

FEMALE GENITAL CUTTING: THE PRESSURES OF CULTURE, INTERNATIONAL ATTENTION, AND
DOMESTIC LAW ON THE ROLE OF AFRICAN WOMEN

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This essay examines the international scrutiny of female genital cutting (FGC) often referred to as female genital mutilation (FGM), and how international legislation overlooks the women affected by the procedure. It focuses on FGC on the continent of Africa, analyzing the policy and legislation influenced largely by those who are either not African or not female. The essay then looks to domestic legislation, reviewing the laws and current practices in Kenya, Senegal, Sierra Leone, and Egypt. Finally, the paper illustrates how changes in the practice of FGC come about with longevity more when those directly affected are brought into the discussion.

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I. Introduction

Female genital cutting is practiced in 28 African nations, including some in which the practice has been outlawed.¹ Female genital cutting is longstanding and has been in practice for millennia in some places.² As with many longstanding traditions, it may be argued that the procedure holds strong ties within the community. In fact, women from the communities who must undergo female genital cutting and advocate for its continuance do not see the procedure as a violation or “aberration”.³ For many young girls and women who face female genital cutting, the person holding the knife is another woman, which presents an interesting question: why would women continue the practice of a procedure that causes pain and potential health risks that could lead to serious injury or death? The answer is as difficult to accept as it is simple in statement: culture. For these women, participating in female genital cutting translates into conforming to the standards for the role of a woman.⁴ In these communities, the practice of cutting continues without scientific need or widespread international approval.

However, this does not mean that the international community has accepted the practice as a meaningful cultural expression. Indeed, it seems that the majority of people living outside of these communities condemn the practice from hearing the name alone. Many people cite international disapproval of the practice, with much support from international organizations, such as the United Nations. In pushing their ideals, critics of female genital cutting run the risk of imposing their beliefs upon the women closest to the communities that adhere to the practice. Advocates for the discontinuation of female genital cutting turn to international norms and the constitutional texts of some of the nations that have outlawed the practice with communities that clandestinely continue it.⁵

Caught between culture and international scrutiny, the women in these communities are often forced to choose between tradition and gender rights. If they choose to stand with tradition, they risk appearing “backward” by international human rights standards enforced by Western ideology. Yet, if they choose to adhere to the changing landscape of women’s rights, led by the White elite, they chance weakening the cultural bonds that have existed for centuries. From this viewpoint, this paper will discuss the multiple levels of legal framework that discuss female genital cutting, both domestically and internationally, focusing on four nations on the African continent: Kenya, Senegal, Egypt, and Sierra Leone. The discussion will illustrate the struggle African women face in their attempt to form a cohesive voice with which to advocate on their own behalf.

¹ Natalie J. Friedenthal, *It’s Not All Mutilation: Distinguishing Between Female Genital Mutilation and Female Circumcision*, 19 N.Y. INT’L L. REV. 111, 115 (2006).

² Blake Guy, *Female Genital Excisions and the Implication of Federal Prohibition*, 2 WM. & MARY J. WOMEN & L. 125, 133 (1995).

³ Sally Sheldon & Stephen Wilkinson, *Female Genital Mutilation and Cosmetic Surgery: Regulating Non-Therapeutic Body Modification*, 12 BIOETHICS 263, 271.

⁴ Friedenthal, *supra* note 1, at 112.

⁵ See generally Kay Boulware-Miller, *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, 8 HARV. WOMEN’S L.J. 155; Katherine Brennan, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7 LAW & INEQ. 367; Robyn Cerny Smith, *Female Circumcision: Bringing Women’s Perspectives Into the International Debate*, 65 S. CAL. L. REV. 2449.

II. The Culture of Cutting: Tradition and the Law

As with many traditions, female genital cutting has become a distinct part of many of the cultures where the practice continues. As part of cultural practice, female genital cutting has the potential to remain valid into the future if the procedure is being analyzed in a country where the constitution states that customary law is allowed to continue without being held firmly under the jurisdiction of the state. For some activists, this potential is problematic, and leaves women unprotected from a harmful human rights violation. For others, including women who have undergone the procedure, lenient constitutions allow the community to continue their cultural expressions.⁶

The debate between these two points of view plays out in discourse about international human rights treaties, with many people less familiar with the culture attempting to force change, but on a domestic level, female genital cutting takes on a more personal aspect. By looking at the text of constitutions and discussing the development of customary law around private areas, such as family law, this section attempts to look to the nations themselves to see how much of an effect the law has on the practice of centuries-old traditions.⁷

a. Female Genital Cutting: The Procedure and History

Like many cultural practices, the exact beginning of female genital cutting is unknown. However, evidence points to the fact that female genital cutting has been practiced for over 2500 years.⁸ Historians also know that cutting practices became associated with the ideals of virginity and chastity that is still prevalent in many African and Arab cultures today.⁹ In addition, male-dominated societies lend themselves to the continuation of the practice for the

⁶ For discussion from authors who acknowledge the need for cultural awareness when being an activist and joining the discussion of female genital cutting, *see generally* Isabelle R. Gunning, *Arrogant Perception, World-travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (discussing the changes in the perception of female genital cutting when acknowledging the prejudice of different cultures), Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1 (discussing the need to combine feminism and culture in order to properly engage in the discourse about female genital cutting with women from the communities in which the practices takes place), Richard A. Shweder, *What about "Female Genital Mutilation"? And Why Understanding Culture Matters in the First Place*, 129 DAEDALUS 209 (discussing the need to observe cultural practices from a culturally aware perspective, especially those of a sensitive nature, such as female genital cutting).

⁷ Abd-el Kader Boye, Kathleen Hill, Stephen Isaacs, & Deborah Gordis, *Marriage Law and Practice in the Sahel*, 6 STUDIES IN FAMILY PLANNING 343, 344 (Nov.-Dec., 1991) ("Although the French colonialists upheld customary marriage law for the most part...they imposed legislation to modify features of customary marriage law and practice that they found objectionable. For example, during the 20th century the French colonial administration enacted two decrees to modify customary marriage law in its African colonies...Article 5 of the Jacquinet Decree required male citizens to choose either monogamous or polygynous status for the duration of marriage. Women were never given this choice.").

⁸ Blake Guy, *Female Genital Excisions and the Implication of Federal Prohibition*, 2 Wm. & Mary J. Women & L. 125, 133 (1995), *hereinafter* "FGE and the Implication of Federal Prohibition".

