

December 1989

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Recommended Citation

Katherine Brennan, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7(3) LAW & INEQ. 367 (1989).

Available at: <https://scholarship.law.umn.edu/lawineq/vol7/iss3/2>

Minnesota Journal of Law & Inequality is published by the University of Minnesota Libraries Publishing.



The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study

By Katherine Brennan*

The practice of female circumcision,¹ prevalent in many traditional societies throughout the world, became widely publicized in Western countries in the late 1970's.² The revelation that girls have their genitals excised as part of an ancient cultural practice shocked and angered many in the West who learned about this practice for the first time.³ This angry reaction resulted in international efforts to eradicate female circumcision. As part of these efforts, a London-based human rights organization presented a detailed report about the painful consequences of female circumcision to the human rights bodies of the United Nations in 1981.⁴ This presentation raised an important question which has plagued human rights proponents for many years. Is it appropriate for the United Nations' human rights system to criticize longstanding cultural practices that conflict with its established human rights norms?

This question has arisen in the context of increasing acceptance of the theory of cultural relativism, and has sparked exten-

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1. "Female circumcision" is an expression used in the popular media and scholarly literature for a variety of female genital operations performed in traditional societies, generally as part of an initiation ritual. The operations involve excising varying portions of the female genitalia, depending on the custom of the practicing society. For a discussion of the types of operations, see *infra* notes 27-28 and accompanying text. I have chosen to use "female circumcision" rather than "female genital operations" because it is less cumbersome.

2. Rhoda Howard, *Women's Rights in English-Speaking Sub-Saharan Africa*, in *Human Rights and Development in Africa* 46, 66 (Claude Welch & Ronald Meltzer eds. 1984).

3. Minority Rights Group, *Female Circumcision, Excision and Infibulation*, Report No. 47, at 3 (3d ed. 1985) [hereinafter *Minority Rights Group*].

4. See *infra* notes 61-63 and accompanying text for a discussion of this presentation.

sive debate between cultural relativists and human rights proponents.⁵ Cultural relativists criticize the current international human rights system because, in its search for potential human rights violations, it looks at cultural practices which have been condoned for centuries by the societies which engage in them. These critics assert that cultural practices have a legitimate function indigenous to the culture and that judging these practices according to international norms imposes outside values upon the society. Human rights proponents respond that their evaluation of cultural practices is based on universally accepted norms and, therefore, does not impose the views of outsiders.⁶

The scholarly literature discussing this conflict between cultural relativism and international human rights theory has been primarily of a theoretical nature. As part of this theoretical analysis, cultural relativists often mention female circumcision as an example of traditional practices that should not be evaluated by outsiders.⁷ The United Nations human rights bodies have already chosen, however, to criticize the practice of female circumcision. This article will look closely at the form this criticism has taken in one of the U.N. bodies in the human rights system, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (hereinafter "the Sub-Commission").⁸ The purpose of

5. For analyses of this topic see generally, Abdullahi An-Na'im, *Religious Minorities under Islamic Law and the Limits of Cultural Relativism*, 9 Hum. Rts. Q. 1 (1987); Philip Alston, *The Universal Declaration at 35: Western and Passé or Alive and Universal?*, 30 Int'l Commission of Jurists Rev. 60 (1983); Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 Hum. Rts. Q. 400 (1984) [hereinafter *Cultural Relativism*]; Jack Donnelly, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights*, 76 Am. Pol. Sci. Rev. 303 (1982) [hereinafter *Human Rights and Human Dignity*]; Rhoda Howard, *Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons*, 6 Hum. Rts. Q. 160 (1984); Rhoda Howard, *supra* note 2; Cornelius Murphy, *Objections to Western Conceptions of Human Rights*, 9 Hofstra L. Rev. 433 (1981); Adamantia Pollis & Peter Schwab, *Human Rights: A Western Construct With Limited Applicability*, in *Human Rights: Cultural and Ideological Perspectives* 1 (A. Pollis & P. Schwab eds. 1979); Alison Renteln, *The Unanswered Challenge of Relativism and the Consequences for Human Rights*, 7 Hum. Rts. Q. 514 (1984); Fernando Teson, *Human Rights and Cultural Relativism*, 25 Va. J. of Int'l L. 869 (1985); R.J. Vincent, *Human Rights and International Relations* (1986).

6. For an example of practices that conflict with human rights norms, but that serve a cultural function, see Rhoda Howard, *supra* note 2, at 58. Howard describes the function of traditional African marriages as the formation of alliances by lineage. She asserts that even though the customs associated with these marriages violate U.N. human rights norms because they subordinate women, they should not be judged by norms based on individual rights theory because their function is not primarily based on the needs of the individual. *Id.* at 58. For a discussion of the theory of the universality of human rights, see R.J. Vincent, *supra* note 5, at 48-50.

7. Alison Renteln, *supra* note 5, at 514.

8. The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities is made up of 26 experts in the field of human

this analysis is to benefit from the Sub-Commission's experience in order to evaluate two aspects of the conflict between cultural relativism and human rights theory — whether cultural relativism has had a practical effect on the work of the international human rights system and whether human rights bodies have any appropriate role with regard to evaluating cultural practices.

The first section of this article will outline the current debate conducted in human rights literature about cultural relativism. The following sections will briefly describe the practice of female circumcision and the political context in which the issue reached the Sub-Commission. This description will focus on female circumcision as practiced in Africa, because the Sub-Commission's work had that focus. I will then describe in detail how the Sub-Commission members resolved the conflict between cultural relativism and human rights theory.

I will conclude that the theory of cultural relativism had a profound effect on the Sub-Commission's evaluation of female circumcision, but that this influence did not prevent the Sub-Commission members from concluding that the practice is a violation of human rights. Regarding the more difficult question — whether this action was an appropriate exercise of the Sub-Commission's function — I will conclude that the human rights system has a legitimate role to play in evaluating cultural practices. This role is different from the one it has with regard to conduct which is not rooted in cultural values. The function of human rights norms, with respect to cultural practices, is to propose a set of values to guide behavior in all societies. These values, such as the value of preserving the physical integrity of young girls, may or may not take hold within the culture to which they are addressed. If they do take hold, these new ideas have the power to change longstanding attitudes and behavior in both Western and non-Western societies without imposing outside norms.

rights who investigate instances of human rights violations and communicate information about these violations to its parent bodies of the U.N. Katherine Brennan, Reed Brody, and David Weissbrodt, *The 40th Session of the U.N. Sub-Commission of Prevention of Discrimination and Protection of Minorities*, 11 Hum. Rts. Q. 295, 295 n.2 (1989). The members are supposed to serve in their individual capacity, but they often represent the views of the government from which they come. *Id.* at 296, n.4. The membership is balanced geographically with an established number of representatives from each of five regions—Africa, Asia, Eastern Europe, Latin America, and “Western Europe” (which includes the United States and other Western countries). Larry Garber & Courtney O'Connor, *The 1984 UN Sub-Commission on Prevention of Discrimination and Protection of Minorities*, 79 Am. J. Int'l L. 168, 169, n.1 (1985).

I. Cultural Relativism and the Response of Human Rights Proponents

A. Cultural Relativism

Cultural relativism can be described, in its simplest form, as the theory that there is infinite cultural diversity and that all cultural practices are equally valid.⁹ There are no absolutes upon which to judge one practice against another because, in the words of one scholar, "the principles that we may use for judging behavior or anything else are relative to the culture in which we are raised."¹⁰ This view of cultural practices calls into question the legitimacy of human rights theory, which purports to establish principles for judging the conduct of all cultures.

Cultural relativism is not a new theory. Western scholars have debated for two centuries the question of whether claims of rights should be evaluated within a cultural and temporal context.¹¹ The relativist view has gained in popularity, particularly during the twentieth century, because this theory provides conceptual support for the anti-colonialist movements in the non-Western world.¹² Some proponents of human rights theory assert that this increased acceptance of cultural relativism offers a growing threat to the validity of the current international human rights system.¹³

That threat arises out of the relativists' belief that cultures have varied values and methods of protecting those values.¹⁴ Rela-

9. A seminal work in the field of anthropology discussed the way in which cultural practices evolve as part of an integrated pattern within each society. Ruth Benedict, *Patterns of Culture* 45-46 (1934). "The tabus on killing oneself or another . . . though they relate to no absolute standard, are not, therefore fortuitous. . . . Taken up by a well-integrated culture, the most ill-assorted acts become characteristic of its peculiar goals, often by the most unlikely metamorphoses." *Id.* at 46. Benedict is often cited for the proposition that all cultural practices are valid relative to their own culture. See, e.g., Alison Renteln, *supra* note 5, at 520.

10. Melville Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism* 14 (1973).

11. R.J. Vincent, *supra* note 5, at 37 (1986).

12. *Id.* at 37. It follows from the theory of cultural relativism that one culture cannot impose its values on another. Hence, a corollary of relativism is the view that Western individuals who view their cultures as superior are engaging in a form of cultural imperialism. *Id.* at 38.

