that enable girl children to acquire knowledge, develop self-esteem, and assume responsibility for their own lives.¹⁷² In particular, men and women, including parents, must be specially educated by governments and the appropriate international organizations on the importance of girls' physical and mental health, including the need to eliminate discrimination, violence against girls, female circumcision, and sexual abuse.¹⁷³

Three months after the Beijing Conference, the U.N. General Assembly approved the Beijing Declaration and formed a three-tiered mechanism—comprising the Assembly, the Economic and Social Council, and the Commission on the Status of Women—to implement the Platform for Action.¹⁷⁴ The Resolution called on States and the U.N. system to implement the Platform for Action “by promoting an active and visible policy of mainstreaming a gender perspective at all levels.”¹⁷⁵ The Resolution further requested the Secretary-General, in cooperation with the Administrator of the U.N. Development Program, to ask the resident coordinators to apply the gender perspective fully and integrate it, as well as other recent similar global conferences, into their program.¹⁷⁶

Although the Beijing Declaration touched on a number of women's issues, it only made passing references to the issue of female circumcision.¹⁷⁷ Clearly, the U.N. cannot expect to stamp out an outdated traditional practice such as female circumcision by making it only a footnote in a widely publicized global confer-

169. See *id.* para. 3, at 409. For an example of how divisive the issue of female circumcision can be, especially as between African and Third World women on the one hand and Western women on the other, see *supra* note 131. But cf. Flint, *supra* note 149 (“I am absolutely against female circumcision but I am also absolutely against the way it is being handled by everybody else.”) (quoting a London-based Somali sociologist).

170. See Beijing Declaration para. 276(a)(b), *supra* note 162, at 462.

171. *Id.* para. 276(d) (emphasis supplied). Tradition and religion are the two most common justifications for the practice. Moslems tend to justify the practice on religious grounds, while non-Moslems cling to tradition (their ancestors did it).

172. See *id.* para. 277(d), at 462.

173. See *id.* at 462-63.

174. See United Nations General Assembly Resolution 50/203 Endorsing the Beijing Declaration and Platform for Action, Dec. 22, 1995, *reprinted in* 35 I.L.M. 485 (1996).

175. See *id.* para. 3, at 489.

176. See *id.* para. 34, at 491.

177. See, e.g., Beijing Declaration paras. 259 & 277(d), *supra* note 162, at 460-63.

ence.¹⁷⁸ The organization must redouble its efforts by sponsoring, in cooperation with one or more of its specialized agencies, a similar conference devoted solely to finding a solution to female circumcision wherever it exists.¹⁷⁹

B. THE UNITED STATES

Until relatively recently, female circumcision was not an issue in the United States but was generally regarded by Americans as "a grotesque foreign ritual,"¹⁸⁰ that is the female equivalent of male circumcision.¹⁸¹ Several reasons have been given for this nonchalance on the part of the United States,¹⁸² chief among them that female circumcision touches on an issue of sex that people generally would prefer to talk about only in private.¹⁸³ With the arrival of immigrants from countries that practice female circumcision, however, this conception is gradually changing.¹⁸⁴ Incidentally, although admirable efforts have been made to expose the practice of female circumcision in the United States,¹⁸⁵ USAID does not appear to be doing nearly enough to raise the consciousness of its administrators and contractors in the Third World about female circumcision and the need to incorporate measures to eradicate it in their program areas.¹⁸⁶ For the struggle to abolish female circumcision to succeed, the United States must provide the requisite leadership both inside and outside its borders.¹⁸⁷ One way to begin is to cast aside all notions of respect for or inviolability of other peoples' cultural

178. Perhaps in much deference to the African and Middle Eastern women present at the Conference, the Declaration only made passing references to the issue of female circumcision. See, e.g., *Beijing Declaration* paras. 259, 277(d), & 283(d), *supra* note 162, at 460-64.

179. The organization has all the parameters in place to squarely tackle this practice in much of the Third World. Its two very influential agencies, the WHO and UNICEF, maintain offices in every single country in the world and are always in touch with the grassroots population. See HOSKEN, *supra* note 1, at 330. The organization's lack of a political will to draw up a special instrument devoted to internationally forbidding the practice of female circumcision may not be unconnected with the fact that over two-thirds of its membership today is drawn from Third World countries, whose blind allegiance to their cultures often cloud the travails of female children and women who are the real victims of those same cultures.

