Human Rights Quarterly

A Comparative and International Journal of the Social Sciences, Humanities, and Law

Volume 10 Number 4 November 1988

The Johns Hopkins University Press

EDITORIAL BOARD

Editor-in-Chief
Bert B. Lockwood, Jr.
Managing Editor
Lisa Kline Arnett
Articles Editors
Janet L. Alter
Kelly Browne
Michael R. Heflin
Staff Assistant
Nancy Ent

EDITORIAL STAFF

Tracy A. Dexter
Kimberly Gambrel
Erika Beth Goss
Linda E. Juergens
Kurt J. Lindower
Antonia Mitroussia
Lorene F. Schaefer
David Stoelting

THE URBAN MORGAN INSTITUTE FOR HUMAN RIGHTS

Director
Bert B. Lockwood, Jr.
Advisory Board
William J. Butler, Chairman
Jorge L. Carro
Gordon A. Christenson
Eli Whitney Debevoise
Norman Dorsen
George Edwards
Tom J. Farer
Thomas M. Franck
Tom Gerety
Louis Henkin
John P. Humphrey
Nathaniel R. Jones
Richard Lillich
Gay McDougall
Myres S. McDougal
Powell McHenry
Charles Runyon
Mark L. Schneider
Louis B. Sohn
Walter Tarnopolsky

[HU]MAN RIGHTS QUARTERLY
[A C]omparative and International Journal of the Social Sciences, Humanities, and Law
[Vo]lume 10 • Number 4 • November 1988
[ISS]N: 0275-0392

[Co]pyright © The Johns Hopkins University Press 1988.

[Typ]eset by Capitol Communication Systems, Crofton, Maryland. Printed by The Sheridan Press, Hanover, [Pe]nnsylvania.

[Th]is journal is printed on acid-free paper. The paper used in this publication meets the minimum requirements [of] American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, [A]NSI Z39,48-1984.

[Al]l rights reserved. No portion of this journal may be reproduced by any process or technique without the [for]mal consent of The Johns Hopkins University Press. Authorization to photocopy items for internal or [pe]rsonal use, or the internal or personal use of specific clients, is granted by The Johns Hopkins University [Pr]ess for libraries and other users registered with the Copyright Clearance Center (CCC) Transactional Reporting [Se]rvice, provided that the base fee of $02.00 per article is paid directly to CCC, 21 Congress St., Salem, [M]ass., 01970. This consent does not extend to other kinds of copying, such as copying for general distribution, [fo]r advertising or promotional purposes, for creating new collective works, or for resale. 0275-0392/ [8]8 $02.00

[H]uman Rights Quarterly is indexed and abstracted in *Current Contents, Current Law Index, P.A.I.S. Bulletin, [Le]gal Resource Index, Social Sciences Citation Index, Linguistics & Language Behavior Abstracts, Political [S]cience Abstracts, International Political Science Abstracts, Religion Index One,* and *Sociological Abstracts.*

[S]UBSCRIBER INFORMATION

[H]uman Rights Quarterly is published four times a year in February, May, August, and November. Subscription [ra]tes (one year): institutions, $57.00; individuals, $21.00; students $19.00. Subscribers in Canada and Mexico [a]dd $3.75 postage; outside North America, add $8.00.

[C]laims for replacement of missing issues must be received within three months following publication of the [is]sue. All payments must be made through U.S. Bank or by International Money Order. All subscriptions are [e]ntered on a calendar year basis only to begin with the first issue of the current volume. Prepayment required [f]or shipment.

[P]lease direct all subscription inquiries and business communications to the publisher: The Johns Hopkins [U]niversity Press, Journals Publishing Division, 701 W. 40th Street, Suite 275, Baltimore, Maryland 21211.

[S]econd class postage paid at Baltimore, Maryland, and at additional mailing offices. Permit for additional [e]ntry pending.

[P]ostmaster: Send address changes to: *Human Rights Quarterly,* The Johns Hopkins University Press, Journals [P]ublishing Division, 701 W. 40th Street, Suite 275, Baltimore, Maryland 21211

[I]NSTRUCTIONS TO CONTRIBUTORS

1. Manuscripts and books for review should be sent to: Bert B. Lockwood, Jr., *Human Rights Quarterly,* Urban Morgan Institute for Human Rights, College of Law, University of Cincinnati, Cincinnati, Ohio 45221. Tel[e]phone (513) 475-4307. Manuscripts cannot be returned.
2. Papers should average between 5,000 and 10,000 words in length. Pages should be numbered sequentially, including footnote pages. All manuscripts should be original, double-spaced with 1½-inch margins, including footnotes. If the manuscript is on a 5¼-inch diskette which is IBM P.C. compatible, send the diskette with the manuscript. Please indicate the name of the software.
3. Use the *Chicago Manual of Style* except for manuscripts in which the predominant mode of analysis is legal, in which case the *Uniform System of Citation* (Harvard Law Review Association) should be used. Footnotes should be double-spaced and on separate pages after the manuscript.

HUMAN RIGHTS QUARTERLY
VOLUME 10, NUMBER 4

CONTENTS

ARTICLES

Alison T. Slack *437* Female Circumcision: A Critical Appraisal

Sonia Rosen and David Weissbrodt *487* The 39th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities

Fae L. Korsmo *509* Nordic Security and the Saami Minority: Territorial Rights in Northern Fennoscandia

Conway Henderson *525* Human Rights and Regimes: A Bibliographical Essay

David Weissbrodt *544* Country-Related and Thematic Developments at the 1988 Session of the UN Commission on Human Rights

BOOK REVIEWS

S. Adele Shank *559* Amnesty International, *United States of America: The Death Penalty*

Human Rights Quarterly Staff *560* International Institute of Higher Studies in Criminal Sciences, *Draft Charter on Human and People's Rights in the Arab World*

561 Berth Verstappen, ed., *Human Rights Reports*

562 *European Convention on Human Rights: Collected Texts*

562 American Academy for the Advancement of Science Committee on Scientific Freedom & Responsibility, *The Open Secret: Torture and the Medical Profession in Chile*

563 Nepal Law Society, *Seminar on: Independence of Judges and Lawyers*

564 Minnesota Lawyers International Human Rights Committee, *Tunisia: Human Rights Crisis of 1987*

565 Minority Rights Group, *Micronesia: The Problems of Palau*

566 The Antislavery Society for the Protection of Human Rights, *Antislavery Reporter*, Vol. 13

567 American Association for the International Commission of Jurists, *Human Rights and Foreign Policy: The Role of Government in 1985 and 1986*