⁹ Angela Wasunna, *Towards Redirecting the Female Circumcision Debate: Legal, Ethical and Cultural Considerations*, available at <http://www.medicine.mcgill.ca/mjm/v05n02/v05p104/v05p104main.htm>.

purposes of maintaining the ideals of virginity and purity for women without much concern for the same in men.¹⁰ This, however, does not mean that women within these cultures do not encourage the continuation of the practice as well.

The World Health Organization estimates that there are between 100 and 140 million girls and women around the world who have been subjected to female genital cutting.¹¹ Female genital cutting can be, and is, performed as early as infancy for some women. For others, the ritual takes place when a young girl goes through a coming of age ceremony. The practice crosses religious as well as ethnic and cultural lines, and although female genital cutting has been reported in the Middle East and among immigrant communities in Europe and the North America, it is most prevalent in Africa where it is practiced in about 28 African countries in the sub-Saharan and Northeastern regions of the continent.¹²

The term female genital cutting can describe “all procedures which involve partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or any other non-therapeutic reasons.”¹³ The World Health Organization has grouped the types of female genital cutting into four categories. The first category, known as ‘sunna,’ ‘circumcision’ or Type I, involves the removal of the prepuce or a partial removal of the clitoris itself. The WHO distinguishes between different subsections of Type I female genital cutting: Type Ia is the removal of the clitoral hood or prepuce only; Type Ib is the removal of the clitoris along with the prepuce.¹⁴ Anatomically, Type Ia would be the female equivalent of male circumcision where the foreskin is removed.

In Type II, also known as ‘excision’, the entire clitoris and labia minora are cut away. The World Health Organization subsections of Type II female genital cutting are: Type IIa, removal of the labia minora only; Type IIb, partial or total removal of the clitoris and the labia minora; Type IIc, partial or total removal of the clitoris, the labia minora and the labia majora.¹⁵ ‘Infibulation’, also referred to as Type III female genital cutting, is performed by cutting off the clitoris, labia minora, and the labia majora. The WHO subsections of Type III female genital cutting are: Type IIIa, removal and apposition of the labia minora; Type IIIb, removal and apposition of the labia majora.¹⁶ The raw edges are subsequently sewn together with catgut or made to adhere to each other by means of thorns. This causes the remaining skin of the labia majora to form a bridge of scar tissue over the vaginal opening. A small sliver of wood or

¹⁰ *Id.*

¹¹ WORLD HEALTH ORGANIZATION, WORLD HEALTH ORGANIZATION: FEMALE GENITAL MUTILATION FACT SHEET, *available at* <http://www.who.int/mediacentre/factsheets/fs241/en>.

¹² *Id.*; *See also* CENTER FOR REPRODUCTIVE RIGHTS, FEMALE GENITAL MUTILATION: A MATTER OF HUMAN RIGHTS (2006), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/FGM_final.pdf.

¹³ *Supra* note 11.

¹⁴ WORLD HEALTH ORGANIZATION, WHO FEMALE GENITAL MUTILATION AND OTHER HARMFUL PRACTICES, *available at* <http://www.who.int/reproductivehealth/topics/fgm/overview/en/index.html>.

¹⁵ *Id.*

¹⁶ *Id.*

straw inserted into the vagina prevents complete occlusion and thereby leaves a passage for urine and menstrual flow.¹⁷

The last category, Type IV (unclassified), includes pricking, piercing or incision of clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris, scraping of the vaginal orifice or cutting of the vagina; introduction of corrosive substances into the vagina and all other procedures that involve partial or total removal of the female external genitalia for cultural or any other non-therapeutic reasons.¹⁸ Type II is the most common type of female genital cutting, accounting for up to 80% of all cases.¹⁹

The procedure is usually carried out in the family home or in the home of a relative.²⁰ In many cases, female genital cutting is performed by an older woman in the family or an elderly woman of the village who has been specially designated for this task.²¹ Since there are no medical standards for the practice, the procedure may be carried out with any available object sharp enough to cut through tissue including knives, scissors, scalpels, pieces of broken glass, lids from tin cans, or razor blades.²² Because medical equipment is not, generally, available, these instruments may cause additional unintended health problems. Generally, anesthetics and antiseptics are not used.²³ In some cases, assistants, usually female family members, physically restrain the girl to prevent her from struggling. In others, the girl or woman is told to remain still as part of the ceremony. Some girls undergo the procedure alone, but female genital cutting is often undergone as a group. Sometimes, the procedure is carried out as part of an initiation ceremony, and then it is more likely to be carried out on all the girls in the community who belong to a particular age group.²⁴

Female genital cutting is a social practice that is strongly anchored in cultural beliefs and norms and custom and tradition are by far the most frequently cited reasons for female genital cutting. Communities that practice female genital cutting maintain their customs and preserve their cultural identity by continuing the tradition. The tradition has been so deeply rooted that many people in female genital cutting-practicing societies regard female genital cutting as so normal that it is unimaginable for them that a woman does not undergo the procedure.²⁵ In addition to the pressures exerted by the tradition, there are three main reasons for the continuation of female mutilation: women's sexuality, social pressure and religion.

In certain countries when female genital cutting continues, it is also believed that cutting allows for women's sexuality to be controlled by reducing their sexual fulfillment and in that way creating the appearance of virginity. By reducing or eliminating a woman's

¹⁷ Blake Guy, *Female Genital Excisions and the Implication of Federal Prohibition*, 2 WM. & MARY J. WOMEN & L. 125, 133 (1995).

¹⁸ *Supra* note 11.

¹⁹ *Id.*

²⁰ AMNESTY INTERNATIONAL, *Female Genital Mutilation – A Human Rights Information Pack*, available at <http://www.amnesty.org/en/library/asset/ACT77/005/1997/en/4cecff84-e987-11dd-8224-a709898295f2/act770051997en.pdf>, hereinafter "AI FGM Info Pack".

²¹ *Supra* note 17 at 133.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

sensitivity and consequently any physical pleasure derived from sexual intercourse, types I and II are intended to attenuate a woman's desire for premarital intercourse as well as to extinguish the 'impure' sexual appetites of married women.²⁶ The ability of uncut women to be faithful through their own choice is doubted. In turn, in most practicing societies, undergoing female genital cutting is a prerequisite for marriage. To ensure that a woman is as marriageable as possible, they are forced to undergo this procedure:

In addition to religious pressure to preserve their virginity until they marry, women who have not been excised experience an overwhelming "and independent social stigma. This stigma arises regardless of whether the woman has retained her virginity in compliance with religious tenets. In most communities, "circumcision is the traditional ritual that confers full social acceptability and integration into the community upon the females." The community generally regards a woman who has not been excised as a disgrace to her family and a dishonorable member of her society. The men of her community consider her to be unsuitable for marriage. The risk of being ostracized in this manner is particularly threatening given the social status and economic stability derived from women's roles as wives and mothers within their respective communities.²⁷

Social pressure in practicing countries plays a major role in ensuring that the practice continues. In a community in which most women are circumcised, family and friends create an environment in which the practice becomes a requirement for social acceptance.