180. See *End Genital Mutilation*, CHI. TRIB., Oct. 29, 1996, at 14, available in 1996 WL 2721454.

181. *Id.*

182. See *id.* (arguing that America's slow response was due partly to misconceptions, insufficiency of information, revulsion, and disbelief).

183. See 140 CONG. REC. S13100-01, S13101 (daily ed. Sept. 21, 1994) (statement of Senator Reid), available in 1994 WL 515176 (CONG. REC.).

184. *Id.*

185. Former congresswoman Patricia Schroeder (D-Colo.) successfully introduced a bill banning female circumcision in the United States and making it a crime to perform it in clinics, unless it is medically necessary for the health of the victim. See 18 U.S.C.A. § 116 (West Supp. 1998).

186. See HOSKEN, *supra* note 1, at 21.

187. The United States could use its influence in world politics positively in favor of the helpless girl child in the Third World. One way, for example, is to condition aid packages to countries certified by the State Department as supporting female circumcision to take steps to ensure its abrogation. Commendably, a similar policy is now in place with respect to loan applications from international financial institutions in which the United States is represented. See *infra* note 248.

practices, because a culture that harms little girls is hardly inviolable.¹⁸⁸ Although the United States may not police the world for the purpose of saving every woman or girl from their cultural or governmental policies, helping to eradicate female circumcision is indeed in its national interest because its unique political, economic, and technological position makes it a premier choice of asylum seekers.¹⁸⁹ Therefore, it is not enough for the country to promulgate laws banning female circumcision within its territory.¹⁹⁰ It must go the extra mile to fight this cultural practice at its source.

Although the United States is a relatively late starter in the struggle to abolish female circumcision, it has made up ground by its recent laws and policies on the practice.¹⁹¹

1. *Statutory and Administrative Policies*

The U.S. Congress has found that female circumcision, carried out by certain cultural and religious groups within the United States, often results in physical and psychological health effects detrimental to women, and that its unique circumstances place it beyond the ability of any single state or local jurisdiction to control.¹⁹² Accordingly, it has enacted a law making female circumcision a criminal offense in the United States.¹⁹³ That law formally criminalizes any knowing circumcision, excision, or infibulation of the labia minora or majora, or the clitoris of a girl under eighteen years of age;¹⁹⁴ but a surgical operation is not a violation of the law if it is medically necessary to the health of the patient and performed by a licensed medical practitioner, or if it is performed on a woman in labor or soon after delivery by a qualified and licensed medical practitioner or midwife.¹⁹⁵ Specifically, the belief of the person on whom the operation is to

188. See Beck, *supra* note 36, at 21. See also *UK Charity Mobilising to End Female Genital Mutilation*, *supra* note 23 (“[Female Genital Mutilation] is not cultural or traditional, it is removal of a healthy organ; this is a harmful practice endangering children’s lives”) (quoting the vice chairperson of the U.K.-based Foundation for Women’s Health Research and Dev.).

189. Compare Beck, *supra* note 36. Squarely confronting the problem of female circumcision at the source, rather than erecting walls at the borders to keep its victims out, appears more sensible. Recently, there has been at least one decided case in which female circumcision was found to constitute a basis for asylum in the United States. See, e.g., *In re Fauziya Kasinga*, No. A73 476 695 (Bd. Immigration App. 1996), reprinted in 35 I.L.M. 1145. The outcome of this case will *not* open the so-called floodgates for similar claims of asylum based on well-founded fears of persecution by reason of genital mutilation because the real victims of this ancient customary practice usually reside several thousand miles away from Western civilization. Maybe this fear of “floodgates” might finally help initiate preventive action on the part of the international community generally!

190. One such law was passed by Congress in 1996. See 18 U.S.C.A. § 116 (West Supp. 1998).

191. See, e.g., 18 U.S.C.A. § 116 (West Supp. 1998); 22 U.S.C.A. § 262k-2 (West Supp. 1998); and 8 U.S.C.A. § 1374 (West Supp. 1998).