567 Robert Dinerstein, Karen Penn, Carlos Vasquez, and Edward Weidenfeld, *Report on the Chilean Electoral Process*

INDEX TO VOLUMES 1–10 569

HUMAN RIGHTS QUARTERLY

Female Circumcision: A Critical Appraisal

*Alison T. Slack**

CONTENTS

I. INTRODUCTION 439
II. FEMALE CIRCUMCISION—WHAT IS IT? 440
A. Description of the Various Forms 440
B. The Process, Conditions, and Epidemiology 442
C. Origins 443
III. ARGUMENTS IN SUPPORT OF THE PRACTICE 445
A. Sexual Control of Females 445
B. Religion 446

* The issue of female circumcision is of special interest to me. As a Peace Corps volunteer in Mauritania, where roughly 80 to 90 percent of females are circumcised, I was witness to the problems associated with this practice. After having lived in my village for five months, one of my friends gave birth to a baby girl, and the family wanted to name her after me. I felt honored, but was afraid that this baby girl, with whom I now had special affinity, was destined to be circumcised. In Mauritania the practice is most often done within the first two weeks after birth, and this contributes to the already high level of infant mortality (approximately 20 percent). I discussed my concerns with the parents in my limited Arabic vocabulary, and was pleased to hear that they had reservations about the practice. During the next two weeks, with my encouragement, they decided not to have their daughter circumcised. Now, six years later, I have learned from a volunteer who was recently in my village that my namesake still has not been circumcised.

It is possible, however, that pressure from the villagers will force the parents to have the procedure done at a later date, and thereby subject my namesake to all of the possible medical and psychological problems. Also, it is possible that if the daughter remains uncircumcised, it will be difficult for her to marry. On the other hand, the family is well respected in the village, and their reservations may serve as an example to other families and thereby help to discourage the practice. I can only hope that this will be the outcome; this would be an example of how the influence of an outsider can be successful. This success would not come from the imposition of values, the passing of laws, or the coercion of people to change their ways, but rather through reinforcement of concerns already harbored—reinforcement by means of education and interpersonal communication.

Many thanks to Professor Philip Alston for all his help with this paper.

Human Rights Quarterly 10 (1988) 437–486 © 1988 by The Johns Hopkins University Press

C. Myths 447
D. Tradition 448
IV. ARGUMENTS AGAINST THE PRACTICE 450
A. Health Effects 450
1. Immediate and Short-Term Complications 451
2. Long-Term Complications 452
3. Psychological Trauma 454
B. Sexual Control of Females 455
C. Religion 457
D. Myths 459
V. FEMALE CIRCUMCISION IN WESTERN CULTURE 461
VI. HUMAN RIGHTS VERSUS CULTURAL SELF-DETERMINATION 462
A. Arguments in Favor of Female Circumcision from a Cultural Self-Determination Perspective 462
B. Arguments Against Female Circumcision from a Human Rights Perspective 464
VII. INVOLUNTARY VERSUS VOLUNTARY PARTICIPATION 468
A. Involuntary Participation 468
B. Voluntary Participation 470
VIII. APPLICABILITY OF HUMAN RIGHTS ON A UNIVERSAL BASIS 473
IX. CHANGE—PREVIOUS ATTEMPTS AND PROSPECTS FOR THE FUTURE 476
A. Measures Taken for Elimination of Female Circumcision 477
1. Legislation 477
2. Religion 478
3. Health Education 479
4. Comparison with Chinese Footbinding 481
B. Prospects and Recommendations for Change 483
1. International Efforts 483
2. Health Education Programs 483
3. Socially Influential Role Models 484
4. Legislation and Multidisciplinary Approach 484

I. INTRODUCTION

Female circumcision has been practiced for nearly 2500 years and continues in practice today in over forty countries.[1] In spite of wide geographical, racial, and religious distribution, the custom has attracted little attention in social or medical literature, and substantive research on the subject has been limited. Those who support and help perpetuate the practice argue that the decision to engage in such a custom is the prerogative of a society, and that other societies have no right to impose their contrary morals and beliefs. Opponents of female circumcision underscore the adverse physical and emotional effects of the practice on women, young girls, and babies. The heart of the controversy lies in finding a balance between a society's cultural self-determination, and the protection of individuals from the violation of their human rights.

This article seeks to determine at what point the "tradition" female circumcision becomes a human rights violation justifying pressure from foreign cultures to end this "tradition." Two major, opposing views emerge in the article. The first view advocates an absolute right to "cultural self-determination": not even a cultural tradition routinely resulting in death could be attacked as a violation of human rights under this view.

The second view argues that a "tradition" that routinely harms or kills individuals is a human rights violation and should be stopped. This view points to the significant number of women and children who do not have an opportunity to refuse to be subjected to this "tradition." This article finds the second view to be most persuasive and argues that human rights are universal.

Following this introduction, Part II describes the four basic forms of circumcision and examines the circumstances under which they occur. The origins of circumcision are also discussed.

Part III sets forth various justifications for the practice, including: religion, tradition, the need to control women's sexuality, and cultural myths. All these justifications except tradition are discounted in Part IV's argument against the practice. The ultimate conflict is between health complications (including death) and the right to continue a cultural tradition.

Part V examines female circumcision as it was practiced in Western

---

1. "The practice of female circumcision is nearly global in its distribution; Africa, Malaysia, Indonesia, and the southern parts of the Arab peninsula, Pakistan, and Russia (some sects), United Arab Emirates, Oman, Bahrain, and South Yemen. The practice is also found in Peru, Brazil, Eastern Mexico, and among the aboriginal tribes of Australia." Lawrence P. Cutner, "Female Genital Mutilation," *Obstetrical and Gynecological Survey*, 40, no. 7 (1985): 438. Although it is most prevalent in Africa and the Middle East, the operation is spreading; there are documented cases in France, Britain, Sweden, Germany, and it is known to be done in many more Western countries. Fran P. Hosken, *The Hosken Report: Genital and Sexual Mutilation of Females* (Lexington, MA: Women's International Network News, 1982).

culture. The justifications for the practice in the West were similar to those espoused by cultures continuing the practice. As the justifications for the practice were found to be unsound, the practice diminished.[2] Western cultures have exposed the myths upon which the practice was based and in turn have abolished the need for the practice.

Part VI focuses on the conflict between the human rights perspective and a view of cultural sovereignty as it pertains to female circumcision; more narrowly, the focus is one of tradition versus health. The article compares circumcision to traditions in the Western world that are known to be unhealthy and dangerous—alcohol, cigarettes, dangerous sports, and cosmetic surgery.