13. Alison Renteln, *supra* note 5, at 520.

14. See, e.g., Rhoda Howard, *supra* note 2, at 60-61. Howard uses as an example of culturally based protections the traditional African customs of polygyny and bridewealth (payment of money by the father of the prospective husband to the bride's father). She asserts that these practices were created, at least in part, to protect women. In the case of polygyny, she states that multiple wives assist men in accumulating economic resources, but they also allow women to share in child-rearing and ensures postpartum celibacy so that women can space their children properly. *Id.* at 60. The bridewealth acts as a sort of insurance; if the husband turns out to be unreliable or wants a divorce, the money can be used to support the

tivists generally agree with human rights proponents that all cultures value human dignity, but assert that non-Western societies do not use an individual rights approach to protect that dignity. Instead, in some non-Western societies the dignity of the individual is preserved through his or her membership in the community, while in others it is preserved through fulfillment of prescribed duties.¹⁵ If societies have adequate internal systems for protecting their own members, human rights instruments are unnecessary and irrelevant. In fact, judging cultural practices against international norms would be inappropriate according to cultural relativists because it imposes external values on those cultures.¹⁶

B. *The Response by Human Rights Proponents*

The application of cultural relativism to human rights theory has naturally prompted replies by proponents of the current international human rights system. Two major arguments are used to refute the claims of cultural relativists. One is the universalists' reply and the other is the approach of positivism.

Universalism, which draws from the natural law tradition in Western jurisprudence, is the theory that there exists some set of standards which all cultures espouse.¹⁷ These universal principles transcend cultural differences and serve as the authority for adopting international human rights. This theory assumes that all cultures value the protection of individual human dignity and that they would establish similar minimum standards for protecting their individual members. The official doctrine underlying the current international human rights systems is that the instruments which make up developing international human rights law enumerates these universal minimum standards.¹⁸ If at least some

wife and children. *Id.* at 61. Although many Westerners see bridewealth as demeaning to women, Howard states that "[A]n attempt to abolish it by legislation could well interfere with traditional means of protecting a woman from abuse by her husband." *Id.* at 61.

15. Jack Donnelly, *Human Rights and Human Dignity*, *supra* note 5, at 306-10.

16. Another argument which cultural relativists use to criticize human rights theory is that the process by which the U.N. norms were established was dominated by Western countries. Based on this assertion, these scholars state that the practices of non-Western countries should not be evaluated by these norms. See Adamantia Pollis & Peter Schwab, *supra* note 5, at 1. Pollis and Schwab also argue that most human rights are based on individual rights theory defined by such Western philosophers as John Locke and Thomas Jefferson. *Id.* at 2-4. *But see* Yosgesh Tyagi, *Third World Response to Human Rights*, *Indian J. of Int'l L.* 119, 124-31 (1981) (arguing that the non-Western world has had a significant role in the promulgation of U.N. human rights norms).

17. R.J. Vincent, *supra* note 5, at 48-49.

18. *Id.* at 47. Even universalist scholars note, however, that the entire range of norms promulgated by the U.N. are not universal. There is no agreement about

of the rights enumerated by the U.N. human rights instruments are universal, that core of rights would provide a standard against which cultural practices could legitimately be judged. Consequently, there has been a rather urgent search by some human rights scholars for this set of universal rights.¹⁹

The positivist²⁰ response to cultural relativism is that, regardless of the conflicting ideologies and cultural values to which nations adhere, the U.N.-promulgated norms represent agreements by these participating nations to work toward a common goal.²¹ Whether or not particular member states have a tradition of valuing individual dignity is irrelevant. If they have ratified human rights instruments based on this theory of individual rights, these states have participated voluntarily in the U.N. process and have obligated themselves to protecting these rights.²² Just as the theory of positivism in Western jurisprudence asserts that law derives its authority from the consent of those governed, adherents of positivism in international human rights law assert that the authority for these rights is derived from the consent of the participant countries.²³ Scholars who follow this approach respond to the criticism of cultural relativists by pointing out that countries that participate willingly in the U.N. process and that ratify the human

what list of rights constitutes the core of universal rights and this question is debated in the literature. Philip Alston suggests that there is little controversy over the right to life; the right not to be enslaved, tortured, or arbitrarily arrested; the right to work; the right to an adequate standard of living; and the right to education. Philip Alston, *supra* note 5, at 60. Jack Donnelly's list is significantly shorter; he states that the prohibition on torture and the requirement of procedural due process in imposing legal punishment are espoused "by virtually all cultures." Jack Donnelly, *Cultural Relativism*, *supra* note 5, at 404-05.

19. See, e.g., Alison Renteln, *supra* note 5, at 540. "There is an urgent need to adopt a broader view of human rights which incorporates diverse concepts. . . . The hope is that greater cross-cultural understanding will shed light on a common core of acceptable rights." *Id.* at 540. The idea that there exists a set of universal rights generally follows from a twentieth century version of natural law. R.J. Vincent, *supra* note 5, at 49. A belief in natural rights is an attractive response to cultural relativism, because rights which are from a higher authority than the state, that are unalterable and "eternal," would transcend any cultural differences that might exist.

20. For a discussion of positivism as applied to international human rights law, see Jerome Shestack, *The Jurisprudence of Human Rights*, in *Human Rights in International Law* 69, 79-81 (Theodor Meron ed. 1985).

21. Rudolf Bystricky, *The Universality of Human Rights in a World of Conflicting Ideologies*, in *International Protection of Human Rights* 83, 84 (Asbjorn Eide & August Schou eds. 1967). Bystricky argues that there is international consensus on at least some of the rights enumerated by the United Nations human rights instruments. *Id.* at 87.

22. *Id.* at 83. Bystricky asserts that "[w]e can say without exaggeration that almost every state has at some time or other appealed to the articles of the Universal Declaration." *Id.*

23. Jerome Shestack, *supra* note 20, at 79.

rights treaties cannot claim to be exempt from the standards to which they voluntarily subject themselves.²⁴

The following two sections will describe the practice of female circumcision and the evolution which this practice has undergone in the twentieth century due both to changes within traditional African society and to external pressures from the West. The last section describes the Sub-Commission's efforts to grapple with female circumcision from a human rights perspective and tests the assertions of cultural relativists and human rights proponents about the legitimacy of the human rights system.

II. A Description of the Practice of Female Circumcision

Although the origins of female circumcision are unknown, the practice has been traced back over two thousand years.²⁵ It is currently practiced in more than forty countries.²⁶ "Female circumcision" is actually a group of similar practices involving excision of varying degrees of the female genitalia. The practices range from clitoridectomy, removing the tip of the clitoris or the entire clitoris, to infibulation, which involves excising all of the external female genitalia and suturing the sides of the vagina together using various methods.²⁷ Infibulation is often performed by using catgut or thorns to sew together the labia majora, leaving a tiny opening for the passage of urine and menstrual blood. The girl's legs are then tied together for an extended period to allow the wound to heal.²⁸ This operation causes serious health problems for many girls such as severe hemorrhaging and infec-

24. See Philip Alston, *supra* note 5, at 62. Alston points out that the principles of the United Nations norms have been affirmed in regional human rights instruments such as the African Charter of Human and People's Rights. *Id.* at 62-63. One criticism of this view, however, is that the individuals who participate in United Nations bodies and the drafting of regional instruments come from the educated elite of their respective countries. Jack Donnelly, *Cultural Relativism*, *supra* note 5, at 404 n.5. This fact suggests that the cultural values of insular minorities, and possibly even of the majority, are not reflected in the resulting documents.

25. Alison Slack, *Female Circumcision: A Critical Appraisal*, 10 Hum. Rts. Q. 437, 439 (1988).

26. Female circumcision is practiced in over 20 African countries. Minority Rights Group, *supra* note 3, at 6. The practice of female circumcision is also found in Malaysia, Indonesia, the southern parts of the Arab peninsula, Pakistan, some sects in the Soviet Union, United Arab Emirates, Oman, Bahrain, and South Yemen. Although the operations are most prevalent in Africa and the Middle East, they are also done in Peru, Brazil, eastern Mexico, and among the aboriginal tribes of Australia. Alison Slack, *supra* note 25, at 439 (citing Lawrence Cutner, *Female Genital Mutilation*, 7 *Obstetrical and Gynecological Surv.* 438 (1985)). I will focus on the practice in Africa since the U.N. debate and actions centered on this area.

27. For a complete description of the various forms of female circumcision, see Minority Rights Group, *supra* note 3, at 3.

28. *Id.* at 4.

tions. Scar tissue resulting from the wound also creates difficulties for adult women, such as obstructed labor and dysmenorrhea (extremely painful menstruation).²⁹

Despite these difficulties, the percentages of women who persist in having their daughters circumcised remains very high in those areas where it traditionally has been done.³⁰ Women surveyed in practicing countries have given various reasons for this practice: that it initiates girls into womanhood, that it is necessary to eliminate "masculine" tissue, that it increases male sexual pleasure, and that it curbs women's sexual appetite and thus maintains the morality of society.³¹

One of the questions which arises out of the conflict between cultural relativism and international human rights theory is what behavior constitutes a cultural practice. Most of the conduct examined by the U.N. is not culturally based. The bulk of the practices which attract the attention of human rights advocates are abuses by government officials of the rights of their citizens.³² An important function of the U.N., therefore, is to provide a forum to which victims of human rights abuses can take their complaints about their own governments.³³ Examples of this sort of government behavior are forced disappearances, arbitrary arrest, and torture.³⁴

It is difficult to draw a clear line between practices which are abuses of political power and those which are based on accepted

29. *Id.* at 5.

30. Representatives who attended a conference on genital operations held in 1984 in Khartoum described these operations generally as "widespread" among the ethnic groups who traditionally have practiced female circumcision. Some gave more specific description of the prevalence. For example, in Liberia 50 to 75% of the women in thirteen practicing ethnic groups are circumcised. In Somalia "[d]ata support the claim that 100% of the female population is circumcised, mainly with the most extreme form of infibulation." Clitoridectomy is practiced among at least 70% of the population of Gambia. *Report of the Workshop: African Women Speak on Female Circumcision*, 11 *Women's International Network News* 28-31 (Winter 1985) [hereinafter *Report of the Workshop*]. These percentages may have changed since 1984, however, because there has been a considerable, organized effort by African organizations to eradicate female circumcision since that time. See *infra* notes 46-60 and accompanying text. In the report of the Khartoum conference cited above, the Egyptian representative stated that educational and health efforts in that country have resulted in a dramatic decrease in the practice. *Report of the Workshop*, *supra*, at 30.