Religion has also been frequently cited as one of the major justifications for the continuation of the practice. Even though female genital cutting is a cultural and traditional practice and is not required by any religion, it is often justified under the pretext of adherence to religious practices and frequently cited as an Islamic religious practice despite having no basis in the teachings of the Koran.²⁸

Other commonly cited reasons used by those who support the practice include hygiene (cleanliness or purity), aesthetics and health. The hygiene and cleanliness view holds that uncut women are regarded as impure and unclean and are not allowed to handle food or water. From the aesthetics side, some advocates maintain the perception that women's uncut genitals are ugly and bulky, hence unacceptable.

b. Customs & the Development of Customary Law

With the onset of imperialism, the societal structures present in many parts of Africa were uprooted and restructured to fit the norms of the new colonial masters. In the process of restructuring the societies, European monarchs set up governments that would mirror the configuration of the "mother country." This meant that governors were sent to the colonies to

²⁶ *Supra* note 17 at 143.

²⁷ *Id.* at 146.

²⁸ *Supra* note 17 at 141.

ensure that the crown would be served by her new subjects, and in a way that would conform to her standards.²⁹

With the end of colonialism came the development of new African nations, many with arbitrarily drawn borders that took no notice of the pre-colonial territory division. The same disregard was shown to the legal systems present before European imperialists. As a result, with the end of colonialism, the newly independent African nations were forced to decide between maintaining the structure implemented by their European colonizers, or attempting to resurrect the former status quo. When dissecting the question of female genital cutting, one must consider the dilemma these nations faced. In his article about the development of family law from custom, Martin Chanock eloquently stated the conflict facing the nascent nations:

[L]aw reform in Africa appears to involve a clash between the customary law and the modernizing ambitions of the post-colonial states. Much of the discussion of it, and the political rhetoric accompanying it, appears to take this for granted. An adequate conceptualizing of the nature of the customary law is, therefore, more than an academic question. It needs to be addressed to comprehend the politics of family law reform in modern Africa. Africans are heirs to a legal situation in which one of the major difficulties is the disparity between the law of the modern state and the customary law of the people. A complicating feature of this situation is that it appears to be the legacy of the colonial situation, the result of racist and oppressive cultural aggression fostered by the rule of white states over African peoples. The relatively recent overthrow of these conquest states has made it seem to many that the apparatuses and cultures of Africa must be re-asserted to become the dominant expressions of African ruled societies.³⁰

From this except one can clearly see the issues that build upon the difficulty facing African nations in the structuring of customary law after independence. Following years of enforcing Westernized codes, the state must become active decision-maker, a role uncommon during colonialism. When Europeans relinquished their positions of power on the African continent, they left a legacy of Western thought for the government structures. However, this structure did not negate the customs that had existed prior to their settlement and continued after they extended their empires. The result is a framework of a legal order, either civil or common, and the customs, like female genital cutting, that would need to be placed within the boundaries.

²⁹ *Supra* note 7 (“To enforce law in French West Africa, the French established a dual court system consisting of courts that applied French law and courts that applied only customary law. The French not only recognized the influence of Islamic law on customary law, but they also accepted the integration of Islamic law into customary law and practice, and specified that the courts were to apply customary law as it modified Islamic law.”).

³⁰ Martin Chanock, *Neither Customary Nor Legal: African Customary Law in an Era of Family Law Reform*, 3 INT’L J.L. & FAM. 72, 72-73.

Cultural conformity in African customary law is not limited to colonial rule. This conformity took shape in a number of different ways, with many nations including repugnancy clauses to ensure that cultural practices did not conflict with the ideals of the Western world:

"Repugnancy clauses" were inserted in virtually all colonial legislation to screen for consistency with "metropolitan high culture," all culturally specific norms before their reception. These clauses served a gate-keeping role during the reception of "native laws and customs." In essence, "native laws or customs" stood the test of the good conscience and the Western notion of justice.³¹

The continued presence of repugnancy clauses is just one way in which the colonial influence remains in the constitutions of some African nations. Yet, in spite of the presence of repugnancy clauses, there are some nations that have, in a sense, rebelled against the colonial past by including clauses that specifically exclude customary law from the jurisdiction of the constitution. These clauses leave private, cultural practices like female genital cutting out of the court system and the discussions of legislators.³² Without addressing the issue directly, laws that pertain to female genital cutting do not force the discussion, or lead to the elimination of the practice. Without the proper domestic framework, international decrees and mandates have no means of being implemented within each individual state, compounding the problems with international agreements described below.

III. Outside Looking In: The International Spotlight

In an effort to promote universal human rights, many organizations use the international stage as a place to encourage ideals, oftentimes at the expense of the "developing world." The United Nations, the largest international organization in the world, enjoys the position of being one of the most influential non-governmental bodies in existence; however, very few nations have the power of persuasion over the general membership, none of which are located in Africa. Nowhere is this greater illustrated than the United Nations Security Council. The five permanent seats, with the power to veto any Security Council provision, belong to the United States, Great Britain, France, Russia, and China.³³ None of these five nations are located on the African or South American continent, therefore, it is unsurprising to note that the majority of human rights initiatives take a decidedly Westernized approach to solving violations. In this regard, female genital cutting is no different, with many opponents coming from cultures where the tradition has never been practiced, and who, oftentimes, do not take the time to understand.

³¹ Cyprian F. Fisiy, *Containing Occult Practices: Witchcraft Trials in Cameroon*, 41 AFRICAN STUDIES REVIEW 143, 148; see also THE CONSTITUTION OF KENYA (proposed draft, 2010) art. 2, sect. 4 (this section states: "Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.")

³² *Supra* note 6, at 344; David Robinson, *Ethnographie et droit coutumier au Sénégal*, 32 CAHIERS D'ÉTUDES AFRICAINES 221, 231 (1992), at 231 (discussing the application of customary law that was not contrary to French law).

³³ UN SECURITY COUNCIL, MEMBERSHIP OF THE SECURITY COUNCIL, <http://www.un.org/sc/members.asp> (last visited Dec. 15, 2010).

Conversely, the discussions that take place within African nations mirror the power struggle seen on the international level, but with different factors dictating the outcome. Within the continent, there are a number of international organizations, most notably the African Union, who have the opportunity to correct the inequalities experienced by African nations when negotiating with the Western powers. In this way, international African organizations present a more culturally relevant point of view on human rights issues. However, in the process of applying cultural norms, these organizations often run into an issue of equally representing the desires of their female citizens.