Part VII, however, sets forth the distinguishing factor—voluntary participation. The article argues that a child is not capable of voluntarily choosing to be circumcised. Moreover, a woman faced with ostracization from her community and a probable life of prostitution, if not circumcised, does not have true freedom of choice, and a woman uneducated as to the probable health complications, is not sufficiently knowledgeable to choose wisely.

Part VIII advocates an application of human rights on a universal basis. Ratification of various human rights treaties by countries where circumcision is practiced evidences a desire to protect human rights.

Finally, this article examines the attempts at change which have been made and recommends several avenues for improvement. Health education is recommended as the most probable to succeed, because it avoids the tradition and religious arguments. Individuals tend to accept health education from people outside their culture more easily than criticism; information about the clinical complications of circumcision is less threatening than the accusation that their traditions are immoral or unnatural. Other recommendations include: international efforts that generate funds for medical assistance, local role models who publicly advocate against the practice, and local legislation that is actively and consistently supported by each government.

II. FEMALE CIRCUMCISION—WHAT IS IT?

A. Description of the Various Forms

Female circumcision, often referred to as genital mutilation, is a traditional practice that involves the cutting away of part or all of the external female

2. It has been shown that cultural norms and values influence medical practices. For example, in France only 2.4 percent of all women have had hysterectomies, while in the United States every year 2 percent of all women between the ages of thirty-five and forty-four have a hysterectomy. Lynn Payer, *Medicine & Culture: Varieties of Treatment in the United States, England, West Germany, and France* (New York: Henry Holt & Company 1988). But cf. Leonard A. Sazan, review of *Medicine & Culture*, by Lynn Payer, *New York Times*, Sunday, 10 July 1988, sec. 7.

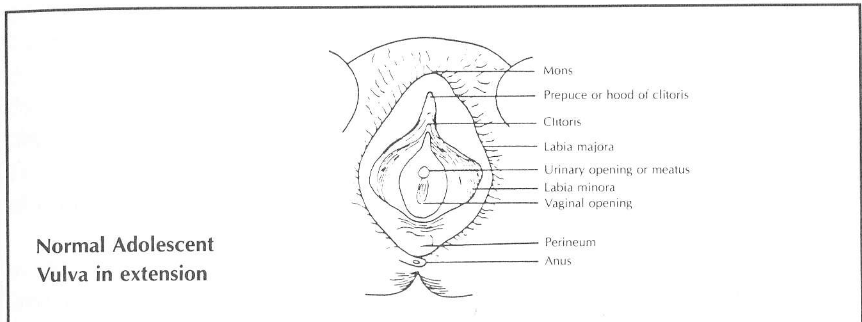


Figure 1. Modupe O. Onadeko and Lola V. Adekunle, "Female Circumcision in Nigeria: A Fact or a Farce?" *Journal of Tropical Pediatrics* 31, no. 4 (1985): 181.

genitalia, composed of the clitoris, the labia minora or small lips, and the labia majora or large lips.

The practice can be broken down into four basic forms that vary in degrees of severity. The first, and least severe form, is called ritualistic circumcision, where the clitoris is merely nicked. This causes bleeding, but little mutilation or long term damage.[3] The second form is simply called circumcision, or "sunna" by the Muslims.[4] This involves the removal of the clitoral prepuce—the outer layer of skin over the clitoris, sometimes called the "hood"; the gland and body of the clitoris remain intact. Occasionally, the tip of the clitoris itself is removed. Sunna has been equated with male circumcision, because the clitoris itself is generally not damaged.

A third, and more harsh form of the practice, is called excision or clitoridectomy. This is the most common form and involves the removal of the gland of the clitoris—usually the entire clitoris—and often parts of the labia minora as well.

Finally, the most severe form of the practice is infibulation, or "Pharaonic" circumcision, where virtually all of the external female genitalia are removed. With this type of circumcision, a dramatic excision is performed—removing the entire clitoris and labia minora—and in addition, much or most of the labia majora is cut or scraped away.[5] The remaining raw edges of the labia majora are then sewn together with acacia tree thorns, and held in place with catgut or sewing thread. The entire area is closed up by this process leaving only a tiny opening, roughly the size of a match stick to

3. Blaine Harden, "Female Circumcision: A Norm in Africa," *International Herald Tribune*, Washington Post Service, 29 July 1985.
4. The word "sunna" in Arabic means "tradition."
5. In some cultures this freshly cut area is then patted with an egg and sugar mixture to help with adhesion. Asma El Dareer, "Attitudes of Sudanese People to the Practice of Female Circumcision," *International Journal of Epidemiology*, 12, no. 2 (1983): 138.

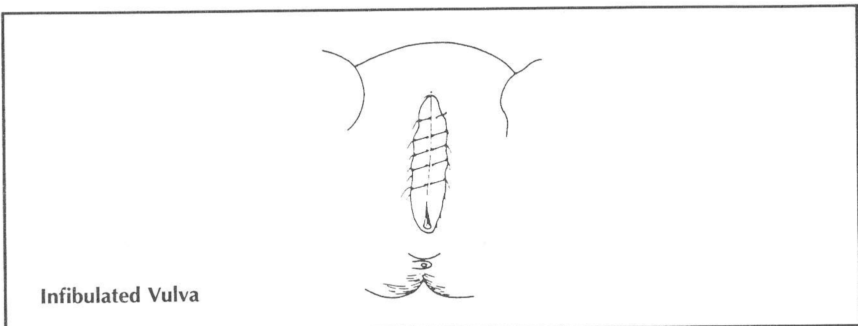


Figure 2. Modupe O. Onadeko and Lola V. Adekunle, "Female Circumcision in Nigeria: A Fact or a Farce?" ***Journal of Tropical Pediatrics*** **31, no. 4 (1985): 181.**

allow for the passing of urine and menstrual fluid.[6] The girl's legs then are tied together—ankles, knees, and thighs—and she is immobilized for an extended period, varying from fifteen to forty days, while the wound heals.[7]

B. The Process, Conditions, and Epidemiology

The instruments used to perform female circumcision range from kitchen knives, old razor blades, broken glass, and sharp stones used in villages, to scalpels used in local health clinics. These instruments are rarely sterilized before the operation, and, except in certain urban areas, anesthesia is almost never used in the process. The incisions are usually made while the girl, often held down by several women (especially with infibulation), is lying on the floor or on a mat outside. The wounds are frequently treated with animal dung and mud in order to stop the bleeding.

The ritual is performed almost entirely by women, generally local midwives or elderly women in the villages.[8] Although not common, the operations sometimes are performed by medical personnel in health clinics or hospitals.