31. *Minority Rights Group*, *supra* note 3, at 7-8.

32. John Humphrey, *Human Rights and the United Nations: A Great Adventure* 46 (1984). In fact, Humphrey asserts that an important impetus of the creation of the U.N. human rights system were the atrocities committed by Hitler. *Id.* at 12.

33. *Id.* at 89.

34. Jack Donnelly, *Cultural Relativism*, *supra* note 5, at 413. The acts of Idi Amin and Pol Pot are examples of gross violations which could never be mistaken for cultural practices.

cultural values. Cultural practices can be defined as conduct which has evolved for a specific purpose within a culture and is condoned as a legitimate expression of that purpose.³⁵ Cultural relativists usually mention the practices of traditional societies in theoretical discussions because these traditional practices historically have been criticized by anthropologists and other scholars who use Western ideals as a standard.³⁶ Examples of these traditional practices are polygyny, child betrothal, and the payment of money for a bride.³⁷ Female circumcision, because of its long history and widespread practice, is instructive as a case study because this practice clearly falls within the definition of a cultural practice.

III. Political Context of the Practice

The practice of female circumcision has been the focus of sharp criticism from the West throughout various periods of the twentieth century. Below is a brief description of this criticism and the attempts at eradication. The purpose of this description is to outline the political context in which the issue of female circumcision reached the U.N. human rights bodies in the early 1980s.

The first Western attempt to eradicate female circumcision in Africa came about as a result of the British colonization of Africa and the influx of Christian missionaries.³⁸ When British administrators became aware of the practice during the 1920s, they instituted a low-level eradication campaign through their regional bureaucracies.³⁹ Christian missionaries incorporated a message against female circumcision into their medical education programs. According to Asma El Dareer, a Sudanese medical doctor who has done extensive studies on the practice of female circumcision, the education by missionaries resulted in fewer infibulations in Kenya, but the infibulations were replaced with excision, a lesser form of genital mutilation.⁴⁰

The most institutionalized campaign against female genital mutilation of the early twentieth century took place in Sudan. School teachers were instructed to speak against the practice and

35. Ruth Benedict, *supra* note 9, at 46-47.

36. *Id.* at 48-49. See also, Alison Renteln, *supra* note 5, at 514.

37. Rhoda Howard, *supra* note 2, at 61. For a discussion of polygyny and brideprice, see *supra* note 14.

38. Asma El Dareer, *Woman, Why Do You Weep?* 92-93 (1982).

39. Awa Thiam, *Black Sisters, Speak Out* 86 (1978). According to Thiam, the British officials were hesitant to discuss the issue because of its sensitivity as a sexual matter and as an indigenous practice. She claims that their wives initiated a movement to speak out against the practice.

40. El Dareer, *supra* note 38, at 92.

the British colonial government passed legislation in 1946 outlawing infibulation.⁴¹ This legislation, however, has not stopped the practice of infibulation in Sudan, but rather forced families to have the procedures done in secret.⁴² Although the 1946 law is still in effect, approximately 80% of the women in Sudan had been infibulated as of 1983.⁴³ It appears that this attempt to outlaw circumcision was unsuccessful because it was imposed by a colonial regime and there was no attempt to educate the Sudanese as to why they should abandon a longstanding cultural tradition at the behest of a foreign power.⁴⁴ Like the efforts in Sudan, other British attempts to eradicate the practice were unsuccessful. Consequently, most of these efforts were abandoned during the 1940s and 1950s.⁴⁵

After the British colonial government officials and missionaries discontinued their eradication efforts, the practice of female circumcision did not receive concerted attention from the West again until almost 20 years later.⁴⁶ In the 1970s the practice of female circumcision was criticized on several different fronts simultaneously. It attracted the attention of feminists in the United States, who condemned the practice as a humiliating way for males to control the sexuality of women.⁴⁷ Western European feminist journals also published articles decrying female circumcision.⁴⁸

41. *Id.* at 95.

42. *Id.* at 95.

43. See Minority Rights Group, *supra* note 3, at 19.

44. El Dareer, *supra* note 38, at 95.

45. *Id.* at 96.

46. The practice continued to be the subject of scholarly pieces by anthropologists, sociologists, and psychologists throughout the twentieth century. See generally Felix Bryk, *Circumcision in Man and Woman: Its History, Psychology and Ethnology* (1934); Bruno Bettelheim, *Symbolic Wounds* (1954); Peter Riviere, *The Structural Context of Girls' Puberty Rites* (1967). These studies examined the psychological and anthropological origins of female circumcision and were often very critical of the practice. They did not, however, represent part of a campaign for eradication, but rather an attempt to explain the function of this ritual in the cultures which practiced it. See Harriet Lyons, *Anthropologists, moralities, and relativities: the problem of genital mutilations*, 8 *Canad. Rev. Soc. & Anth.* 499-500 (1981).

47. Two American feminists who criticized female circumcision were Mary Daly and Fran Hosken. Daly wrote a collection of essays on cultural practices, including female circumcision, which she described as a sadistic ritual expressing the misogyny of the male-dominated culture. Mary Daly, *African Genital Mutilation: The Unspeakable Atrocities* in *Gyn/Ecology: The Metaethics of Radical Feminism* 167-170 (1978). Hoskens engaged in extensive research on the existence and effects of female genital operations and has published an international newsletter disseminating her findings since 1978. See Fran Hosken, *Female Genital Mutilation*, 1 *Feminist Issues* 3 (Summer 1981).

48. The subject appeared repeatedly in the *Isis International Bulletin*, published in Italy and Switzerland. See, e.g., *Genital Mutilation*, 8 *Isis International Bulletin* 12 (Summer 1978). The International Alliance of Women also discussed female circumcision in their journal, the *International Women's News*, published in

These feminist writers generally have refused to acknowledge any need for cultural sensitivity in discussing this practice. In fact, they stated that the male leaders of practicing countries use the demand for cultural sensitivity merely to maintain their supremacy over women.⁴⁹

The publicity generated by feminists about female circumcision resulted in conflicting reactions by Africans. Many African women responded with outrage to the Western feminists' criticism of the practice.⁵⁰ At the same time, however, African feminists were publishing literature which denounced female circumcision. These women echoed the sentiments of Western feminists that this tradition was a violation of their physical integrity and their dignity.⁵¹ Firsthand accounts of the ritual operation quoted women who described in passionate language the pain and degradation they felt as a result of the operations.⁵²

The other important arena in which the issue of female circumcision arose was the United Nations. Opponents of female circumcision have criticized the U.N. for its silence on this issue until

London. See, e.g., *World Conference U.N. Decade for Women*, 75 *International Women's News* 43, 44 (Sept. 1980).

49. Mary Daly asserts that Western men collude with the practicing cultures by agreeing to believe the cultural myths about female circumcision and "erasing" the truth that mutilation is done for male pleasure.

Erasure of all this on the global level occurs when leaders of "advanced" countries and of international organizations overlook these horrors in the name of "avoiding cultural judgment." They are free of responsibility and blame, for the "custom" must be respected as part of a "different tradition." By so naming the tradition as "different" they hide the cross-cultural hatred of women.

Mary Daly, *supra* note 47, at 160.

50. During meetings of non-governmental organizations which were held at the same time as the U.N. World Conference for Women, discussions about female circumcision sparked controversy. African women expressed shock that the subject was discussed in a meeting with a French woman in the chair and several walked out in protest. Minority Rights Group, *supra* note 3, at 10. The President of the Association of African Women published an article criticizing the cultural insensitivity of Westerners who have spoken out against female circumcision. Marie-Angelique Savane, *Why We Are Against the International Campaign*, 40 *Int'l Child Welfare Rev.* 38 (1979). She stated that African women have more significant problems of hunger and survival and they resent their customs being described as "barbaric." *Id.* at 38-39.

51. See Minority Rights Group, *supra* note 3, at 8 (citing *The Silence Over Female Circumcision in Kenya*, *Viva* (Aug. 1978)); see also Awa Thiam, *supra* note 39, at 81 (1978).

52. In one collection of accounts entitled "Black Sisters, Speak Out," an excised woman from Mali recalls her experience in the following manner: "I was in the throes of endless agony, torn apart both physically and psychologically. It was the rule that girls of my age did not weep in this situation. I broke the rule. I reacted immediately with tears and screams of pain." Awa Thiam, *supra* note 39, at 62. Another says, "As soon as I was conscious of being excised and infibulated, I felt a deep sense of outrage." *Id.* at 65.

recent years. These critics point out that the Economic and Social Council of the United Nations requested the World Health Organization (WHO) in 1959 to study ways to eradicate female circumcision.⁵³ WHO declined to undertake this study, stating that these operations "are based on social and cultural backgrounds, the study of which is outside the competence of the World Health Organization."⁵⁴ The United Nations International Children's Emergency Fund (UNICEF) also refused to take action on this issue until 1980.⁵⁵ WHO's official silence on the issue, however, gave way to active participation in an African campaign in the late 1970s, due to the pressure from Western and African women to take action. As a result, WHO sponsored a series of conferences, designed to educate Africans about the harmful health consequences of female circumcision.⁵⁶

Female circumcision also became an issue for discussion during the United Nations Decade for Women, a series of international conferences from 1975 to 1985 designed to improve the lives of women.⁵⁷ Concerns about cultural sensitivity arose during the "Decade" discussions in both the official United Nations meetings

53. Minority Rights Group, *supra* note 3, at 8.

54. *Id.* at 8.