This point becomes evident when analyzing the text of the African Charter on Human and Peoples' Rights and the later drafted Protocol to the African Charter on the Rights of Women in Africa. For African women, the struggle to have a representative voice on the international stage has been an ongoing one, with much of the discourse ignoring the inherent intersectionality present for them when discussing customary practices that directly affect the lives of women. In the end, the most successful international provision discussing the future of female genital cutting is the aforementioned Protocol to the African Charter on the Rights of Women in Africa.

As with many human rights issues, the international community has taken notice of female genital cutting. This topic has garnered increasing attention over the years, which has led to noteworthy results. One of these results is that nations where female genital cutting has never been a native custom have enacted legislation to prevent the act from entering their borders.³⁴ However, the laws enacted in individual states do not address the overall international discussion of female genital cutting. To better understand views on female genital cutting on a global scale, one must turn to the discourse taking place within supranational and international organizations. For this purpose, we now turn to the provisions relied upon from the United Nations and the African Union.

a. The United Nations

The United Nations has long been considered the most predominant international organization in the world; and given the influence and widespread acceptance of United Nations decrees, this sentiment is not without support. The United Nations has often been the

³⁴ At this point, I am referring to nations such as the United States, the United Kingdom, Austria, Belgium, Denmark, Spain, and Sweden, who have enacted laws prohibiting female genital cutting. Other Westernized states have applied existing criminal legislation when dealing with cases of female genital cutting within their borders, such as Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, Portugal, and the Netherlands. For more information regarding the legislation in Europe being used to stop female genital cutting, see Sophie Poldermans, *Combating Female Genital Mutilation in Europe: A Comparative Analysis of Legislative and Preventative Tools in the Netherlands, France, the United Kingdom, and Austria*, available at www.stopfgm.net/dox/SPoldermansFGMinEurope.pdf. For more information regarding the legislation in the United States, see CENTER FOR REPRODUCTIVE RIGHTS, FEMALE GENITAL MUTILATION (FGM): LEGAL PROHIBITIONS WORLDWIDE (February 2009), available at <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/Fact%20Sheet%20FGM%2002-2009.pdf>.

place for smaller, less powerful nations to turn when faced with large-scale human rights violations or when a new nation wishes to be acknowledged by the international community.³⁵ For the topic of female genital cutting, the UN has released an interagency statement calling for an end to female genital cutting.³⁶ This report illustrates the importance given to the topic, as ten of the more prevalent United Nations departments have signed onto it. The agencies involved are: the Office of the High Commissioner for Human Rights (OHCHR), the Joint United Nations Programme on HIV and AIDS (UNAIDS), the United Nations Development Programme (UNDP), the United Nations Economic Commission for Africa (UNECA), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), and the World Health Organization (WHO).³⁷ These ten organizations within the UN have taken up the mission of ending a practice they describe as “harmful,” “painful,” “traumatic,” and having “no known health benefits.”³⁸ However, these organizations miss an important aspect that must be considered when crusading against customary practices: cultural differences.

One of the most relied upon texts of the United Nations used by those who advocate for the end of female genital cutting is the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).³⁹ Many female genital cutting detractors cite CEDAW because of its general feminist sentiment. For those seeking the end to the tradition, CEDAW is readily cited. Many of CEDAW’s provisions are applicable, but the most available and pertinent to female genital cutting is Article 5(a):

States Parties shall take all appropriate measures [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and

³⁵ This is in reference to the United Nations’ attempts at preserving order whenever possible, including their many peace missions and tribunals. For more information regarding UN Peacekeeping Missions, see UNITED NATIONS, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/peacekeeping/>. For more information regarding UN tribunals, see UNITED NATIONS, UNITED NATIONS PROCUREMENT DIVISION – UNITED NATIONS PEACEKEEPING MISSIONS, <http://www.un.org/depts/ptd/tribunals.htm>.

³⁶ UNITED NATIONS, ELIMINATING FEMALE GENITAL MUTILATION: AN INTERAGENCY STATEMENT, available at www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf.

³⁷ *Id.*

³⁸ *Id.* at 1.

³⁹ See generally ELIZABETH HEGER BOYLE, FEMALE GENITAL CUTTING: CULTURAL CONFLICT IN THE GLOBAL COMMUNITY (2005); Elizabeth Heger Boyle & Sharon E. Preves, *National Politics as International Process: The Case of Anti-Female-Genital-Cutting Laws*, 34 LAW & SOC’Y REV. 703; JULIE PETERS & ANDREA WOLPER, WOMEN’S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES (1994); ANIKA RAHMAN & NAHID TOUBIA, FEMALE GENITAL MUTILATION: A PRACTICAL GUIDE TO WORLDWIDE LAWS & POLICIES (2000); Robyn Cerny Smith, *Female Circumcision: Bringing Women’s Perspectives Into the International Debate*, 65 S. CAL. L. REV. 2449; Leigh A. Trueblood, *Female Genital Mutilation: A Discussion of International Human Rights Instruments, Cultural Sovereignty and Dominance Theory*, 28 DENV. J. INT’L L. & POL’Y 437.

all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁴⁰

This small excerpt accurately alludes to the general tone of the entire document. Both within and outside of the African continent, many have noted that CEDAW pushes for an agenda that is decidedly Western in its approach.⁴¹ From the outside, the drafters of CEDAW view culture as villainous to women. The language of CEDAW generalizes culture as something that negatively affects women around the world with no discussion of the benefits of celebrating culture, such as community strengthening. CEDAW, drafted through the United Nations, approaches the discussion of culture as something that impedes the progress of women around the world if that culture does not conform to Western standards:

The documents generated at global conferences, from Commission meetings, as well as those from the CEDAW hearings and the general recommendations the CEDAW committee writes typically talk about culture as a barrier to progress. Culture is often equated to customs, traditions, and ancient practices. Documents concerning women are particularly likely to describe culture in these terms.⁴²

As described above, those who lead the international discussion amongst the nations comprising the United Nations utilize the term “culture” whenever broaching a topic that is foreign to their sensibilities. This foreignness creates a detachment in the worst possible way when discussing female genital cutting. Female genital cutting is not only personal for the women who experience it, but also for the community as a whole. For the cultures that incorporate female genital cutting into communal coming of age ceremonies, culture dictates the process by which the procedure is done, the experiences that lead up to it, and the reception of the girl or woman after the procedure is complete. When discussing female genital cutting as an outdated, violent procedure, international lawmakers exclude a level of depth necessary for understanding the living culture that has assisted in the continuation of the practice. In this way, representatives who advanced CEDAW as it is written have continued the cultural hierarchy that was developed during colonization. This type of cultural chain of command prevents a true sense of equality because the feminism advanced through CEDAW’s text reeks of a superiority complex. The feminism that would benefit a middle-class, white, American woman is not the feminism that would benefit a polygamous African woman who lives in a small village. Because of the implied hierarchy of the text, CEDAW fails to address the needs of women who are not similarly situated as the drafters. However, this does not mean that when culture is respected, gender is as well, as can be seen with the protocols of the African Union.

b. The African Charter on Human and Peoples' Rights

⁴⁰ United Nations, *Convention on the Elimination of all Forms of Discrimination against Women* (Sept. 3, 1981), available at <http://www2.ohchr.org/english/law/cedaw.htm>.