192. See 18 U.S.C.A. § 116 (West Supp. 1998).

193. See *supra* note 191.

194. See 18 U.S.C.A. § 116 (West Supp. 1998). The statute prescribes a five-year sentence for its violation. 18 U.S.C.A. § 116(a) (West Supp. 1998).

195. See 18 U.S.C.A. § 116(b)(1)(2) (West Supp. 1998).

be performed, or of any other person, that her or their cultural belief requires the operation, is immaterial.¹⁹⁶

Under the Immigration and Nationality Act, immigrants who voluntarily subject their daughters to circumcision in the United States today will probably lose their residency status following the penalties prescribed under section 116.¹⁹⁷ If the parent, parents, or relatives of a girl child who undergoes the operation are naturalized U.S. citizens, they ought to lose their rights to raise that child, in addition to suffering the full penalties of the law.¹⁹⁸ Female circumcision leaves no less a physical or psychological scar on girls than rape, incest, or other forms of sex crimes or abuse against children.¹⁹⁹ Commendably, at least three states, namely Illinois, North Dakota, and Minnesota, have taken measures to stop the practice in their jurisdictions by enacting laws specifically making female circumcision a criminal offense.²⁰⁰

The current U.S. administrative policy toward the issue of female circumcision was exemplified by its recent condemnation of an Egyptian court's decision striking down an Egyptian government's ban on female circumcision.²⁰¹ Recently, the Board of Immigration Appeals (BIA) blazed a new trail by holding that,

196. 18 U.S.C.A. § 116(c) (West Supp. 1998). This provision prospectively destroys the defense of cultural integrity or sovereignty that defenders of female circumcision are always eager to cite. An immigrant defender of female circumcision will be hard pressed trying to defend a culture that in essence assaults the *culture* of the host country.

197. Section 116 does not say anything about revocation of residency status of an alien found to have engaged in this practice. However, a combined reading of sections 212(a)(2)(A)(i) and 237(a)(2)(A)(i) of the INA, 8 U.S.C.A. §§ 1182(a)(2)(A)(i), 1227(a)(2)(A)(i) (West Supp. 1998) shows that such an immigrant who is convicted under section 116 will now most probably be deported if the offense is committed within five years of acquiring residency status because the offense created under section 116 is presumably one that involves "moral turpitude." Even if the immigrant committed the section 116 offense more than five years after acquiring residency status, section 101(a)(43)(F) of the INA, 8 U.S.C.A. § 1101(a)(43)(F) (West Supp. 1998) still brings the offense within the definition of "aggravated felony" since it attracts a punishment of up to five years imprisonment. Under section 237(a)(2)(A)(iii) of the INA, conviction for aggravated felony is an independent ground for deportation of an alien from the United States, regardless of length of residency prior to commission of the qualifying offense. *See* 8 U.S.C.A. § 1227(a)(2)(A)(iii) (West Supp. 1998).

198. Although section 116 does not cover this aspect, the state in which the parents or relatives of the victim reside could conceivably seize the child on the basis of the provisions of the relevant child welfare laws. For example, in Texas, a government entity could request permission of the court to take possession of a child in an emergency by showing, through an affidavit, that the child faces an immediate danger to her physical health or safety, or has been the victim of neglect or sexual abuse, and that continuation of that child in the home is contrary to her welfare. *See* TEX. FAM. CODE ANN. § 262.101(1) (West Supp. 1998).

199. Regardless of how much responsible parents despise the use of "abuse" in reference to their conduct toward their children, female circumcision, to the extent that it is a sexual conduct that harms a child's mental, emotional and physical welfare, is a form of abuse in law. *See, e.g.,* TEX. FAM. CODE ANN. § 261.001(1)(C)(E)(F) (West Supp. 1998) (defining what constitutes "abuse" under Texas law).

200. *See, e.g.,* 720 ILL. COMP. STAT. 5/12-32(b), 5/12-33(c), 5/12-34(c) (West 1997); N.D. CENT. CODE § 12.1-36-01(1) (1997); MINN. STAT. § 609.2245(1) (1998).