55. *Id.* at 9. The authors assert that UNICEF has claimed reluctance to address this issue due to the need for cultural sensitivity. They note, however, that these claims lack credibility because UNICEF and other international organizations have not hesitated to insist on family planning, a move which conflicts with African tradition. *Id.*

56. See *Report of the Working Group on Traditional Practices Affecting the Health of Women and Children*, U.N. Doc. E/CN.4/1986/42 at 20 (1986) [hereinafter *Report of the Working Group on Traditional Practices*]. Two such conferences were the 1979 seminar held in Khartoum, called "Traditional Practices Affecting the Health of Women and Children," and another by the same name, held in 1984 in Dakar, Senegal. Fran Hosken, *13 Women's International Network News* 25 (Autumn 1987). The participants in both of these conferences adopted resolutions calling for the abolition of female circumcision. At the end of the Dakar conference the participants agreed to start an organization called the "Inter-African Committee on Traditional Practices." *Id.* at 31. This committee is made up of organizations from each participating African country whose goal is to launch a campaign against harmful traditional practices. As of May 1987 the IAC had developed national committees in fourteen countries according to Fran Hosken, a United States activist who publishes information about female circumcision. These countries are: Benin, Djibouti, Egypt, Ethiopia, Gambia, Ghana, Kenya, Liberia, Mali, Nigeria, Senegal, Sierra Leone, Sudan, and Togo. *Id.* at 23.

57. According to one scholar, Arvonne Fraser, the Decade participants addressed the issue of female circumcision because dialogue among Western feminists and African women forced the issue to the forefront. Arvonne Fraser, *The U.N. Decade for Women, Documents and Dialogue* 76 (1987). Fraser asserts that during preparations for the U.N. conferences, these women created an informal international network for exchanging ideas and that this exchange resulted in consciousness-raising about female circumcision among African and non-African women. *Id.* at 76-77.

and the parallel meetings which non-governmental organizations conducted. The official document reporting on the African regional preparatory meeting for the Decade for Women condemned international campaigns against female circumcision which were insensitive to "the complexity of the African situation."⁵⁸ The same resolution which opposed the international campaign, however, also condemned the practice of female circumcision.⁵⁹

This history shows a growing awareness and opposition to female circumcision through the twentieth century. The early efforts by the British resulted in Africans' resistance, not a surprising reaction within the colonial context. More recently, however, a movement against female circumcision has sprung up within the practicing cultures for the first time, kindled by the strong rhetoric of Western feminists and other critics. Although they resented their tradition being called "barbaric" by Western feminists, African women were affected by the world-wide movement for women's rights. Profound changes in attitudes toward the status of women resulted in a re-thinking of female circumcision. Due to these external forces, and also due to changes within modern African society, a sizable opposition to female circumcision developed by the early 1980s. The opposition movement included both Africans and non-Africans. Members of the opposition movement worked out a sort of compromise among themselves which called for non-Africans to refrain from criticism, but to assist with technical and financial assistance.⁶⁰ It was within this climate that the issue reached the human rights bodies of the United Nations.

IV. Action in the United Nations Human Rights Bodies

During the 1981 session of the U.N. Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, the Minority Rights Group, a human rights organization based in London, presented a comprehensive report about female circumcision.⁶¹ This report documented in detail the painful physical and

58. *Report of the Regional Preparatory Meeting of the United Nations Economic Commission for Africa*, U.N. Doc. A/Conf.94/17 at 44 (1980).

59. *Id.* at 43. The resolution implied that these Africans saw genital mutilation as a violation of human rights by explicitly stating that all humans have the right to health and that genital mutilation has adverse health effects. *Id.* at 43.

60. See Kay Boulware-Miller, *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, 8 Harv. Women's L.J. 155, 163 (1985); Alison Slack, *supra* note 25, at 483.

61. The presentation was actually made at a working group meeting of the Sub-Commission, the Working Group on Slavery. *Report of the Working Group on Slavery on its Seventh Session*, U.N. Doc. E/CN.4/Sub.2/486 at 17 (1981) [hereinafter *Report of the Working Group on Slavery*]. For a discussion of the rationale for

psychological consequences of the practice and asserted that female circumcision was a violation of human rights. The representative of the Minority Rights Group who presented the report, a Ghanaian woman by the name of Stella Efua Graham, called for eradication of the practice, which she emphasized should be done gradually "[b]ecause of the sensitivity of the issue and its roots in traditional culture."⁶² She called upon the Sub-Commission to establish a special working group to consider the practice of female circumcision and other practices which harm women and children.⁶³ This presentation set the stage for the conflict which exists between cultural relativism and international human rights theory.

The Sub-Commission members were confronted with the question which is central to this conflict. Should the human rights bodies decline to consider practices, such as female circumcision, that are legitimate expressions of cultural values but which appear to conflict with international human rights norms? The Sub-Commission members discussed whether to take up the issue of female circumcision for two years.⁶⁴ Their ensuing actions demonstrated that the individual members were conscious that they were proposing to evaluate an ancient cultural tradition with a long history and widespread acceptance. As a result, they proceeded with great caution. Nevertheless, in 1982 the Sub-Commission formally decided to consider female circumcision.⁶⁵

The 1982 resolution called for a study of "all aspects of the problem of female genital mutilation, including the current extent and causes of the problem and how it might best be remedied."⁶⁶ This study was approved by the U.N. parent bodies of the Sub-Commission and was expanded to include several traditional practices harmful to the health of women and children.⁶⁷ The study

discussing this item under the rubric of "slavery," see *infra* notes 75-77 and accompanying text. The Minority Rights Group based its presentation on a detailed report which it published in 1980 about female genital mutilation. This report, which has been revised twice since 1980, was highly acclaimed in the Western media and has been relied upon heavily by commentators on this issue. See Minority Rights Group, *supra* note 3.

62. Report of the Working Group on Slavery, *supra* note 61, at 18.

63. *Id.* at 18.

64. Discussing an issue for two consecutive years before taking action is not an unusual amount of time for the Sub-Commission. Many issues are discussed for considerably longer before the members agree to act.

65. Sub-Comm'n Res. 1982/15, U.N. Doc. E/CN.4/Sub.2/1982/43 at 87 (1982).

66. *Id.* at 88.

67. The procedure for approval of such studies requires an official resolution from several U.N. bodies. In the case of female circumcision, the Sub-Commission first adopted a resolution in 1982 declaring its intent to embark on this study (Sub-Comm'n Res. 1982/15, U.N. Doc. E/CN.4/Sub.2/1982/43 at 85 (1982)) and repeated

was done by a special temporary working group established for that purpose.⁶⁸ The study was completed and the working group published its report in 1986.⁶⁹ Since that time, the Commission on Human Rights adopted a resolution during its 1988 session asking the Sub-Commission to investigate national and international measures for eradicating traditional practices harmful to women and children.⁷⁰ The Sub-Commission responded to this request by asking Halima Embarek Warzazi, the chairperson of the special working group on traditional practices, to study "recent developments" with regard to traditional practices affecting the health of women and children.⁷¹

This series of actions by the Sub-Commission is their customary method of examining a potential violation of human rights. A close look at the process, however, reveals some important differences in the Sub-Commission's treatment of female circumcision from their treatment of conduct which is not culturally based. First, the Sub-Commission's two-year discussion about whether to take up the issue of female circumcision indicates that the members were conscious of the cultural significance of this practice, an awareness which made them cautious and resulted in a discussion dominated by non-Western representatives. Second, the report published by the Special Working Group on Traditional Practices analyzed female circumcision from a cultural and historical perspective, as well as from a human rights perspective. When answering the central question about whether female circumcision is a violation of human rights, the language of the conclusion was

this request in 1983 (Sub-Comm'n Res. 1983/1, U.N. Doc. E/CN.4/Sub.2/1983/43 at 73 (1983)). For reasons which are unclear, its parent body, the Commission on Human Rights, did not approve the 1982 resolution. The Commission on Human Rights adopted a resolution authorizing the study in 1984 with little debate. (Comm'n Res. 1984/48, U.N. Doc. E/CN.4/1984/77 at 83 (1984)). The study then required final approval by the Economic and Social Council, a committee of the General Assembly. ECOSOC granted its approval without debate in 1984. (ECOSOC Res. 1984/34, U.N. Doc. E/1984/84 at 23 (1984)).

68. A working group was established to do the study. This group was made up of two Sub-Commission members and representatives from three U.N. agencies, UNICEF, UNESCO, and WHO. The Sub-Commission appointed an African woman, Halima Embarek Sarzazi of Morocco, who served as chairperson of the group, and Muslidhar Bhindare of India. *Report of the Working Group on Traditional Practices*, *supra* note 56, at 2. Several representatives of non-governmental organizations also participated.

69. *Report of the Working Group on Traditional Practices*, *supra* note 56. The Commission on Human Rights transmitted this study to governments, other U.N. agencies, and non-governmental organizations in 1986, asking the non-governmental organizations to assist the affected governments in carrying out the recommendations of the report. Comm'n Res. 1986/23, U.N. Doc. E/CN.4/1986/65 at 88 (1986).

70. Comm'n Res. 1988/57, U.N. Doc. E/CN.4/1988/88 at 127 (1988).

71. Sub-Comm'n Res. 1988/34, U.N. Doc. E/CN.4/Sub.2/1988/45 at 62 (1988).

tentative and evasive. Third, after the Sub-Commission members stated definitively that female circumcision is a violation of human rights, they decided to support the internal African eradication efforts through education and persuasion. They did not attempt to embarrass or coerce the governments of countries in which female circumcision is practiced into taking positive steps to prohibit female circumcision.