The age at which girls are circumcised varies both geographically and ethnically. In Mauritania, Nigeria, and Ethiopia, the operation is performed

6. A small sliver of wood or reed is often left in the opening so the wound will heal around the wood, and the opening will remain tiny.
7. Often one of the harsher forms of the practice occurs, even though a milder type was intended because the children struggle due to the blunt instruments used and lack of anesthesia.
8. The operation provides an important source of income for these midwives, as well as a position of authority and respect within the community. Pamela Constantinides, "Women Heal Women: Spirit Possession and Sexual Segregation in a Muslim Society," *Social Science and Medicine,* 21, no. 6 (1985): 687.

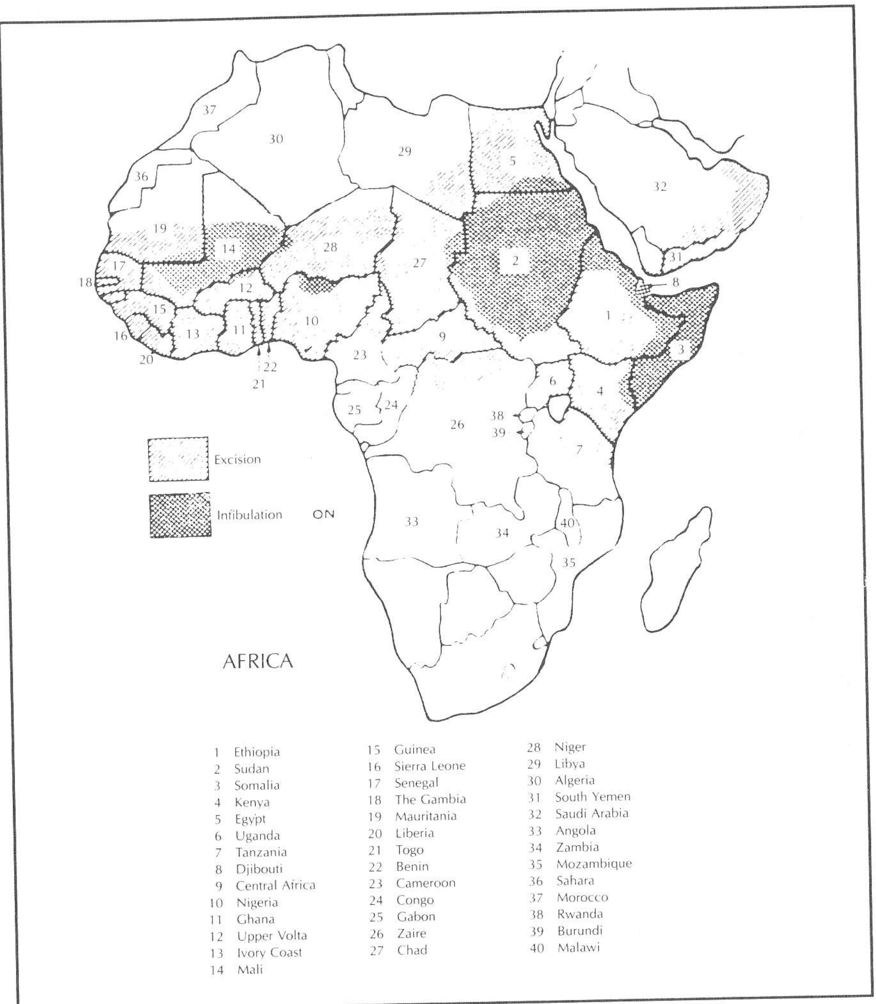
on newborns, or within the first few weeks following birth. In Kenya and Tanzania, young women are excised on their wedding night. And in Mali, the operation may be performed on married women after they have had their first child. The practice most often occurs, however, on young girls between the ages of three and eight years, or before a girl's first menstruation.[9] The age of girls presently being circumcised has been dropping in a number of countries.[10]

Female circumcision is practiced in more than forty countries. It extends across the African continent, including twenty-six countries, as well as the southern part of the Arab Peninsula and the Persian Gulf.[11] Among the countries with the highest incidence of female circumcision are Somalia, Sudan, and Ethiopia. Nine out of ten females in Somalia and Sudan are infibulated.[12] It is estimated that, in 1982, there were 74 million circumcised females in Africa alone.[13] The practice is primarily found in areas where there is much poverty, illiteracy, hunger, unsanitary conditions, and where there is little in the way of health care facilities. Furthermore, the economic and social status of women characteristically is low.

C. Origins

Although documentation and statistical information are difficult to find, it is believed that female circumcision has been practiced for nearly 2500 years, prior to either Islam or Christianity. The cultural and geographical origins of the practice are unknown. The incidence is, however, so geographically dispersed and occurs among such a variety of cultures that it is reasonable to assume that the practice arose independently among different groups of people.[14] It is likely that female circumcision, as with male circumcision, was initially part of the traditional puberty rites, in which young

9. Among certain tribes, the operation may even be performed on women after they have died. Robert A. Myers et al., "Circumcision: Its Nature and Practice Among Some Ethnic Groups in Southern Nigeria," *Social Science and Medicine,* 21, no. 5, (1985): 588 n.20.
10. Hosken, note 1 above, 28.
11. The number of countries where the practice has been reported is actually growing due to the increasing number of immigrants leaving areas where the practice is traditionally performed and moving to Western industrial countries.
12. Harden, note 3 above.
13. A program aired on BBC television estimated that the number was a high as 84 million in thirty countries. Note, "Female Circumcision," *The Lancet,* 12 March (1983): 569.
14. A form of clitoridectomy (excision of the clitoris with partial closing) and castration (removal of the ovaries) was practiced in the United States and Europe during the last half of the nineteenth century and early twentieth century as a cure for female masturbation and insanity. G.J. Barker-Benfield, *The Horrors of the Half-Known Life: Male Attitudes Toward Women and Sexuality in Nineteenth Century America* (New York: Harper and Row Publishers, 1976). See also Hosken, "Case Histories: The Western World," note 1 above, 245–265.



Map of Africa and the Arab Peninsula showing present distribution of excision and infibulation. Fran P. Hosken, "Female Genital Mutilation in the World Today: A Global Review," *International Journal of Health Services* 11, no. 3 (1981): 420.

women and men were introduced into the adult world—a "rite of passage."