201. *See U.S. Denounces Egypt Court Over Genital Mutilation*, DOW JONES INT'L NEWS SERV. (Dow Jones & Co.) (June 26, 1997), available in WESTLAW, Midnews Database.

in certain circumstances, fear of female circumcision could constitute extreme hardship or "well-founded fear of persecution," justifying the grant of asylum status to an applicant.²⁰² This decision of the BIA has provided a road map "which may easily be extrapolated and applied in upcoming adjudications, not only of gender-based asylum claims, but in many other asylum applications."²⁰³ It is commendable.

C. GREAT BRITAIN, CANADA, FRANCE AND OTHER WESTERN COUNTRIES

Today, a few Western countries have implicitly or explicitly taken a stand against female circumcision through their penal laws.²⁰⁴ Sweden has prohibited the practice since 1982.²⁰⁵ Britain abolished the practice in 1985.²⁰⁶ However, although the British prohibition has been in force since September 1985, there is no recorded conviction credited to it. And the practice continues among immigrant communities in Britain, often with the active encouragement and collusion of local touts.²⁰⁷

Since Canada was cited by the WHO as one of at least forty countries involved in the practice of female circumcision,²⁰⁸ and following considerable pressure from the Quebec Order of Nurses²⁰⁹ and various rights groups, including the Ontario Human Rights Commission,²¹⁰ a bill was introduced in the Canadian House of Commons in 1996 specifically making female circumcision a crime punishable by as many as fourteen years imprisonment.²¹¹ The new law became effective in May 1997 and classifies female circumcision as aggravated assault.²¹²

202. See *In re Fauziya Kasinga*, *supra* note 189, at 1152.

203. *Id.* at 1158 (Board Member Lory D. Rosenberg concurring).

204. Great Britain, the United States, Sweden, and recently Canada now have laws expressly outlawing female circumcision. However, France, the Netherlands, Belgium, and Switzerland each has existing penal laws which implicitly prohibit the practice. See Layli Miller-Bashir, Note, *Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law*, 4 AM. U.J. GENDER & L. 415, 433 (1996).

205. *Id.* at 434 n.119.

206. See Prohibition of Female Circumcision Act, 1985, ch. 38 (Eng.), § 1(a)(b). The Act also applies to Northern Ireland.

207. See Flint, *supra* note 149, at T010 (reporting that the law merely drove the practice underground in Britain). The law merely succeeded in presenting immigrant parents with a devil's alternative: to perform the ritual clandestinely, or to send their children back to Africa for this purpose. *Id.*

208. See Lisa Priest, *Our MDs Involved in Genital Mutilation*, TORONTO STAR, Oct. 3, 1994, at A9, available in 1994 WL 7994094; and Allan Thompson, *Mutilating Girls' Genitals Illegal, Cops Says*, TORONTO STAR, Oct. 4, 1994, at A10, available in 1994 WL 7993953.

209. See Mike King, *Nurses Support Proposal to Outlaw Female Circumcision*, MONTREAL GAZ., Oct. 20, 1995, at A4, available in 1995 WL 6987511.

210. See, e.g., Jacquie Miller, *Ontario Rights Panel Condemns Female Genital Mutilation*, MONTREAL GAZ., May 22, 1996, at A13, available in 1996 WL 4186171.

211. See David Vienneau, *Sex with Kids Abroad Illegal Under New Bill—Canadians Would Be Tried Once They Return Home*, TORONTO STAR, Apr. 19, 1996, at A11, available in 1996 WL 3361409.

212. See R.S.C. 1985, ch. C-46, § 268(1) (Can.) (providing that wounding, maiming, disfiguring, or life endangerment are ways of committing aggravated assault).

The new Canadian law parallels the ones already in force in England and the United States in virtually all respects, except in terms of severity of punishment.²¹³ A similar punishment was recently recommended for Australia's state of New South Wales by its Minister for Women's Affairs, in an effort to stop the practice of female circumcision in that state.²¹⁴

France is the only nation that has actually prosecuted parents alleged to have carried out the procedure within its borders.²¹⁵ France punishes female circumcision using its law that classifies any violence to a child resulting in mutilation as a crime.²¹⁶ The French position sends a clear signal to apologists of this cultural practice that observance of their cultural heritage inside French territory must yield to considerations of decency and dignity of the girl child. It is an immense moral victory for rural and international activists against this practice.²¹⁷