1. The Sub-Commission's Decision to Evaluate Female Circumcision from a Human Rights Perspective

The Sub-Commission members spent two years debating the preliminary question of whether to study the issue of female circumcision at all. From the standpoint of cultural relativism, the Sub-Commission's debate over this question should have resulted in a quick determination not to evaluate female circumcision from a human rights perspective. All cultural practices are equally valid, according to the relativist approach, and applying international human rights norms to a particular cultural practice would be tantamount to imposing external cultural values on the practicing culture.⁷² The Sub-Commission adopted a resolution in 1982, however, declaring their intent to study female circumcision and other traditional practices which affect women and children.⁷³ This decision suggests that the Sub-Commission members do not adhere to the relativist view that cultural practices cannot be evaluated by human rights norms.

A close look at the Sub-Commission discussion regarding female circumcision, however, shows that cultural relativism has had a profound impact on the attitudes of Sub-Commission members. A corollary of the theory of cultural relativism — that one should not judge cultural practices using one's own biases — was evident during the Sub-Commission debate.⁷⁴ The members' comments demonstrated that they were acutely aware of the cultural significance of the issue they were discussing and the risk of trampling on deeply held traditional values.

Their debates demonstrated this cultural sensitivity in two ways. First, the African members and members from countries in which female circumcision is practiced admonished all participants to respect the cultures from which this practice came. Many asked that it be addressed solely as a humanitarian concern, rather than as a potential human rights violation. Second, the Western mem-

72. See *supra* notes 15-16 and accompanying text.

73. See *supra* note 67. This resolution was adopted by consensus.

74. See *supra* note 12 for a discussion of this corollary.

bers did not, for the most part, participate in the discussions, and the one European member who criticized the practice was taken to task for doing so.

The need for cultural sensitivity came up initially during discussions about which Sub-Commission forum was proper to discuss the issue of female circumcision.⁷⁵ The Minority Rights Group brought its report on female circumcision to the 1981 session of the Working Group on Slavery.⁷⁶ The group chose this forum for reasons which are not evident on the record, but the Sub-Commission's broad definition of slavery suggests a rationale for including female circumcision under this agenda item. "Abuses — whether by economic or sexual exploitation or physical brutality — of the power exercised over children (inside or outside the family) can, in their worst manifestations, amount to a widespread equivalent of slavery."⁷⁷

Despite this expansive definition of slavery, the decision to discuss female circumcision in this context is jarring because it implies that female circumcision in some way enslaves the girls who are excised. Not surprisingly, the African members of the Sub-Commission found that implication offensive. The government representatives from Senegal and Sudan, as well as many of the Sub-Commission members, expressed their anger with the decision to treat female circumcision as an analogue of slavery.⁷⁸ The member from India asserted that calling this practice a form of slavery would demonstrate ignorance on the part of Sub-Commission members and cause resistance to change among practicing countries.⁷⁹ The Working Group decided, however, to continue considering the issue until the Sub-Commission took it up elsewhere.⁸⁰

The African participants at the Sub-Commission often reminded Western members that female circumcision is a custom with a long tradition in Africa. For example, Halema Embarek Warzazi, the Sub-Commission member from Morocco who ulti-

75. *Report on the Working Group on Slavery, supra* note 61, at 19.

76. *Id.* at 17.

77. *Updating of the Report on Slavery Submitted to the Sub-Commission in 1966*, U.N. Doc. E/CN.4/Sub.2/1982/20/Add.1 at 20 (1982). Another likely explanation for their choice is that Ben Whitaker was simultaneously the chairperson of both the Working Group on Slavery and the secretary general of the Minority Rights Group.

78. *See Summary Record of the 18th Meeting*, U.N. Doc. E/CN.4/Sub.2/1982/SR.18 at 5 and 7-8 (1982) and *Summary Record of the 19th Meeting*, U.N. Doc. E/CN.4/Sub.2/1982/SR.19 at 2-4 (1982).

79. *Summary Record of the 18th Meeting, supra* note 78, at 5.

80. *Report of the Working Group on Slavery, supra* note 61, at 19.

mately served as chairperson of the Working Group on Traditional Practices, asserted that only those countries in which the tradition of female circumcision existed could solve the problem effectively.⁸¹ Members from Western countries appeared to take these admonitions to heart, because those representatives were almost completely silent during the discussions on female circumcision. The Sub-Commission member from Norway, Asbjorn Eide, described the reason for this reticence. Eide stated that the problem would be best taken up by women from the countries concerned and that the West should stay out in order to avoid misunderstanding.⁸²

The one exception to the silence of Western participants was by Sub-Commission member Ben Whitaker of the United Kingdom. Whitaker was the chairman of the Working Group on Slavery during the time that female circumcision was first presented to it, and, in that capacity, he was responsible for writing and presenting the Working Group's annual report. During his presentation to the Sub-Commission in 1981, Whitaker made strong statements condemning female circumcision, describing it as an analogue to slavery and asserting that it is a violation of human rights.⁸³ He acknowledged that female circumcision is a cultural tradition, but also said that arguments of tradition had been used in the past to excuse slavery. Such arguments, according to Whitaker, should not be allowed to curtail the campaign against the practice.⁸⁴ He added, however, that "care should be taken not to impose outside cultural interference upon any group."⁸⁵

Whitaker's statements appear to contradict each other. He described the cultural justifications for the custom as excuses which should not hinder efforts at eradication, and at the same time warned against imposing outside cultural values. African Sub-Commission members roundly criticized his statements about female circumcision and accused him of cultural insensitivity.⁸⁶ Whitaker's statements are typical of the dilemma facing persons from non-practicing countries. One wishes, on the one hand, to

81. *Summary Record of the 909th Meeting*, U.N. Doc. E/CN.4/Sub.2/SR.909 at 9 (1981).

82. *Id.* at 10. Eide avoided making any observations on the matter himself.

83. *Id.* at 2-3.

84. *Id.* at 3.

85. *Id.*

86. *Summary Record of the 19th Meeting*, *supra* note 78, at 2. Ibrahim Jimeta, the member from Nigeria, stated that he agreed with the proposal for a study, but he questioned the basis for some of Whitaker's statements, including that female circumcision is "devoid of rational justification." *Summary Record of the 18th Meeting*, *supra* note 78, at 8.

condemn in the strongest terms a practice which destroys the genitals of young girls. On the other hand, individuals who participate in international fora desire to remain sensitive to the longstanding cultural traditions of non-Western countries. The other Western members of the Sub-Commission appeared to resolve that dilemma by remaining silent.

In light of the potential divisiveness over female circumcision, there was an unexpected degree of consensus over whether to pursue some action on the issue. Sub-Commission members, including those from countries in which female circumcision is practiced, generally agreed that the practice should be studied by the human rights body.⁸⁷ Differences mainly arose over how to justify this result.⁸⁸ In fact, the Sub-Commission, as a whole, appeared to walk a tightrope between the desire to eliminate the practice of female circumcision and the need for cultural sensitivity. Many of the same members who demanded sensitivity to African cultural values stated that female circumcision should be eradicated. Not all members agreed that female circumcision should be studied as a potential violation of human rights, but those who did not approve of that approach stated that it should be eradicated for humanitarian reasons.⁸⁹ Even members and representatives from practicing countries stated that they supported the goal of eradication.⁹⁰

The Sub-Commission members ultimately decided to study the issue of female circumcision and other traditional practices affecting the health of women and children.⁹¹ The resolution was

87. Sambacor Konate, the government observer from Senegal, made the only statement on record which suggested that female circumcision was not a problem. In 1982 Konate stated that he was not convinced by the arguments against the practice and that the issue should not be treated as a human rights violation. *Summary Record of the 19th Meeting, supra* note 78, at 2. In fact, he stated that calling female circumcision a violation of human rights was itself a denial of rights "since it lacked the necessary respect for cultural differences and the identity of the African world." *Id.* at 2.

88. See *infra* note 89 and accompanying text for a discussion of the suggestion that the practice should be approached from a purely humanitarian perspective.

89. See, e.g., *Summary Record of the 18th Meeting, supra* note 78, at 6 (Comments of Warzazi).

90. For example, the written statement submitted by the government of Sudan outlined a comprehensive program for the elimination of female circumcision. *Reports prepared in accordance with paragraph 6 of resolution 1982/20 of the Commission on Human Rights*, U.N. Doc. E/CN.4/Sub.2/AC.2/1982/12/Add.3 at 2 (1982). Among the steps Sudan reported were national legislation expressly prohibiting female circumcision, excision and infibulation, doing individual and team research, and establishing discussion groups, seminars and social campaigns. *Id.* See also *Reports prepared in accordance with paragraph 6 of resolution 1982/20 of the Commission on Human Rights*, E/CN.4/Sub.2/AC.2/1982/12/Add.4 at 2 (1982) (similar efforts described for Ethiopia).

91. See *supra* notes 67-69. The Commission on Human Rights broadened the

adopted without opposition.⁹² The members were willing to evaluate traditional practices from a human rights perspective despite their cautionary statements about the cultural significance of the decision.

The Sub-Commission's decision appeared to be influenced by the practical and political realities in African countries. The members acknowledged the magnitude of the health problems resulting from female circumcision and expressed a desire to address this problem. Mohamed Yousif Mudawi, the Sudanese Sub-Commission member, described this problem, ". . . about 100 million female children were victims of that type of mutilation, with all that that entailed in pain and medical, psychological or physical complications."⁹³ The other factor that affected the Sub-Commission members was the growing opposition developing in and outside of Africa.⁹⁴ African government reports submitted to the Sub-Commission declared opposition to female circumcision.⁹⁵ African leaders as well as human rights advocates were calling for the eradication of female circumcision. Because of the lack of opposition to studying female circumcision, the Sub-Commission was able to adopt the resolution with little conflict.