Infibulation, the most extreme form of female circumcision, has been traced by some anthropologists and historians to ancient Egypt, hence, the name Pharaonic circumcision.[15] Analysis of Egyptian mummies has shown

15. Recorded cases, based on evidence from mummies in Egypt date from as far back as 484 B.C.E., Hosken, note 1 above, 54.

that women were infibulated during this time, and some believe that the practice may have originated there. Others believe, however, that the practice existed long before, perhaps among herders as a protection against rape for young girls who took animals out to pasture, or as a custom among the stone-age people within Equatorial Africa. "The custom may well have been an outgrowth of human sacrificial practices, or of some early attempts at population control."[16]

III. ARGUMENTS IN FAVOR OF THE PRACTICE

The reasons and justifications for female circumcision are numerous and complex. As with most traditional practices, the ideological basis lies in the society's cultural, traditional, historical, economic, and religious background. The most commonly given reasons for the persistence of the practice include: sexual control over females, religious requirements, mythical beliefs, and the need to maintain a tradition that has been with these cultures for thousands of years.

A. Sexual Control of Females

"There seems to be an implicit cultural belief in Islamic countries that a woman's sexuality is irresponsible and wanton and therefore must be controlled by men."[17] In contrast to male circumcision, which is in no way an attempt to inhibit sexual pleasure, performance, ability or desire, one of the most frequently given reasons for female circumcision is the control of the sexuality of females. This is the case especially in areas where the practice is carried out on infants and very young girls, clearly not old enough to be initiated into the adult world.

Circumcision and excision serve primarily to discourage promiscuity by reducing a woman's sensitivity and desire for sexual intercourse. The primary function of infibulation is to guarantee a bride's virginity. It is "the most effective means to keep the girls' virginity intact," explains a Somalian woman.[18] In many Muslim countries, there is little interaction between men and women on a daily basis, and the women often keep themselves concealed behind long gowns and dark veils. In Somalia, and several other Muslim African countries, however, women's dress is less restricted, and

16. Hanny Lightfoot-Klein, "Pharaonic Circumcision of Females in the Sudan," *Medicine and Law,* 2 (1983): 354.
17. Lawrence P. Cutner, "Female Genital Mutilation," *Obstetrical and Gynecological Survey* 40, no. 7 (1985): 438.
18. Harden, note 3 above.

there is a great deal of interaction between men and women who often work beside one another. There is a need, it is believed, to guard against the temptation of more intimate interaction between the sexes. The tiny opening left after infibulation make it virtually impossible to carry out the act of sexual intercourse without reopening the previously sewn-up area.

The preservation of virginity is essential for determining a woman's social position in these societies, and in some areas the value of a prospective bride is based on the size of the infibulated opening: the smaller the opening, the more likely the woman is to be a virgin, and the more valuable she is to a prospective husband.[19] In the interest of social position, family honor, and economics within these cultures, it is believed that the sexuality of women must be controlled.

B. Religion

Female circumcision existed before the introduction of either Islam or Christianity. In Africa, the operation is performed by Christians (Catholics, Protestants, and Copts), Muslims, Jews, Animists, and atheists, although the practice does not exist in the teachings of any formal religion.[20]

A number of studies that have examined the reasons given for the practice have found that one of the most common responses was to abide by religious requirements.[21] This response was especially common for males interviewed.

The religion that seems to have incorporated the practice most heavily into its culture is Islam. The belief is widely held among Muslims, who support the perpetuation of female circumcision, that the practice is scripturally mandated by the Koran.[22] Although the practice often is supported by Muslim leaders, no mention of either excision or infibulation is found in the Koran. Female circumcision is supported by these leaders as being a positive "sunna," or tradition—one that serves to attenuate the sexual desire in women, "directing it to the desirable moderation."[23] There is contempt among men in Muslim Africa toward women who have not been circumcised. "Indeed, one of the worst insults in Muslim Africa is to be called 'Son of an uncircumcised mother.' "[24]

Perhaps the most powerful reason for the continuation of the practice in Islamic Africa is the heavy emphasis on the physical state of virginity within the Muslim religion. Female circumcision is viewed as a means of "protecting female modesty and chastity, which are highly valued in Islam and are clearly prescribed in the Qu'ran [sic]. . . . Virginity is still considered the most precious possession of the unmarried woman."[25]

C. Myths

Justification for the practice often is based on the following myths: (1) the clitoris represents the male sex organ and, if not cut, will grow to be the size of a penis;[26] (2) females are sterile until they have been excised, and the operation will actually increase fertility, as well as the number of live births; and (3) the operation is a biologically cleansing process that improves the hygienic and/or aesthetic condition of female genitalia.[27] Some believe that the clitoris, itself, produces an "offensive discharge" that may even be harmful.[28] In Sudan, it is believed that a woman is naturally "polluted" and can only be cleansed, and suited for marriage and childbirth, by being excised.[29]

It has been suggested that one of the myths helping to perpetuate the practice stems from the "Pharaonic belief in the bisexuality of gods."[30] All males and females have both masculine and feminine souls that are represented in their sexual characteristics. The prepuce, or foreskin, of the penis, it is believed, represents the feminine soul in the male, while the clitoris represents the masculine soul in the female. According to the myth, adolescents cannot be admitted into the adult world until they have been rid of the physical characteristics of the opposite sex—hence the justification for both male and female circumcision. In some societies, the female genitalia are considered to be "redundant" or "masculine" and hence unattractive to the men in that society. Some supporters argue that female circumcision actually enhances the sexual pleasure of men.[31]

In some cultures, the clitoris is seen as physically or spiritually threat-

19. In Somalia, the prospective husband's family has the right to inspect the infibulated scarring to ensure the women's virginity and to determine the worth of the woman. It should be noted, however, that while infibulation is highly successful in inhibiting premarital sex, it also makes legitimate, marital sex extremely difficult: the tiny opening must be cut open before intercourse and often again before childbirth.
20. Harden, note 3 above. See also, Hosken, note 1 above, 56.
21. E.g., Asma El Dareer, *Woman, Why Do You Weep?* (London, UK: Zed Press, 1982), 71; Raqiya Haji Dualeh Abdalla, *Sisters in Affliction: Circumcision and Infibulation of Women in Africa* (Connecticut): Lawrence Hill and Co., 1982), 96; El Dareer, "Attitudes of Sudanese People," note 5 above, 142.
22. El Dareer, note 21 above, 72.
23. Marie Bassili Assaad, "Female Circumcision in Egypt: Social Implications, Current Research, and Prospects for Change," *Studies in Family Planning,* 11, no. 1 (1980): 5.