⁴¹ Sally Engle Merry, *Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)*, 26 POLAR: POLITICAL AND LEGAL ANTHROPOLOGY REVIEW 55, 66 (discussing the language in CEDAW as painting a negative picture of culture as it pertains to women in general).

⁴² *Id.*

Unlike the United Nations, the African Union does not face the same issue of cultural disassociation. While there are many different and diverse cultures across the African continent, making it difficult for all to be represented, the African Union representatives have a better understanding of the cultural norms facing the different African nations within the African Union. With a better sense of awareness of the cultural and traditional differences, the African Union is equipped where the United Nations is not. This does not eliminate the possibility of overlooking other differences amongst the African nations that make up the union. For women in Africa, having a voice in the African Union's discussion of human rights means overcoming the gender biases that exist globally, although they were addressed, however incompletely, in CEDAW. In the end, the African Charter on Human and Peoples' Rights reverses the problems faced from CEDAW: instead of overlooking the depth of culture and tradition, there is little attention placed on the role of women.

Arguably, an important aspect of human rights lies within gender discrimination and equality; however, the African Charter on Human and Peoples' Rights (the Charter) mentions "women" twice in its sixty-eight articles, and both instances are located within the same article.⁴³ When mentioning women, the Charter states:

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.⁴⁴

This excerpt, which is the third section of Article 18 of the Charter, provides a very general and basic statement in regards to the way women should be treated within member states. The vagueness of this section leaves much to be desired for women seeking equal rights. By stating that the state "shall ensure the elimination of every discrimination... as stipulated in international declarations and conventions," the Charter does not compel an active approach for the state to take. With this framing, the state is compelled to ensure the end of discrimination as interpreted within the state and to protect rights only after they have been brought to the international stage. In a nation where female genital cutting has been taking place for centuries, the practice would not be seen as discrimination because there may be a male corollary to the practice, making the first half of the provision irrelevant.⁴⁵

For the second half of the section, relating to the effects of international declarations and conventions, the section states that the member state must protect the rights of women and children. Applying this phrasing to CEDAW, the article does not guarantee an end to female genital cutting, and would leave a woman without much recourse in domestic courts. Using the applicable CEDAW provision, Article 5(a), female genital cutting does not necessarily fall within the boundaries of being prejudicial to women because of the way the tradition is practiced within the community. Arguably, if all women within the group undergo female genital cutting, there is no prejudice against those similarly situated. If applying the standard to

⁴³ AFRICAN UNION, AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, *available at* http://www.achpr.org/english/_info/charter_en.html.

⁴⁴ *Id.*

⁴⁵ In stating this, I do not mean that the procedures are parallel, merely the coming of age celebration and all that it entails.

men, there would have to be sufficient evidence shown that there is no comparable standard for the men in the community. This would lead to a discussion where the most important distinction to be made is whether the court should rely on science or tradition. Because female genital cutting, like male circumcision, is sometimes seen as a form of cleansing the body, the tradition may survive. If, however, the court relies on science and anatomy to prove a prejudicial difference in procedure, the only form of female genital cutting that may survive is type Ia. In the end, the Charter does little to guide the domestic legislators or courts because of the vagueness of the language.

Advocates for the elimination of female genital cutting may also attempt to turn to Article 18, Section 2:

The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.⁴⁶

If applied along with the aforementioned section, this sentence may allow for further interpretation of female genital cutting. As opposed to Section 3 of the same article, this section imposes a duty upon the member state to “assist the family.” This assistance can come in the form of protection for the children in the custody of parents who believe in female genital cutting.

Conversely, those who would continue the practice of female genital cutting may turn to this provision and point to the end of the phrase that lauds the family as the authority in enforcing “morals and traditional values.” For the Westerners who drafted CEDAW, this phrasing would do nothing for the advancement of women’s rights because it bows to the traditions of the member state. For African women hoping to end female genital cutting, the Charter provides little, if any, assistance. The language of this document illustrates a desire to protect the sanctity of culture and tradition, enabling the continuance of centuries-old practices in an effort to maintain strong communities. The problem with this outlook is that culture and tradition trump the protection of female citizens. African women who would look to the provisions of the African Union as being more sympathetic than CEDAW cannot find ease in the language of the text. To better progress a movement to stop female genital cutting, African women should turn to the Protocol to the African Charter on the Rights of Women in Africa.

c. The Protocol to the African Charter on the Rights of Women in Africa

Unlike CEDAW and the Charter, the Protocol to the African Charter on the Rights of Women in Africa (the Protocol) combines the discussion of both gender and culture, attempting to reconcile the tension felt by African women. On the topic of female genital cutting, the Protocol makes no mistake in identifying the practice and speaking directly to it in Article 5:

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

⁴⁶ *Supra* note 43.

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.⁴⁷

Unlike CEDAW or the Charter, the Protocol takes both culture and gender into consideration and uses knowledge of both to craft active language pertaining to the protection of women. However, the language of the Protocol is more important than a mere comparison to the other documents.

Article 5 of the Protocol not only attempts to induce the creation of legislation that would ban female genital cutting, it also compels member states to address the issue before it becomes a matter of the court. In sections a, c, and d of Article 5, the provision requires member states to provide information about female genital cutting, as opposed to allowing the tradition to remain mysterious or taboo. In addition, member states must “support...victims” as well as “protect” those who are at risk of being cut. By using language that would force action both before and after the procedure, the Protocol takes into consideration the fact that tradition may prevail in some instances, and that the only way to truly prevent the practice from continuing well into the future is through information to all communities.⁴⁸

IV. Case Studies: Eastern and Sub-Saharan Africa

Every nation that joins international organizations that release decrees and reports risks having citizens use the words of the international organization in domestic courts. Female genital cutting presents an example of international law being influenced by the practices of cultures within certain nations and resulting in different countries reacting to the foreign practice. The most evident of these tensions arise when a specific action, that is contrary to the international sentiment, has been reported. This has happened in a number of countries, but in reference to female genital cutting, instances in and about Africa generate the most attention.