Thus, the Sub-Commission members were able to avoid the fundamental conflict between cultural relativism and human rights theory during this preliminary debate in two ways. They described the Sub-Commission's goal as addressing an undisputed

mandate to include "traditional practices affecting the health of women and children." *Summary Record of the 52nd Meeting*, U.N. Doc. E/CN.4/1984/SR.52 at 9 (1984).

92. See Sub-Comm'n Res. 1982/15, U.N. Doc. E/CN.4/Sub.2/1982/43 at 85 (1982).

93. *Summary Record of the 18th Meeting*, *supra* note 78, at 5 (1982). See *supra* text accompanying note 29 and *infra* notes 107-109 and accompanying text for a discussion of the documented consequences to the health of women and girls.

94. See *supra* notes 46-60 and accompanying text. The open opposition in Africa to female circumcision is particularly striking. Historically, African countries have been reticent, reluctant to criticize the conduct of other African countries. Due to this reticence, the human rights bodies have been widely accused of having a double standard toward Africa. Critics claim that the U.N. responds to human rights abuses which occur in racist regimes such as South Africa, but remains silent over egregious conduct in Black African countries such as that of Idi Amin in Uganda. See Warren Weinstein, *Africa's Approach to Human Rights at the United Nations*, 6 *ISSUE: A Quarterly Journal of Africanist Opinion*, Winter 1976 at 17-19.

95. For a discussion of the report from Sudan, see *supra* note 90. Oral statements by government observers also generally opposed the practice. The only explicit defense of the practice on record were the remarks of the government observer from Senegal, Sambacor Konate. See *supra* note 87. Even Konate, who also served as a member of the Commission on Human Rights, changed his position and supported the study of traditional practices when the Commission discussed the matter in 1984. *Summary Record of the 30th Meeting*, U.N. Doc. E/CN.4/1984/SR.30 at 17 (1984).

health problem rather than questioning the underlying cultural values of female circumcision. The African support for the study of female circumcision also allowed the Sub-Commission members to avoid a clash between Western and non-Western members that could have occurred over this issue.

The Sub-Commission's decision to study female circumcision shows that purely theoretical considerations — in this case the belief that cultural relativism undercuts the validity of evaluating cultural practices — do not necessarily affect the human rights system with the expected outcome. Instead of paralyzing the human rights system, as predicted by some human rights theorists,⁹⁶ cultural relativism has made a positive contribution. Members exhibited sensitivity to cultural values other than their own. Despite the reluctance to judge traditional practices that follows from such sensitivity, the members responded flexibly to practical and political concerns and ultimately decided that it was appropriate to evaluate female circumcision from a human rights perspective.

2. The Study of Female Circumcision as a Potential Violation of Human Rights

The Sub-Commission established a special working group to study female circumcision and its mandate was expanded to cover other traditional practices which affect the health of women and children.⁹⁷ The group issued a final report approximately one year after it convened its first meeting in January of 1985.⁹⁸ The report demonstrates some important differences between the type of analysis carried out by this Working Group and the customary analysis of potential human rights violations. The Sub-Commission's analysis normally involves an investigation into the existence of conduct which allegedly violates human rights norms and the consequences of this conduct to individuals. Established human rights principles are then applied in order to determine whether the conduct constitutes a violation of human rights.⁹⁹

96. A number of human rights scholars have expressed concern about the negative effect that the theory of cultural relativism could have on the human rights system. See *supra* note 13 and accompanying text.

97. See *supra* notes 67-68 and accompanying text. The group decided to study three traditional practices: female circumcision, son preference, and harmful birth practices. *Report of the Working Group on Traditional Practices*, *supra* note 56, at 4.

98. *Id.* at 2.

99. See, e.g., *Report of the Working Group on Enforced or Involuntary Disappearances*, U.N. Doc. E/CN.4.1492 (1981). In this report the Working Group summarized the problem of involuntary disappearances in over 20 countries. *Id.* at chs.

The study of female circumcision summarized the prevalence of the practice and the consequences which result from it.¹⁰⁰ Instead of applying specific human rights norms to this information, however, the Working Group analyzed additional factors of cultural significance. If the Working Group had followed the customary approach, several existing human rights norms justifiably could have been applied in order to evaluate whether female circumcision is a violation of human rights.¹⁰¹ For example, Article 3 of the Universal Declaration of Human Rights states that "[E]veryone has the right to life, liberty and security of the person."¹⁰² Article 9 of the International Covenant on Civil and Political Rights contains the same provision.¹⁰³ The provision regarding "security of the person" could be interpreted to prohibit female circumcision because the human body is inviolable.¹⁰⁴ So interpreted, the individual right to physical integrity arises in the form of a negative duty, of both the state and private individuals, to refrain from assaulting the human body.¹⁰⁵ The practice of female circumcision would be a breach of that duty, especially when

3 & 4. It then discussed the human rights norms which are implicated by this practice. *Id.* at ch. 5. The Working Group asserted that involuntary disappearances violate the principal rights to liberty and security of the person, found in Article 3 of the Universal Declaration of Human Rights, as well as in other human rights instruments. *Id.* at 65.

100. See *Report of the Working Group on Traditional Practices*, *supra* note 56, at 10-12.

101. Neither the debates, nor the resulting resolutions have named specific rights which are being violated by female circumcision. This question has been discussed in the scholarly literature, however. One author has suggested that the rights of the child, the right to sexual and corporal integrity, and the right to health are violated by female circumcision. Kay Boulware-Miller, *supra* note 60, at 165-76. Additional rights which have been discussed in the context of female circumcision are the right to life and the right to be free of torture or cruel, inhuman, or degrading treatment or punishment. Alison Slack, *supra* note 25, at 464-68 (1988).

102. Article 3, Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), *adopted* 10 Dec. 1948.

103. Article 9 of the International Covenant on Civil and Political Rights, *entered into force* 3 January 1976, G.A. Res. 2200A, 21 UN GAOR, Supp. (No. 16) 49, 52 U.N. Doc. A/6316 (1967).

104. There is some disagreement as to what extent this provision protects against mutilation of the human body. The right to security of the person clearly protects an individual against government interference such as arbitrary arrest and detention. Richard Lillich, *Civil Rights*, in *Human Rights in International Law* 115, 124 (Theodor Meron ed. 1985). In addition, Lillich states that some scholars interpret Article 3 in conjunction with the privacy protection in Article 12 to mean that the broad category of physical integrity is protected. One author has forcefully argued that the right to be free from "assault upon life or limb" is a notion that developed in tandem with individual dignity and is clearly recognized in the Universal Declaration and the International Covenant. M.T. Meulders-Klein, *The Right Over One's own Body: Its Scope and Limits in Comparative Law*, 6 B.C. Int'l & Comp. L. Rev. 29, 32-33 (1983).

105. *Id.* at 34.

performed on young girls who cannot give meaningful consent.¹⁰⁶ The Working Group's study, however, did not discuss the possibility that female circumcision violates the right to physical integrity, nor did it apply any other specific human rights norms.

Instead, the Working Group engaged in a balancing process which weighed the cultural function of female circumcision against the harmful consequences. The report described in detail the physical and psychological consequences of female circumcision. According to the Working Group, the operations cause physical pain so extreme that it has sent girls into shock.¹⁰⁷ The report listed physical complications occurring shortly after the operation and later in adulthood¹⁰⁸ and described psychological consequences such as depression, anxiety, night terror, and frank psychosis.¹⁰⁹

The discussion of health consequences was followed by an analysis of the cultural functions fulfilled by female circumcision and the evolution that the functions have undergone. The working group described two functions which female circumcision traditionally has served. First, female circumcision serves as a physical rite which introduces girls into womanhood.¹¹⁰ The second function claimed for the practice is that it tests the girl's capacity to endure acute suffering and cope with the future pain of childbirth.¹¹¹

Changes in the practice have rendered these functions obsolete according to the Working Group. The operations generally are no longer done at puberty; they are done in infancy or early childhood.¹¹² This change deprives the operation of its initiatory function because the girls are too young to appreciate the significance of the ritual.¹¹³ In modern African society, some operations

106. Kay Boulware-Miller, *supra* note 60, at 166.

107. Report of the Working Group on Traditional Practices, *supra* note 56, at 11.

108. See *supra* text accompanying note 29 for a description of physical complications. In addition, the report listed infections resulting from the use of such instruments as knives and razor blades, illness caused by the use of traditional medicines such as cow dung and ash for healing the wound, and accidental cutting of adjacent organs due to the girl's agitation. Report of the Working Group on Traditional Practices, *supra* note 56, at 10. Complications which occur in adulthood can include scarring which shrinks the genital apertures, chronic infections which can cause infertility, and obstetric complications. *Id.*

109. Report of the Working Group on Traditional Practices, *supra* note 56, at 11-12.

110. *Id.* at 12.

111. *Id.* at 13. Halima Embarek Warzazi, the chairperson of the Working Group, suggested another function during the Sub-Commission debates in 1982. She stated that she was convinced the practice was due to sex discrimination and was intended to deprive women of the enjoyment of their bodies. *Summary Record of the 909th Meeting*, *supra* note 81, at 9 (1981). The report did not include this function, however.