24. Abdalla, note 21 above, 84.
25. Assaad, note 23 above, 5.
26. Nayra Atiya, *Khul-Khaal: Five Egyptian Women Tell Their Stories* (New York: Syracuse University Press, 1982), 11.
27. Ibid.
28. *The Lancet,* note 13 above.
29. Hosken, note 1 above.
30. Assaad, note 23 above, 4.
31. Kay Boulware-Miller, "Female Circumcision: Challenges to the Practice as a Human Rights Violation," *Harvard Women's Law Journal,* 8 (1985): 157.

ening. "The clitoris is considered to be a dangerous organ which can cause symbolic or spiritual injury to the baby,"[32] and this pernicious organ must be eliminated to protect the newborn.

D. Tradition

The most widely held justification for the continued practice of female circumcision is the importance of tradition. "Very often no other reason is given except that it is a 'tradition.' "[33] In a questionnaire survey given in five rural communities in Nigeria, 280 men and women were asked about their experiences with the practice, as well as their thoughts as to why the practice continues to exist. The reasons given for the continuation of female circumcision included attenuated sexual urge for women, increased sexual performance for men, and protection of the health of babies. The dominant reason, however, given by both men and women was the need to maintain tradition.[34]

In 1985 the Working Group on Traditional Practices Affecting the Health of Women and Children, a body associated with the UN Commission on Human Rights, drafted a report based on a comprehensive study of female circumcision. The Working Group's study revealed similar results with 54 percent of their sample stating that tradition was the reason for the continuation of the practice. Religion and diminution of women's sexual sensitivity were next in importance.[35]

In 1983, Asama El Dareer interviewed over 4,500 adults in Sudan with detailed questionnaires that asked first, whether they were in favor of the practice, and second, why, or why not. Dareer found that 82.6 percent of the females interviewed approved of female circumcision regardless of the type (sunna, intermediate, or infibulation). Similarly 87.7 percent of the males interviewed "approved of the persistence of the practice. . . . The main reasons for approval were 'tradition' and 'religion' illustrating the strength of social influence in the Sudan; rites and traditional practices are taken for granted and people do not expect to be asked 'why' they actually participate in them."[36]

In a similar study carried out a year earlier by the same author, tradition was also found to be the most frequently given response. "Traditions are

32. Myers et al., note 9 above, 584.
33. Note, "Excision and Infibulation: A Painful Practice," *Midwives Chronical and Nursing Notes,* (February 1985): 46.
34. Circumcision of both sexes remains widely practiced with almost 100 percent of the adult population being circumcised. Myers et al., note 9 above, 581, 583.
35. Draft Report of the Working Group on Traditional Practices Affecting the Health of Women and Children, U.N. Doc. E/CN.4/HC.42/1985/L.5, Introduction, 12 September 1985.
36. El Dareer, note 5 above, 141, 143.

complied with because they are firmly woven into the social fabric. Typical responses to our question, 'Why do you continue to circumcise women?' were on the lines of: 'It is our custom and we are powerless to stop it' or 'Why should we stop doing it?' "[37]

In her book Nayra Atiya recorded the interviews of five Egyptian women. One spoke of female circumcision with a strong, yet all too familiar, sense of fatalism and lack of control.

> It's true that God created us this way, but when we woke up to ourselves we found this custom handed down to us from our grandfathers and theirs and from those of whom we are not even aware and those we no longer know. We emerged into this world and found this habit already existed. It's just so. My people do this, and so I must do like they do.[38]

When a tradition such as female circumcision becomes so deeply engrained in a society—accepted by virtually everyone, either passively or actively—it can serve as a power that helps to bind the community together and provide a source of cultural identity that is often crucial in small rural communities. "[I]t is important to note that the moral code of the tribe is bound up with this custom and that it symbolizes the unification of the whole tribal organization."[39] A study of the practice in Somalia found that "for the Somalian woman, the excissory practice is an important factor in cultural identification even today."[40]

The power of traditional adherence to cultural practices can be seen in Western cultures as well. In 1985, a study of the practice of male circumcision in the United States found that there was a tendency for many parents to have their sons circumcised regardless of the recent evidence suggesting that the practice is not only unnecessary, but may in fact be more dangerous than previously realized. This phenomenon evidences a psychological need to maintain tradition, and to avoid ostracism.

> Woven throughout the history of circumcision is ritual psychoanalytic theory and stigma. Transculturally, rituals are rich in symbolism. The symbolism of circumcision hinges on the absence of a foreskin which implies that more than a simple operation has taken place. . . . When approved by a certain culture, ritual can become standardized, repetitive, and prescribed. That is, cultural rules command that the ritual be performed.[41]

In some cultures, the ritual of female circumcision is endowed with

37. El Dareer, note 21 above, 68–69.
38. Atiya, note 26 above, 11.
39. Jomo Kenyatta, *Facing Mt. Kenya: The Tribal Life of the Gikuyu* (London, UK: Secker & Warburg, 1953): 134.
40. Pia Grassivaro Galio and Marian Abdisamed, "Female Circumcision in Somalia: Anthropological Traits," *Anthropologischer Anseiger,* 43, no. 4 (1985): 323.
41. Candice C. Harris, "The Cultural Decision-Making Model: Focus-Circumcision," *Health Care for Women International,* 6, no. 1–3 (1985): 27.

psychological benefits. The procedure often is accompanied by elaborate ceremonies and joyous celebrations. The event is one that young girls look forward to in excited, and even in some cases pleasurable, anticipation.[42] There may be days of preparation, including cleansing, praying, consuming special food and drink, and performing rituals, such as dancing and singing. The girls frequently receive gifts and are showered with praise and words of support for being brave and becoming women. Clearly, these conditions only apply to those cultures where the girls are old enough to understand the significance of the event.

The importance of such a tradition can be seen as it relates to other aspects of the culture, because female circumcision touches many facets of a society.

> This particular tradition plays an important role in some tribes. It is an integral part of the sequence of events in a girl's life, especially in relation to marriage. For example, circumcision is considered to be a declaration of eligibility for marriage by the Shanabla tribe.[43]

IV. ARGUMENTS AGAINST THE PRACTICE

Although female circumcision has been a pervasive practice for thousands of years, recently there has been increasingly vehement opposition, even from members of the practicing cultures. Revulsion from a physical perspective, the belief that the practice is degrading to women, and the knowledge that the practice often is carried out unnecessarily as a result of inaccurate beliefs and myths surrounding the operation, have all contributed to this opposition. The dominant and most widely based objection to the practice, however, is the concern over the pain and physical damage, even death, that circumcision has caused so many women and children.

A. Health Effects

There are major health problems—psychological, as well as physical—associated with female circumcision. The adverse effects can be severe with any of the forms, but the problems are most pronounced with excision and infibulation. Furthermore, physical problems can accompany the individual to adulthood and result in obstetrical complications that jeopardize both mother and child.