⁴⁷ AFRICAN UNION, PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA, available at www.africa-union.org/.../Protocol%20on%20the%20Rights%20of%20Women.pdf.

⁴⁸ For further information on the Protocol and female genital cutting, see generally Johanna E. Bond, *Gender, Discourse, and Customary Law in Africa*, 83 S. CAL. L. REV. 509.

While female genital cutting takes place in the Middle East and Asia as well as on the African continent, very few cases about the practice outside of Africa reach the mainstream media and circulate around the globe, adding to the negative, homogenous portrayal of the continent.⁴⁹

The African continent is far from homogenous in culture, tradition, and law. The differences are often more pronounced when nations from different regions are compared. The four nations selected for case study in this paper were chosen due to their variety in location and prevalence of female genital cutting. Each nation fulfills one of two criteria for diversity and gives a simple sampling of the different ways that female genital cutting has been addressed both within the government and through non-governmental organizations.

a. Kenya

In Kenya, the prevalence of female genital cutting is lower than any of the other nations discussed in this paper. At 27.1%, Kenya has one of the lowest prevalence rates of female genital cutting of the 28 African nations where the practice noticeably takes place.⁵⁰ Yet, in spite of this low rate, the media has focused a lot of attention on the nation in regards to the practice of female genital cutting.⁵¹ This attention may be attributed to a number of things, including the fact that the news source may want to follow up on a scintillating topic, but there would be no need to report if the practice was discontinued. The continuation of the tradition illustrates the desire of some communities to maintain the status quo as it relates to female genital cutting. In Kenya, this presents an interesting case study because the practice has been outlawed:

No person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development.⁵²

In addition, it is worth noting that the Kenyan Constitution contains a repugnancy clause:

Any law, including customary law that is inconsistent with this

⁴⁹ See *Kenya shock at mutilation death*, BBC NEWS, June 23, 2006, available at <http://news.bbc.co.uk/2/hi/5109094.stm>; *Girls flee circumcision in Kenya*, BBC NEWS, Dec. 5, 2008, available at <http://news.bbc.co.uk/2/hi/7766806.stm>; *"I had female circumcision"*, BBC NEWS, May 13, 2004, available at <http://news.bbc.co.uk/2/hi/health/3711459.stm>; Ania Lichtarowicz, *Genital mutilation "still common"*, BBC News, June 10, 2003, available at <http://news.bbc.co.uk/2/hi/africa/2977426.stm>; Omer Songwe, *Cameroon princess fights mutilation*, BBC NEWS, Dec. 9, 2002, available at <http://news.bbc.co.uk/2/hi/africa/2547503.stm>; *Ethiopian girl recounts night of terror*, BBC NEWS, Apr. 30, 2002, available at <http://news.bbc.co.uk/2/hi/africa/1959589.stm>; *Couple's stand against female circumcision*, BBC NEWS, Jan. 22, 2003, available at <http://news.bbc.co.uk/2/hi/africa/2681191.stm>; Kristin Whiting, *Reporter's Notebook: Female Circumcision in Africa*, National Geographic, Feb. 19, 2002, available at http://news.nationalgeographic.com/news/2002/02/0220_020219_TVcircumcision.html.

⁵⁰ WORLD HEALTH ORGANIZATION, PREVALENCE OF FGM, <http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/index.html>.

⁵¹ See *supra* note 49, which includes a majority of articles discussing female genital cutting in Kenya specifically.

⁵² Kenyan Children Act of 2001, sect. 14.

Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.⁵³

These two provisions serve as legislative proof of the intent of the Kenyan government to discontinue the practice of female genital cutting, yet groups still follow through with the procedure.

One reason for the continued unlawfulness may lie in the interpretation of Kenyan law as it pertains to custom and tradition. In her article discussing the ways in which development clashes with culture and custom, Celestine I. Nyamu states that the constitutions of many African nations leave room for civil disobedience:

An example of government avoidance of responsibility for inequality can be seen in the framework adopted by some Anglophone African constitutions to accommodate cultural and religious pluralism. The Kenyan constitution, for example, exempts customary and religious laws in the areas of marriage, divorce, devolution of property on death, and other personal law matters from the anti-discrimination provision in section 82.⁵⁴

From this excerpt, one can begin to understand the reason why female genital cutting still takes place in Kenya: there has not been a concerted effort to have the practice eliminated. Kenya is a clear example of the power of tradition and custom over legislation when the community has not reached the conclusion implied by the text of the laws. Until Kenyans wish to end female genital cutting, it seems that the law will stand on the books, but ignored by the citizenry. The laws seem to do nothing but force those who perform the procedure to be subtler in its execution.⁵⁵ In the end, the population knows that the practice continues, with many Kenyans claiming that the laws are not stringent enough.⁵⁶

Kenyans may be able to make progress in ending female genital cutting by presenting the issue in a different light. Instead of working from the legislation down, people within the communities need to begin with the women who have undergone the procedure and those who do not wish to have the procedure performed. In addition, the activism that would need to take place should come from advocates within the community, as opposed to foreign NGOs that would perpetuate the disconnection problem seen with the UN provisions. The attempts made to have female genital cutting stopped in Kenya have, largely, been done with the assistance of Western organizations, such as Equality Now, which is based in the United States.⁵⁷ This is not to say that the only efforts to eradicate female genital cutting in Kenya are from Western-based groups, however, within the same article, there is only one mention of a Kenyan activist, while

⁵³ THE CONSTITUTION OF KENYA (proposed draft, 2010) art. 2, sect. 4.

⁵⁴ Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?*, 41 HARV. INT'L. L. J. 381, 401.

⁵⁵ Ochieng' Ogodo, *FGM in Kenya: Outlawed, Not Eradicated*, WOMEN'S E-NEWS, Feb. 8, 2005, available at <http://womensenews.org/story/genital-mutilation/050208/fgm-in-kenya-outlawed-not-eradicated>.

⁵⁶ *Id.*

⁵⁷ Joyce Mulama, *A Disturbing Trend in Female Genital Mutilation*, IPS News, June 9, 2004, available at <http://ipsnews.net/interna.asp?idnews=24098>.

there is mention of London-based Amnesty International and Ghanaian activists who have ventured to Kenya.⁵⁸ Other than the one Kenyan activist, the other Kenyans mentioned in the article were government spokespersons; both denied knowing of cases where the practice continues or of medical professionals who assist in the procedure.⁵⁹ For Kenya, the push to end female genital cutting must come from the community for there to be lasting effect.