112. Report of the Working Group on Traditional Practices, *supra* note 56, at 13.

113. *Id.* at 13. The Working Group suggested that in earlier times, initiation as a

are done in a hospital setting, where no ritual accompanies the operation. This use of surgical procedures strengthens the argument that the practice is done in blind obedience to tradition rather than to fulfill an initiatory function.¹¹⁴ The use of modern medical techniques also deprives the practice of its other function within traditional societies — testing the girls' capacity to cope with pain. Use of anesthesia during the genital operation reduces the physical pain, although it does not diminish the psychological impact.¹¹⁵ The report stated that, as a result of these changes in the practice, female circumcision enjoys less support within the practicing cultures than it had previously.¹¹⁶ Urbanization and education has resulted in diminished support for the custom,¹¹⁷ and the Working Group noted the international and African efforts for eradication in the health and education fields.¹¹⁸

Based on these factors, the study concluded that female circumcision is a custom with serious consequences for physical and psychological health.¹¹⁹ The report equivocated, however, on the question whether the harm caused by this custom rose to the level of a human rights violation. The report appeared to conclude that female circumcision is a human rights violation, but used evasive language in its conclusion. The report stated that, because the evolution in traditional societies has deprived female circumcision of its former role, the practice is "at variance with new standards defined by various international instruments relating to human rights."¹²⁰ This statement reflects an awareness that cultures are dynamic in nature and that they evolve both endogenously and in

full member into society brought with it the rights and benefits accorded individuals in these traditional societies. *Id.* at 21. African human rights experts point out that African traditional societies value one's role in the community and that the importance of the individual is de-emphasized in comparison to Western society. Josiah Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 Hum. Rts. Q. 309, 320-325 (1987). Thus, initiation rites are very important.

114. *Report of the Working Group on Traditional Practices*, *supra* note 56, at 13. A survey cited in the study shows that most adherents give as their reason for continuing the practice "tradition" (54.2%). Other reasons given were diminution of women's sensitivity (27.5%), religion (18.6%), and "facility" of sexual relations (4.8%). *Id.* at 13.

115. *Id.* at 13.

116. *Id.* at 14-15. A survey of persons in countries where female circumcision is practiced who oppose female circumcision showed that 43.6% were opposed because they thought it was pointless. *Id.* at 14. The Working Group also noted that new attitudes about women's status in African society has brought about opposition (32.7% of persons surveyed) because it reduces a woman's sensitivity to sexual activity. *Id.*

117. *Id.* at 14.

118. *Id.* at 15-20.

119. *Report of the Working Group on Traditional Practices*, *supra* note 56, at 21.

120. *Id.* at 21.

response to outside influences. The changes that occurred in traditional African societies have made female circumcision functionally obsolete. At the same time, the cultures' values were influenced by the development of international standards for human rights. The Working Group seemed to say that female circumcision became outmoded because it no longer served a function and because changes in cultural values meant that it became less tolerable.¹²¹

The Working Group did not seek a universal standard upon which to judge female circumcision as part of this analysis. Instead, the report merely mentioned the relevant human rights instruments and concluded that the practice is incompatible with these instruments without specifying the norms upon which this conclusion is based. The conclusion is, in fact, couched in positivist terms.¹²² "In the light of these principles which today have the force of law, all countries which have ratified the . . . [instruments] are currently confronted with the incompatibility which exists between these principles and the obligations they assume as States[,] parties to the above-mentioned instruments. . . ."¹²³ This approach reflects the utilitarian aspect of positivist theory. Rather than search for "inalienable" natural rights, the members looked at the political realities and concluded that there has been a sufficient change in the culture to warrant their conclusion. This conclusion is that, because of a growing opposition to female circumcision and

121. This approach, of course, does not answer the question whether the Sub-Commission would be justified in naming a practice a violation of human rights if it continued to serve an important function in the culture. A helpful, contrasting example is the use of amputation as a form of criminal sanction under Islamic law (known as "*Shari'a*"). The Sub-Commission looked at this issue in 1984 and treated this practice very differently than it has treated female circumcision. The Sub-Commission adopted a resolution in 1984 suggesting in the title that these amputations were a violation of human rights without studying the issue first. Sub-Comm'n Res. 1984/22, E/CN.4/Sub.2/1984/43 at 95 (1984). Furthermore, the debate involved an angry defense of the practice by the members of the Sub-Commission and other government representatives from Islamic countries. For example, the Sudanese government observer stated that non-Muslims do not understand the Islamic legal system and that *Shari'a* had been practiced long before an alien system of law was introduced. *Summary Record of the 25th Meeting*, U.N. Doc. E/CN.4/Sub.2/1984/SR.25 at 13-14 (1984). This suggests that the Sub-Commission members may have used the functional argument with female circumcision to justify the desired result. Even if that is the case, however, the viability of the practice appears to affect its treatment at the human rights bodies because the resolution on Islamic penal code amputations has gone no further than the Sub-Commission. A forceful opposition by the practicing cultures appears to make an impact.

122. For a discussion of positivist theory, see *supra* notes 20-24 and accompanying text.

123. *Report of the Working Group on Traditional Practices*, *supra* note 56, at 21.

the ratification of instruments which arguably prohibit it, the practice should be eliminated.

3. The Sub-Commission's Actions in Response to the Study.

Despite the evasive language of the Working Group's report about whether female circumcision is a violation of human rights, the Sub-Commission ultimately adopted a resolution which declared that it is.¹²⁴ The resolution defines the rights violated as "the rights of women and children."¹²⁵ Once the Sub-Commission has decided a particular type of conduct is a violation of human rights, it can not force governments to outlaw the practice. Instead, the principal techniques available for implementing human rights norms are persuasion and embarrassment.¹²⁶ The Sub-Commission and other human rights bodies use persuasion and embarrassment in several ways in order to gain compliance with their norms. One example of these methods is to adopt resolutions declaring the existence of human rights violations in a particular country and asking or demanding that the violations be eliminated.¹²⁷ An important aspect of this process is the notion that governments are troubled by public criticism of their behavior and

124. Sub-Comm'n Res. 1988/34, U.N. Doc. E/CN.4/Sub.2/1988/45 at 62 (1988).

125. *Id.* at 62. This resolution was adopted without a vote and with very little debate. The relevant language of this resolution is "concerned about the continuation of harmful traditional practices which violate the rights of women and children. . . ." The resolution reflects the fact that the Sub-Commission expanded its consideration beyond female circumcision to other harmful traditional practices, but female circumcision has been the focus.

126. David Weissbrodt & Teresa O'Toole, *The Development of International Human Rights Law*, AIUSA Legal Support Network Newsletter, 17, 25 (Fall 1988). In addition to these techniques, the U.N. human rights bodies sometimes also use aid to victims and technical assistance to governments as a means of promoting human rights. *Id.* at 27-28. This discussion will not include these techniques because they are in the early stages of development and therefore used infrequently. *Id.* at 27.

127. The United Nations human rights bodies have three primary procedures by which they publicize human rights abuses in order to embarrass or persuade the government concerned to change its behavior. David Weissbrodt & Teresa O'Toole, *supra* note 126, at 25. The first procedure allows the Sub-Commission and the Commission on Human Rights to receive communications from individuals and groups about specific abuses and to forward the complaint to the government concerned. E.S.C. Res. 728F (XXVIII), 28 ESCOR Supp. (No. 1) (1959). Governments have tended to respond promptly to these communications. David Weissbrodt and Teresa O'Toole, *supra* note 126, at 27. The second procedure involves public discussion in the Sub-Commission and Commission about "gross" violations in specific countries. E.S.C. Res. 1235, 42 ESCOR Supp. (No. 1) at 17, U.N. Doc. E/4393 (1967). The third procedure involves non-public discussions of specific countries in order to name those countries that have a "consistent pattern of gross violations of human rights." E.S.C. Res. 1503, 48 ESCOR Supp. (No. 1A) at 8, U.N. Doc. E/4832/Add.1 (1970). The names of the "gross violators" are announced publicly after the investi-

the threat of this embarrassment theoretically will convince them to comply with their human rights obligations.¹²⁸

Because the Sub-Commission only recently adopted a resolution declaring female circumcision a violation of human rights, it is difficult to assess what methods the Sub-Commission will use to ensure compliance. The report by the Working Group on Traditional Practices recommended that the Sub-Commission assist African governments in eradicating female circumcision by helping with public education and by supporting other eradication efforts already underway.¹²⁹ One might predict that the members would be impatient to bring about the eradication of female circumcision because of the magnitude of the health problem. Several Sub-Commission members publicly stated that female circumcision seriously affects individuals' psychological and physical health. Whitaker put the number of girls and women who had been circumcised as of 1982 at some 70 million.¹³⁰ Mohamed Yousif Mudawi of Sudan claimed that 100 million females were affected and that many suffered serious pain and medical and psychological complications.¹³¹ The gravity of this problem arguably would induce the Sub-Commission members to take prompt action in convincing governments to eliminate female circumcision.

The cultural significance of female circumcision suggests, however, that the Sub-Commission will proceed with caution and sensitivity. This prediction is strengthened by the cautious approach the members took toward the public discussion and study of female circumcision. The other factor which suggests that the Sub-Commission will proceed carefully is that private parties, rather than government officials, carry out female circumcision and preserve the custom. Embarrassing government officials is less effective in that case.

Since the Sub-Commission determined that female circumcision is a violation of human rights, the members have not yet con-

gation, provided that they have not been considered under other U.N. procedures. David Weissbrodt & Teresa O'Toole, *supra* note 126, at 27.