42. Marie-Angelique Savane, "Why We Are Against the International Campaign," (paper located in the files of Professor Philip Alston, Tufts University), 39.
43. El Dareer, note 21 above, 70.

1. Immediate and Short-Term Complications

The conditions under which the typical female circumcision takes place are far from satisfactory for safe and hygienic operations. The unsterilized instruments and unhygienic methods used in the various procedures, especially infibulation, can result in immediate medical problems: hemorrhage, septicemia, shock from pain and blood loss, acute infection (such as tetanus from unclean utensils and the materials used to patch the wounds), urine retention due to occlusion, damage to and bleeding from adjacent organs and tissue (including the rectum and urethra), and even death.[44]

Although the adverse effects from the less extensive forms of female circumcision—ritualistic, sunna, and excision—are usually less severe, the immediate effects of pain, heavy bleeding and infection are real and threatening. There is another problem with the milder forms: "This delicate operation requires great skill, surgical tools and knowledge of anatomy, conditions that are not available where these operations are traditionally performed."[45] When no anesthesia is used, it is reasonable to assume that the girls may struggle, and that the result could be a more severe form of circumcision than intended; an intended sunna might inadvertently become an excision.

Because anesthesia is rarely used in these operations, severe pain that can lead to shock is commonly experienced. The pain also can last for weeks. This is especially true with the more severe forms of the practice. Even in cases where local anesthetics are used, the pain can often be intense after the drug wears off. In the case of infibulation, the girls are forced to be inactive for some time, with their legs bound together to ensure that the area is closed as it heals; the girls' excrement remains trapped within the bandage during this time.

Doctors in Sudan have estimated that the number of fatalities due to circumcision, especially infibulation, is "approximately one third of all girls in areas where antibiotics are not available."[46] Death can result from hemorrhage, infection, shock, and other complications. Death due to female circumcision is one of the many factors that leads to the already high rates of infant mortality within these countries. It should be noted that countries with the highest rates of infant mortality correspond closely to those that continue to practice female circumcision. For example, "Somalia, which is believed to have the highest percentage of circumcised women in the world, has the world's fourth-highest infant mortality rate."[47]

44. Excision by burning, which can lead to similar complications, has also been reported. Hosken, note 1 above, 29.
45. Ibid., 26.
46. Lightfoot-Klein, note 16 above, 356.
47. Harden, note 3 above.

2. Long-Term Complications

Long-term health problems can result from any form of female circumcision, but the most severe and long lasting problems are associated with infibulation. Among the most frequent of the long-term health problems is chronic infection. Localized infections, dangerous in their own right, can lead to widespread infections and related problems such as urinary tract complications.

In a study carried out in the Sudan, virtually all of the infibulated women questioned reported substantial difficulties in urination, even without the complications of infection. "The average period of time required by a Pharaonically circumcised virgin to urinate is 10 to 15 minutes. She must force the urine out drop by drop. Some women reported requiring up to two hours to empty their bladders."[48] Severe infections can lead to such complications as incontinence. "A woman who becomes incontinent as a result is generally repudiated by her husband and shunned by society."[49]

Other results from infection are excruciating pain with urination, kidney infections, and eventual sterility.[50] A survey carried out in Sudan found that 30 percent of the circumcised women questioned had experienced fertility problems.[51]

Menstrual difficulty is another major problem caused by female circumcision, particularly infibulation. Dysmenorrhoea and hematocolpus, the build-up of menstrual blood when it is not allowed to escape the body, occurs in many infibulated women. In another study conducted in Sudan in 1983, it was found that "nearly all infibulated women reported agonizingly painful menstruations, in which the menstrual flow was all but totally blocked, resulting in a build-up of clotted tissue behind the infibulation, frequently requiring surgical intercession."[52] Hematocolpus can lead to swollen abdomens as a result of the blockage of menstrual flow. Ironically, the combination of the swollen abdomen and lack of menstrual flow has, in some cases, caused girls to be ostracized from their families, who believe that such signs mean the girls are pregnant.

Extensive malformation and scarring, as well as vaginal abscesses, are also frequent results of the operation. Keloid formation, the hardening of tissue from scars, results in the massive build-up of skin that has lost its elasticity.[53] Keloid scars can become so large that they obstruct walking.[54]

48. Lightfoot-Klein, note 16 above, 356.
49. World Health Organization (WHO), "A Traditional Practice that Threatens Health—Female Circumcision," *WHO Chronicle,* 40, no. 1 (1986): 33.
50. This is ironic because the operation is often performed in the belief that it will enhance fertility.
51. Harden, note 3 above.
52. Lightfoot-Klein, note 16 above, 356.
53. This type of scarring tends to be more prevalent among those with dark skin.
54. *WHO Chronicle,* note 49 above, 32.

The combination of the tiny opening left from infibulation and the hardening of the genital tissues means that it is virtually impossible to have sexual intercourse without having the area reopened.

On a woman's wedding night, the infibulated area must be penetrated by her husband. Often penetration is difficult, due to the size of the opening and the build-up of keloid scar tissue, and frequently the area must be opened with a knife. In some societies, for example Sudan, this procedure is carried out only in secrecy, and reflects negatively on the potency of the husband.[55] In such a case, a woman might go to a health clinic and say that she is expecting a child and needs to be opened. More commonly, a women would be opened with a knife by a local midwife since health clinics are few. The Sudanese women interviewed, "without exception reported going through a great deal of suffering during a process of gradual penetration which lasted an average of 2–3 months. Quite a few suffered tearing of surrounding tissues; hemorrhage was common, as were infections and psychic trauma."[56]

In other countries, the infibulated area is opened routinely with a knife before the consummation of the marriage. In Somalia, the husband uses his fingers, a knife, or a razor to enlarge the opening in his wife. In yet a different culture, the husband's mother or grandmother measures his penis, makes a wooden replica of the same size, and cuts the infibulated opening of the bridge accordingly. "The opening is just big enough to allow penetration, which has to take place frequently during the early days and weeks of the marriage to prevent the open wound from closing again."[57] The medical results of this re-injury to the genital area are similar to the initial operation: infection, hemorrhage, injury to adjacent areas, keloid formation, and severe pain.

It is possible that these open wound may increase the susceptibility of women to infection by the Acquired Immune Deficiency Syndrome (AIDS) virus during intercourse.