D. ATTITUDE OF AFRICAN COUNTRIES

In general, the attitude of African countries in the struggle to eradicate female circumcision has left much to be desired. Only a handful of African countries have attempted to legislate against the procedure or introduce policies aimed at eradicating it in their countries,²¹⁸ but lack of enforcement mechanisms and the transient nature of African governments have negated the effects of even these measures.²¹⁹ Nigeria, the self-styled African "giant," has no official policy geared toward stamping out female circumcision, even though a 1981 Federal Ministry of Health official survey revealed that the practice was still prevalent in virtually all the states within the federal republic.²²⁰ In 1946, Sudan amended its Penal Code to add a new section prohibiting female circumcision, but the amendment was a virtual sham because it allowed practitioners to continue removing the projecting part of the clitoris while forbidding infibulation.²²¹ An attempted prosecution under the law led to serious civil disturbances.²²²

Today, only Egypt maintains a semblance of a ban against female circumcision, which its Health Ministry imposed in 1995. But even this ban was recently over-

213. The sentence is fourteen years under section 268(2) of the Canadian law. R.S.C. 1985, ch. C-46, § 268(2).

214. See *Genital Mutilation Outlawed*, MONTREAL GAZ., Mar. 7, 1994, at C1, available in 1994 WL 7585369.

215. See Rone Tempest, *Ancient Traditions vs. The Law: Prosecutions of Two Immigrants for 'Female Circumcision' in France Highlight an Increasingly Common Cultural Clash—Customs in One Part of the World are Viewed as Repulsive in Another*, L.A. TIMES, Feb. 18, 1993, at A1, available in 1993 WL 2348929.

216. *Id.* See C. PEN., art. 312 (1993-94).

217. *Id.*

218. See HOSKEN, *supra* note 1, at 19.

219. *Id.*

220. See *id.* at 192.

221. See Section 284-A(1)(2) of the Sudanese Penal Code, reprinted in HOSKEN, *supra* note 1, at 96.

222. HOSKEN, *supra* note 1, at 96-97.

turned by its State Court.²²³ African leaders should look no further than the Organization of African Unity (OAU)²²⁴ and the African Charter on Human and Peoples' Rights²²⁵ to protect helpless women and female children trapped by this culture.²²⁶ The African Charter guarantees the inviolability of every individual African "without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."²²⁷ It prohibits all forms of exploitation and degradation, including, but not limited to, torture, cruel, inhuman or degrading punishment and treatment.²²⁸ Further, it obligates African states to promote and protect the morals and traditional values recognized by their communities,²²⁹ and to ensure elimination of every discrimination against women and children, whose internationally guaranteed rights must be respected and protected.²³⁰ More importantly, the African Charter recognizes that those traditional values, which a State or the individual is duty-bound to promote and preserve, must be positive African cultural values only.²³¹

Accordingly, no African state or individual may, consistent with the African Charter, practice, defend, or condone a discriminatory and cruel practice, such as female circumcision, which exposes its victims to physical and psychological harm, without violating the provisions of the African Charter.²³² This conclusion is consistent with the view that a document that was drawn up to promote and protect human and peoples' rights could not be interpreted to endorse a practice such as female circumcision, which tortures and mutilates "half of the population that the document aims to protect."²³³ The African Charter further obligates African states to promote the rights and freedoms guaranteed to the people by the Charter through teaching, education, and publication.²³⁴ In addition, as a measure of safeguard, a special commission was mandated to collect documents, undertake studies and research, organize seminars, symposia, and conferences, disseminate information, and encourage national and local institutions concerned

223. See *Egyptian Court Overrules Government Ban on Female Circumcision*, *supra* note 76.

224. See Charter of the Organization of African Unity, May 25, 1963 (entered into force, Sept. 13, 1963), 479 U.N.T.S. 39, *reprinted in* 2 I.L.M. 766 (1963) [hereinafter OAU Charter].

225. See African Charter on Human and Peoples' Rights, June 26, 1981 (entered into force, Oct. 21, 1986), O.A.U. Doc. CAB/LEG/67/3 Rev. 5, *reprinted in* 21 I.L.M. 59 (1982) [hereinafter African Charter].