The top-down legislative approach, both domestically and internationally, have done nothing but force practitioners to become more discreet and careful with the procedure. This is likely because, although the Kenyan government has signed on to a number of international treaties and decrees that outlaw the practice (including CEDAW, the Charter, and the Protocol), there has not been a local call for change from the women in these communities; otherwise, the government's action does nothing to alleviate unlawfulness. A better understanding of a successful implementation of grassroots organization can be seen in the actions of women in Senegal.

b. Senegal

Unlike Kenya, Senegal is located in the Western part of Africa. Similarly, however, the Senegalese government has enacted a law that prohibits female genital cutting.⁶⁰ In Senegal, there is considerable blending between customary and non-customary law. This blending stands as a testament to the influence of the French. As a result, French law is written to incorporate customs in the codified statutes. The criminal law concerning female genital cutting is no different in this regard. The text of the addendum to the 299th provision of the criminal code reads:

Sera puni d'un emprisonnement de six mois à cinq ans quiconque aura porté ou tenté de porter atteinte à l'intégrité de l'organe génital d'une personne de sexe féminin par ablation totale ou partielle d'un ou plusieurs de ses éléments, par infibulation, par insensibilisation ou par un autre moyen.

(Anyone who has, or attempted to, compromise the integrity of the genitalia of a female person by: partial or total removal of one or more of its components, infibulation, desensitization, or by any other means, shall be punished with imprisonment from six months to five years.)

La peine maximale sera appliquée lorsque ces mutilations sexuelles auront été réalisées ou favorisées par une personne relevant du corps médical ou paramédical.

(The maximum penalty will be applied when the sexual mutilation has been carried out or facilitated by a person licensed as medical or paramedical personnel.)

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ CODE PENAL [C. PEN.] art. 299 bis (loi n° 99 - 05 du 29 janvier 1999) (Sen.).

Lorsqu'elles auront entraîné la mort, la peine des travaux forcés à perpétuité sera toujours prononcée.

(If the procedure results in death, those convicted shall be sentenced to the penalty of hard labor for life.)

Sera punie des mêmes peines toute personne qui aura, par des dons, promesses, influences, menaces, intimidation, abus d'autorité ou de pouvoir, provoqué ces mutilations sexuelles ou donné les instructions pour les commettre.

(Any person who, by gifts, promises, influences, threats, intimidation, abuse of authority or power, caused genital mutilation or gave instructions to commit them shall face the same penalties.)

This provision calls for the discontinuation of any type of female genital cutting, and goes so far as to refer to the procedure as mutilation in all forms. This broad sweeping legislation also calls for the imprisonment of any person involved in the furtherance of the practice. By doing this, the Senegalese government has eliminated the risk of any form of female genital modification, even if it may be considered a traditional or cultural act.

In addition to legislation, Senegal is also the home of a number of community-based activists. Of these movements, the most successful has been the organization Tostan. Tostan, which is Wolof for “breakthrough,” was started in 1991, working with ten West African nations in two decades.⁶¹ Of the ten nations they work with, Tostan has implemented their 30-month educational program on female genital cutting in five: Senegal, The Gambia, Guinea, Burkina Faso, and Somalia.⁶² Senegal has, by far, been the most successful in implementing the program and ending female genital cutting in participating villages. Tostan reports that, of the approximately 5,000 Senegalese villages that participate in female genital cutting, 4,385 have agreed to discontinue the practice.⁶³

What makes Tostan unique amidst a sea of human rights non-governmental organizations is the approach they use to end what they perceive as human rights violations. Instead of entering a nation and pushing their specific ideals with no regard to the culture and history of tradition, Tostan presents objective information in the native language of the village.⁶⁴ The approach goes further by inviting the entire village to participate: “The program encourages dialogue and consensus among members of all groups: men and women, elders and youth, different social classes, ethnic groups, castes, and religions.”⁶⁵ By making the

⁶¹ TOSTAN, ABOUT US | HISTORY, <http://tostan.org/web/page/576/sectionid/556/parentid/556/pagelevel/2/interior.asp> (last visited Dec. 15, 2010).

⁶² TOSTAN, COMMUNITY-LED SUCCESSES | ABANDONING FEMALE GENITAL CUTTING, <http://tostan.org/web/page/586/sectionid/547/pagelevel/3/parentid/585/interior.asp> (last visited Dec. 15, 2010).

⁶³ *Id.*

⁶⁴ TOSTAN, OUR PROGRAMS | OUR APPROACH, <http://tostan.org/web/page/619/sectionid/547/pagelevel/3/interior.asp> (last visited Dec. 15, 2010).

⁶⁵ *Id.*

educational experience one of mutual exchange between the workers from Tostan and the community itself, this organization allows for the type of discussion that can lead to lasting progress. Instead of taking an ethnocentric or misogynistic approach, Tostan gives power to the community to determine what will happen in the future and what traditions need to change for the community to thrive.

However, the community involvement and legislation, which was enacted in 1999, have not completely eliminated the practice within the Senegalese borders. In 2005, six years after the law was enacted, the World Health Organization reported that the prevalence rate of female genital cutting, for women between the ages of 15-49, was estimated at 28.2%.⁶⁶ While this rate is better than many other nations, it shows that more than one fourth of Senegalese women surveyed have undergone female genital cutting, pointing to the fact that there are communities where the procedure is still practiced.

Senegal presents an interesting case study because of the relatively low prevalence of female genital cutting, presence of legislation banning the procedure, and the community involvement in the discussion of the procedure. Unlike Kenya, it seems that there is a foreseeable end to female genital cutting in Senegal. At this point, it is merely a matter of time for the information to be presented to the communities that have yet to hear it. With successful grassroots organizations, domestic law, and international law all pointing to the same outcome, it seems that Senegal will see an end to the tradition on its own terms and in its own time.

c. Sierra Leone & Egypt

In Sierra Leone, there is no legislation that prevents female genital cutting.⁶⁷ This may be a result of a number of factors, including concerns about political stability. For a nation that has dealt with civil strife for a number of years, the topic of female genital cutting may not see the floor of the legislature. Another reason may also be the influence of cultural groups, including the secret societies that continue to thrive in Sierra Leone.⁶⁸ There have been a number of measures taken to have female genital cutting eliminated, but barring domestic legislation, the likelihood that Sierra Leone will discontinue the practice is extremely low. Unlike the nations mentioned above, female genital cutting takes place legally in Sierra Leone. Because female genital cutting is not illegal, Sierra Leone brings a unique question to the international discussion: When, if ever, should human rights activists allow objectively violent traditional practices to continue?