128. A vivid example of the power the threat of embarrassment wields occurred at the Sub-Commission meeting of 1984. During the public discussion of human rights abuses in treatment of the mentally ill, a non-governmental organization claimed that abuses existed in Japanese mental hospitals. Larry Garber & Courtney O'Connor, *The 1984 U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities*, *supra* note 8, at 171. The assertion made front-page news in Japan and within weeks, legislation was introduced to regulate the admission and treatment of mental patients. *Id.* at 171.

129. *Report of the Working Group on Traditional Practices*, *supra* note 56, at 22.

130. *Summary Record of the 19th Meeting*, *supra* note 78, at 8 (1982).

131. *Summary Record of the 18th Meeting*, *supra* note 78, at 5 (1982).

demned or criticized the countries in which it is practiced.¹³² The resolution adopted in 1988 by the Commission on Human Rights simply asked that the Sub-Commission investigate ways for governments to eradicate this and other harmful traditional practices.¹³³ The Sub-Commission's follow-up resolution adopted that same year used even weaker language. The second resolution asked Halima Embarek Warzazi to study "recent developments" on harmful traditional practices.¹³⁴ This language suggests that the Sub-Commission will take a low-key approach designed to persuade a gradual change in attitudes.

In addition to these actions, however, the Commission on Human Rights currently is drafting a convention which, if adopted and ratified, would require parties to prohibit female circumcision. The proposed "Convention on the Rights of the Child" calls on governments to abolish female circumcision,¹³⁵ a provision which goes much further than the resolutions because it would impose an affirmative duty upon the governments to eradicate the practice. Furthermore, unlike a Sub-Commission resolution, conventions are binding treaties on those governments that ratify them.

It is too early to know how aggressively the Sub-Commission will work to eradicate female circumcision. The actions up to this

132. The language used in Sub-Commission resolutions is generally diplomatic when "criticizing" human rights violations. There is, however, a sort of hierarchy of severity with which the resolutions are drafted. Expressing "concern," which is the term used in the resolution defining female circumcision as a violation, is the most common approach. Sub-Comm'n Res. 1988/34, U.N. Doc. E/CN.4/Sub.2/1988/45 at 62 (1988). If the conduct is considered egregious, the Sub-Commission will use language which is designed to be more embarrassing. For example, a 1984 resolution on Chile used such terms as "deploring" and "especially disturbed." Sub-Comm'n Res. 1984/29, U.N. Doc. E/CN.4/Sub.2/1984/43 at 102 (1984).

133. Comm'n Res. 1988/57, U.N. Doc. E/CN.4/1988/88.

134. Sub-Comm'n Res. 1988/34 U.N. Doc. E/CN.4/Sub.2/1988/45 at 62 (1988).

135. *Question of a Convention on the Rights of the Child*, U.N. Doc. E/CN.4.1989/29 at 12 (1988). Article 24(3) calls on governments to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." This article does not explicitly mention female circumcision, but the *travaux preparatoires* make it clear that Working Group has it in mind. *Question of a Convention on the Rights of the Child*, U.N. Doc. E/CN.4.1987/25 at 8-10 (1987).

Another convention, the Convention on the Elimination of Discrimination Against Women, contains language which could be construed to prohibit female circumcision in ratifying countries. G.A. Res. 34/180 (1979), 34 U.N. GAOR Supp. (No. 46) at 193-98, U.N. Doc. A/34/46 (1980). In its 1988 session, the Committee on the Elimination of Discrimination Against Women discussed whether female circumcision violates Article 12 of the Convention. Article 12 calls upon parties to eliminate discrimination against women in the health care field. The Committee decided to delay taking action until it had more information. Andrew Byrnes, *Report on the Seventh Session of the Committee on the Elimination of Discrimination Against Women*, Int'l Women's Rights Action Watch 11-12 (1988).

point clearly show that the members do not intend to engage in public discussions or adopt formal resolutions that would embarrass the governments whose citizens continue to practice female circumcision. The intent of the study and the resolutions appears to be more subtle — to encourage gradual eradication by changing societal attitudes. The human rights bodies have, however, formally stated that female circumcision should be eliminated in light of international human rights norms. The approach taken by the Sub-Commission, and the reaction its work receives in the practicing cultures, may help determine whether there is an appropriate role for the human rights system with regard to cultural practices. If the attitude of the human rights bodies — that female circumcision is outmoded and unacceptable — takes hold within the practicing cultures, this issue may be an example of how the international human rights system can appropriately address cultural practices. Rather than imposing its views on cultures that do not agree with them, the human rights bodies may serve a sort of “consciousness-raising” function. The process of defining human rights norms, which involves many cultural and ideological perspectives, is an attempt to reach an international consensus over what behavior is acceptable. Once this consensus is reached, the resulting guideline may resonate within cultures that had not previously espoused such a value and inspire change within those societies.

V. Conclusion

The Sub-Commission’s evaluation of female circumcision provides a valuable opportunity to look closely at the practical effects of the conflict between cultural relativism and human rights theory.

The nature of the Sub-Commission’s actions with regard to this practice suggests that the members were influenced by cultural relativism. The Sub-Commission’s treatment of this cultural practice differed from the customary treatment of potential human rights violations. For example, the need to respect cultural values was explicitly acknowledged and Western participants honored that need by not criticizing female circumcision based on Western ideas. The report published by the Sub-Commission also evaluated the practice within its own cultural context. After determining that female circumcision is a violation of human rights, the resolutions adopted by the Sub-Commission did not condemn the practicing cultures. Rather, those resolutions called on the human rights system to engage in education efforts and other

measures to persuade the practicing cultures to stop performing these operations. The Sub-Commission members demonstrated awareness of the cultural significance of female circumcision by these actions. Despite this awareness, the Sub-Commission members obviously concluded that they had the authority to evaluate this practice and to declare that it violates international human rights law.

The source of the Sub-Commission's authority to judge practices like female circumcision is, of course, the fundamental question raised by cultural relativists. If all cultures are equally valid, on what authority can the human rights system evaluate these practices?

The authors of the report on female circumcision published by the Sub-Commission made no attempt to identify universal principles upon which to base their conclusion that female circumcision is a human rights violation. The report mentioned no specific international norms, nor did it rely on more general philosophical principles. The authors looked instead to the existence of international instruments ratified by countries in which female circumcision is practiced, without stating what human rights are being violated.

The language of the study also reflected the utilitarian influence of positivism. The authors weighed the diminished function served by female circumcision in current African society against the harmful consequences of the practice for women and girls. The report concluded that the harm outweighed any function the practice may still serve and indicated that, as a result, the cultural practice was obsolete.

Thus, the Sub-Commission members relied on positive international human rights law for evaluating female circumcision, not a surprising decision since these experts participate in developing that law. This reliance on the voluntary ratification of human rights instruments begs the question, however, whether this law can be appropriately applied in a cultural context. Does the fact that countries consented to conform to principles in these instruments provide sufficient authority to transcend the importance of longstanding cultural values?

The history of the practice of female circumcision suggests some answers to that question. This history demonstrates problems inherent in relying on the authority of positive law for outlawing longstanding cultural practices. The law enacted by the British in Sudan, for example, did not eliminate the practice of female circumcision, and in fact, engendered resistance to change.

Likewise, African women commenting on eradication efforts have stated that attempts to coerce parents to stop having their girls circumcised would simply result in more secrecy. The existence of laws forbidding female circumcision, or resolutions condemning the practice based on human rights norms, do not ensure that members of the culture will respond by dropping the custom. Whether or not positivism is an appropriate theoretical response to the questions raised by cultural relativism, relying merely on the existence of positive law may not be effective in changing deeply embedded cultural attitudes. Thus, even if the ratification of human rights instruments provides ample authority upon which to outlaw a cultural practice, a more subtle approach may be needed.

The efforts of the international women's movement in addressing the issue of female circumcision suggests a way in which the application of human rights norms can be more effective. The international women's organizations, working in conjunction with African women, have had a significant impact on attitudes toward female circumcision. Their combined efforts at educating African women about the harmful consequences of female circumcision resulted in a growing opposition to the practice. The women's movement relied on a simple idea that all women deserve to be treated with dignity and to control their own bodies. This idea has undeniably taken hold to varying degrees throughout the world and the result of this influence can be seen in the African campaign to eradicate female circumcision and other traditional practices harmful to women and children.

The combination of these two experiences suggests an appropriate role for the human rights system with regard to cultural practices. The human rights system should continue to develop norms to guide human behavior and to disseminate ideas about the importance of individual dignity. Countries which systematically violate human rights instruments should continue to be chastised and their victims protected by the human rights system.

With regard to cultural practices, however, the human rights system should apply the international norms differently. The authority for applying these norms to cultural practices probably cannot be found by searching for elusive universal principles. If the norms are developed in a process which reflects the views of divergent cultures and ideologies, the authority for these norms should come from the fact that a great number of nations agreed that a particular type of conduct is desirable. This authority should not be interpreted simplistically to coerce cultures into evolving new behavior fitted to this international ideal. Rather,

the norms should be used to expose both Western and non-Western cultures to these ideas. If there are individuals within a culture who feel victimized by one of that culture's practices, the international human rights system will provide a forum for those persons much like the Sub-Commission did for African women. As the experience with female circumcision demonstrated, cultures are dynamic in nature, and they change in response to external and internal influences. Simple, powerful human rights principles, upon which a great number of nations can agree, may resonate within a society and provide a catalyst for change. To deny that this is an appropriate role for the international human rights system is to deny the beneficial aspects of new ideas and the positive nature of cross-cultural influences.

The results of the Sub-Commission's work on the issue of female circumcision are not yet known. If it continues to address the issue with respect for the practicing cultures, however, the Sub-Commission may provide an example of how human rights can be an appropriate catalyst for cultural change.