226. Only about thirty-six African States have so far ratified the Charter on Human and Peoples' Rights since 1986. See BURNS H. WESTON ET AL., *BASIC DOCUMENTS IN INTERNATIONAL LAW AND WORLD ORDER* 897, 929 (2d ed. 1990).

227. See African Charter, *supra* note 225, arts. 2, 4. Article 2 conspicuously omits "gender" from its classification. *Id.* art. 2.

228. See *id.* art. 5.

229. See *id.* art. 17(3). *But see id.* art. 29(7).

230. See *id.* art. 18(3).

231. See *id.* art. 29(7).

232. See, e.g., *id.* arts. 4, 5 & 16(1).

233. See *What's Culture Got to Do With It?*, *supra* note 8, at 1955-56.

234. See African Charter, *supra* note 225, art. 25.

with human and peoples' rights, including governments, to respect the guaranteed human and peoples' rights.²³⁵ The special commission should also formulate principles and rules for solving human rights-related problems, which African governments may adopt as a model in enacting appropriate human rights-based laws.²³⁶

Unfortunately, these lofty ideals embodied in both the OAU and the African Charters have largely remained dead letters because the inherent problems that have plagued the OAU as an organization since its birth have prevented it from acting as a sum of its parts.²³⁷ In order to effectively eradicate a harmful traditional practice such as female circumcision in Africa, Africans must respect the provisions of the African Charter, particularly articles twenty-five and forty-five, both of which encourage education as a necessary tool for preserving and protecting the guaranteed rights, and involve religious and traditional leaders in this process.²³⁸

III. Mobilizing to End Female Circumcision

Without doubt, female circumcision in Africa and the Middle East is a human rights violation, but the dilemma lies in balancing the need to respect cultural differences with the necessity to uniformly enforce human rights standards.²³⁹ The time has finally come for the opponents of this practice to engage in an international "multicultural dialogue and grassroots advocacy" with rural women by educating them on the health implications of female circumcision.²⁴⁰ Women's groups, such as the International Federation of Women Lawyers and the National Organization for Women, must mobilize to spread the message among their grassroots members.²⁴¹ At the international level, the U.N. must show its support for victims of this cultural practice by convening an international conference to draw up a regime specifically making female circumcision an international crime, and by exposing countries certified to condone this practice to varying degrees

235. See *id.* art. 45(1)(a).

236. See *id.* art. 45(1)(b).

237. For a concise treatment of the ideological differences between African States prior to the formation of the OAU, see VINCENT THOMPSON, *AFRICA AND UNITY* (1969); William I. Zartman, *The OAU in the African State System*, in *THE OAU AFTER TWENTY YEARS* 41 (Yassin El-Ayouty et al. eds., 1984) ("There is no OAU; there are only members, and their interests come first."), cited in John T. Okwubanego, *The OAU and Collective Security in Africa: Policing A Divided Continent* (1993) (unpublished M.A. half-thesis, The Fletcher School of Law and Diplomacy, Tufts University) (on file with the *International Law Review Association* of SMU School of Law).

238. See Sharif, *supra* note 19, at 424.

239. See Dimauro, *supra* note 45, at 338.

240. *Id.* at 340.

241. One such seminar recently found "a serious gap" between government policies on women's reproductive health issues and their actual execution, and concluded that many African governments have failed to address traditional practices harmful to women. See *Africa: Limited Advances in Productive Health Rights for Women*, INTER PRESS SERV. (Global Information Network) (Aug. 31, 1997), available in 1997 WL 13256336.

of international sanctions if they fail to put in place credible mechanisms for its eradication.²⁴²

Until that is done, however, international activists and local rights groups must redouble their efforts in educating both rural women and men that female circumcision violates the rights of women and girl children as guaranteed by the relevant international instruments, including the Universal Declaration of Human Rights,²⁴³ CEDAW,²⁴⁴ and the Convention on the Rights of the Child.²⁴⁵ For their part, Western nations must not only enact local laws that forbid the practice within their borders, but must use their strong influence within international organizations to bring the rest of the world's attention to this severe human rights and health issue.²⁴⁶ In this respect, the United States gets credit for providing appropriate leadership with its recent law directing executive directors of all its relevant international financial institutions to oppose loan applications by countries certified to condone female circumcision that have not taken adequate steps to eradicate it.²⁴⁷ A similar move by other economic powers, such as Canada, the United Kingdom, Germany, and France will surely get the attention of Third World countries that have no mechanisms in place to arrest this obnoxious practice.²⁴⁸