The World Health Organization estimates that 94% of women between the ages of 15 and 49 have undergone some form of female genital cutting.⁶⁹ Female genital cutting is reportedly practiced by all of the ethnic and religious groups in Sierra Leone with the exception

⁶⁶ *Supra* note 50.

⁶⁷ CENTER FOR REPRODUCTIVE RIGHTS, FEMALE GENITAL MUTILATION (FGM): LEGAL PROHIBITIONS WORLDWIDE (February 2009), *available at* <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/Fact%20Sheet%20FGM%2002-2009.pdf>.

⁶⁸ *See generally* Anna Cave, Nasim Farjad, Chi Mgbako, Meghna Saxena, & Helen Shin, *Penetrating the Silence in Sierra Leone: A Blueprint for the Eradication of Female Genital Mutilation*, 23 HARV. HUM. RTS. J. 111.

⁶⁹ *Supra* note 50.

of the Christian Krio in the Western area.⁷⁰ The high prevalence of female genital cutting in Sierra Leone may be attributed to the fact that there is no domestic legislation in place to deter the tradition, however, the existence of legislation does not necessarily mean that the practice will be discontinued. An example of this principle is Egypt.

In Egypt, the prevalence of female genital cutting is 91.1%, less than three percent below that of Sierra Leone.⁷¹ For a nation with a law banning female genital cutting, this rate is extremely high. Compared to Kenya and Senegal, who both also have legislation in place, Egypt's policies are astonishingly high. What makes Egypt unique is the public outcry that led to the 2008 law banning female genital cutting, or female circumcision as it is referred to in Egypt. In 2007, a 12-year-old girl died as a result of a circumcision performed in an illegal clinic in the southern town of Maghagh.⁷² Immediately following the death of Badour Shaker, the Egyptian Health Ministry released a decree stating that female circumcision is "prohibited for any doctors, nurses, or any other person to carry out any cut of, flattening or modification of any natural part of the female reproductive system, either in government hospitals, non government or any other places."⁷³ Along with the Health Ministry, the Egyptian First Lady and religious leaders across the nation also spoke out against the practice following Shaker's death.⁷⁴ The following year, Egypt put a law into place to ban the practice all together.⁷⁵ What, then, has limited the progress of eradicating female genital cutting in Egypt?

To answer this question, it is more helpful to look to the similarities between Sierra Leone and Egypt. Both nations are home to communities who wish to continue performing female genital cutting on a large scale. Egypt has enacted a law to ban the procedure and, in the past, the Sierra Leonean has promised to do the same; however, neither nation has had a strong grassroots opposition to female genital cutting.⁷⁶ The lack of community effort, such as that seen in Senegal, and harmony between domestic and international law as seen in both Senegal and Kenya, keeps Sierra Leone from experiencing major developments in the fight to end female genital cutting. For Egypt, the problem seems to lie in the execution of the law banning female circumcision. While Kenya experiences minor setbacks in the execution of their laws, Egypt did not prosecute anyone found guilty of female circumcision until a year after the law was enacted.⁷⁷

⁷⁰ SUPRAREGIONAL PROJECT ENDING FEMALE GENITAL MUTILATION, FEMALE GENITAL MUTILATION IN SIERRA LEONE (published by Deutsche Gesellschaft für Technische Zusammenarbeit), *available at* www.gtz.de/en/dokumente/en-fgm-countries-sierraleone.pdf.

⁷¹ *Supra* note 50.

⁷² *Death of 12-Year-Old Circumcised Girl Shocks Egypt, Prompts Ban on Rite*, FOX NEWS, June 29, 2007, *available at* <http://www.foxnews.com/story/0,2933,287393,00.html>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ CENTER FOR REPRODUCTIVE RIGHTS, FEMALE GENITAL MUTILATION: A MATTER OF HUMAN RIGHTS (2006), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/FGM_final.pdf

⁷⁶ *Sierra Leone government to ban female circumcision: minister*, FORWARD UK, Feb. 5, 2008, *available at* <http://www.forwarduk.org.uk/news/news/172>.

⁷⁷ Mustafa Suleiman, *Egypt makes first arrest over female circumcision*, AL ARABIYA NEWS CHANNEL, Aug. 13, 2009, *available at* <http://www.alarabiya.net/articles/2009/08/13/81698.html>.

Both of these illustrate the need for grassroots organization in the fight to change customs and traditions. For a topic like female genital cutting, where tradition, religion, custom, and culture are all tied into a single act, law and local support are needed to both legitimate the ideals put forth in the international discussion of human rights as well as adapting the plans of outsiders so as not to destroy the cultural fabric of the community. Because of the delicate balance that must be struck when modernizing centuries-old customs, African women are faced with a definite struggle, one that has the potential of separating families or causing uproar throughout an entire nation. In order to effect change, therefore, women in Sierra Leone and Egypt must band together within their nations to compel the government to either enact or execute the law in order to protect women as they see fit, or organize to help educate the world about why the tradition should stand. As it is, the women in these communities are painted as victims, not agents of their own lives, and will continue to be discussed internationally without having any input in the conversation.

V. Conclusion

The power to permanently change the traditions of a culture must come from within the group itself, lest we risk denying groups the right of self-identification. The conflict comes about when globalization of economies transitions into globalization of thought, leading the more influential, and wealthy, of nations in a position of power. This is no different in the realm of female genital cutting. This practice has continued for nearly two millennia, and the majority of the backlash against the procedure comes from the West. When we open borders for the exchange of thought, we risk change to tradition, but should this risk be borne on both sides of the exchange? While women in Africa are being told that the Western world wishes to “educate” them on the rights they have, should not the West face a similar argument on the continuation of tradition and celebration of culture? To a Westernized mind, the practice of female genital cutting seems harmful, painful, and unnecessary, but does a culture where it marks a sign of desirability, maturity, and custom have the right to continue the tradition without public scrutiny?

Feminists and human rights activists from Europe, America, and all across the African continent have spoken against female genital cutting, with lasting results seen when local and international opinion align and the community welcomes the change. This illustrates the lasting ability of tradition and culture in spite of international pressure from people both within and outside of the perceived community. Surely, the only way for true change to take place, the group that the change will affect must seek that change. From this, the Western world should understand the need to work with the “victimized” group, as opposed to continuing the imperialistic mindset by forcing their ideals upon others. In the end, this will be the only way to ensure lasting change in the fields of human and women’s rights.