IV. Conclusion

Female circumcision may be a Third World cultural "thing," but it is in the interest of all nations that it be eradicated. Because it is performed without the consent of the victim, and endangers her immediate and long-term health, it is a form of torture and hence a human rights violation. And because of the demo-

242. *But cf.* Annas, *supra* note 59, at 353 (calling for the amendment of article 24(3) of the Convention on the Rights of the Child to specifically require States to abolish all traditional practices prejudicial to children's health, including female circumcision).

243. Universal Declaration of Human Rights, Dec. 10, 1948, U.N.G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), arts. 2, 5, and 7.

244. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, U.N.G.A. Res. 34/180 (XXXIV), 34 U.N. GAOR, Supp. (No. 46) 194, U.N. Doc. A/34/830 (1979), *reprinted in* 19 I.L.M. 33 (1980), art. 5(a) (abolition of social and cultural practices based on women's inferiority to men); arts. 14(2), 15.

245. Convention on the Rights of the Child, Nov. 20, 1989, U.N.G.A. Res. 25 (XLIV), 44 U.N. GAOR, Supp., U.N. Doc. A/RES/44/25 (1989), *reprinted in* 28 I.L.M. 1457 (1989), arts. 2(2), 3(1), 12(1), 16, 19, 24(3), 34, & 37.

246. Western nations provide much of the funding today for the WHO and other U.N. specialized agencies such as UNICEF and UNESCO. They are therefore in a position to set the agenda for these agencies and maintain control over the pace and substance of their programs. *See* Dimauro, *supra* note 45, at 344.

247. *See* 22 U.S.C.A. § 262k-2(a) (West Supp. 1998).

248. Virtually all Third World countries depend on loans from the International Monetary Fund (IMF) and the World Bank for their economic and social development. Therefore, attaching this extra condition to the institutions' now popular Structural Adjustment Programs (SAP) will only enhance the freedom of millions of women and generations of girl children yet unborn from this practice. *But see* Beck, *supra* note 36.

graphics of victims of this practice (women and children from high refugee-producing regions), recent laws and immigration rulings in the United States and Canada, as well as favorable laws in Britain, Sweden, France, Australia, and the Netherlands might increase international migration by victims who up to now had nowhere to run.²⁴⁹

The U.N., in spite of its numerical domination by Third World countries, must still provide a forum for an international colloquy designed to fashion an instrument that will globally ban female circumcision by specifically designating it a health and human rights issue. Such a regime will make it easier to identify countries that actively condone the practice when they fail to ratify the document, and will open the door for international collective or individual sanctions against such nations. Finally, African and Middle Eastern men must free their women and girls from the shackles of this terrible cultural practice, which continues to thrive because of their vanity. Most of all, education of the masses of women in the rural areas must become a priority, because "[education] is a vital need in the modern world, a question of life or death for many, and for all a choice between stagnation and progress."²⁵⁰ For the African or Middle Eastern woman or girl, it must be seen as the *only* choice.²⁵¹

249. Already, the United Nations High Commissioner for Refugees has urged governments to accord refugee status to women who suffered rape or sexual violence, or who have a well-founded fear of female genital mutilation. See *Abused Women Get U.N. Backing*, TORONTO STAR, Feb. 24, 1996, at A14, available in 1996 WL 3352486 (persuading governments to liberally interpret the 1951 U.N. Refugee Convention to include sexual violence, race, nationality, and religion among the grounds for justifying an applicant's "well-founded fear of persecution.').

250. See HOSKEN, *supra* note 1, at 324 (quoting EVELYNE SULLEROT, WOMAN, SOCIETY, AND CHANGE 173 (1973)).

251. The only way to hasten the demise of this culture is by making women and girls aware of their human rights; that they really do not have to submit to humiliation in order to be accepted into their cultures. Further, only educated and emancipated women have any chance of breaking into traditional male strongholds such as politics and the judiciary, which shape all national and international policies. See, e.g., HOSKEN, *supra* note 1, at 26.