Difficulties in childbirth for infibulated women are frequent and often serious. The scarred and hardened tissue often blocks the birth passage and results in tearing of the vaginal area, hemorrhaging, or a ruptured uterus. The perineum may become lacerated, and fistulas (unnatural passages), may be created. The vaginal opening is frequently cut, or "re-infibulated," to allow for easier passage of the fetus, but delayed births are common, and obstructed labor can result. Brain damage and death of the baby can occur because of lack of oxygen. In unassisted births where the infibulated opening is too small, or in cases where the infibulated area is so mutilated that

55. Physicians in Sudan have reported instances of severe depression in men who were unable to penetrate their brides quickly. Some of these cases even ended in suicide. Lightfoot-Klein, note 16 above, 359.
56. Ibid., 356.
57. A quotation by Dr. Pieters in Hosken, note 1 above, 123.

sufficient cutting of the opening is impossible, the lives of both the mother and the child are threatened.

In Sudan, the majority of women, either by their own insistence or by pressure from their family, are re-infibulated after giving birth even though 25 percent of women admit to having complications from circumcision.[58] It is believed that this will ensure continued sexual pleasure for the husband, as well as faithfulness on the part of the woman.[59] Since most women have several children, they must endure this process repeatedly, accumulating additional scar tissue with each operation. This in turn makes each birth more difficult, painful, and dangerous for both the mother and the child. Re-infibulation is also commonly performed on women who have been divorced or widowed.

Over time, certain adverse effects of the operation may be dissociated with their cause and, hence, not attributed to the practice. Sterility, which is often not discovered until many years after a female has been circumcised, will tend not to be blamed on the operation. An obstructed birth, where the child and/or the mother dies, will most probably be blamed on fate, or on God's wishes, but not on the unnatural build-up of scar tissue.

3. *Psychological Trauma*

Although few studies have been done on the psychological effects of genital mutilation, it is well known that extensive and enduring pain can create deep psychological wounds. Emotional trauma can be severe, resulting from the memories of painful experiences. These painful memories may be triggered by the permanent scars left from the operation. It would seem logical that such intense pain in an extremely delicate, complex, and vital physical area, when experienced by young girls in their formative years, could result in substantial psychological problems. Whether these problems would cause permanent emotional damage is not clear. It appears that the extent of the damage would "depend largely on the child's inner defenses and the prevailing psychosocial environment."[60]

The girls often experience severe anxiety in anticipation of the event, if they are old enough to understand what the procedure entails. The event itself is also frightening—the girls are held down by force and circumcised without anesthesia.

The pain may last for weeks after the operation and may recur throughout life. "The debilitating pain of menstruation (as a result of the operation), the agony of the first intercourse, especially for the infibulated, the prolonged

58. *The Lancet,* note 13 above, 569.
59. Lightfoot-Klein, note 16 above, 357.
60. UNESCO, note 35 above, 12.

suffering in childbirth, no doubt create deep psychological wounds as well as physical ones."[61] Over the years, emotional reactions to these problems, along with repeated infection and painful urination, "may present themselves as chronic irritability, anxiety, depressive episodes, conversion reactions or frank psychosis."[62]

The psychological effects on the attitude toward sexual intercourse by women who have been circumcised also has not been conclusively determined. It is clear, however, that a large number of circumcised women are afraid of sex, experience extreme pain from the act, and receive little, if any, enjoyment from sexual relations.

In societies where circumcision is performed primarily to reduce the sexual desire and discourage promiscuity, sexual intercourse is not something women expect to enjoy. Even if women might be able to enjoy sex on a physical level, regardless of social pressures against this, the pain and difficulties due to the operation would prohibit most of the enjoyment of the act.

Considering the overwhelming evidence depicting the dangerous health effects, both physical and emotional, resulting from female circumcision (especially the more severe forms), the arguments against the continuation of the practice on these grounds are well-supported.

B. Sexual Control of Females

Sunna and excision (or clitoridectomy) are believed to attenuate a woman's desire for sexual intercourse, while infibulation is an attempt to make sexual intercourse physically impossible for a woman until she is opened up at the time of her wedding. There is, however, no guarantee that these operations accomplish their purpose.

The extent to which female circumcision actually reduces sexual sensitivity or desire is unclear. In a presentation for the Fifth Obstetric-Gynecological Congress in Khartoum, Sudan in 1977, Dr. Salah Abu Bakr presented evidence indicating that most of the nerves in the external vaginal area of infibulated women were destroyed. Dr. Bakr concluded that "circumcision and infibulation results [sic] in destruction of the nerve supply of the vulva."[63] The sensitivity and response to stimulation would, therefore, be greatly reduced. In an interview, a Sudanese woman explained that her sexual sensation and response had been substantially weakened due to her infibulation: "With the Pharaonic [infibulation], you cannot really feel your

61. Hosken, *Hosken Report,* note 1 above, 30.
62. UNESCO, note 35 above, 13.
63. Fran P. Hosken, *Female Sexual Mutilations: The Facts and Proposals for Action* (Lexington, MA, Women's International Networks News, 1982), 21.

man."[64] In addition, the pain frequently experienced by women during intercourse reduces any pleasure that might be experienced.[65] It is generally believed that female circumcision does successfully reduce a woman's sexual response and pleasure.

There is evidence, on the other hand, that even women who have been severely mutilated can still experience pleasure and sensation from sexual intercourse. A Sudanese study showed that "close to 90% of women (by their own report) were orgasmic, ranging from always to occasionally and from intense to mild. Many were able to give vivid and convincing descriptions of their orgasms and to credibly ascribe frequency of occurrence."[66] It would seem reasonable that, unless severe damage was done, or infection had resulted from the operation, circumcised women would still be sensitive in the vaginal passage and could experience pleasure from penetration during sexual intercourse.

Finally, even if all of the nerves in the external part of the genital area are destroyed, this does not necessarily mean that the inner, psychological desire for sexual release is destroyed as well. "[W]hile circumcised women may be less enthusiastic about sexual intercourse due to diminished sensitivity, the operation does not suppress libido, which is psychological."[67] It is quite likely, however, that the "libido" or psychological sexual drive of women may be inhibited due to the severe taboos against their enjoyment of sex,[68] but this is not necessarily the result of the physical operation. Hence, one of the most important goals justifying the practice of female circumcision—controlling the sexual desire of women—is not necessarily accomplished. With the milder forms of the operation, there may be little or no effect. The continuation of the practice for the purpose of diminishing sexual desire would, therefore, appear to be of questionable value.

A common justification for infibulation is that it will guarantee a woman's virginity before marriage and thereby protect the honor of both the woman and her family. The size of the opening left after infibulation practically ensures that intercourse cannot take place unless the opening is enlarged, either by cutting, or by repeated attempts at penetration. This operation, however, is no guarantee that sexual intercourse has not taken place. A woman can be opened with a knife at any time. She can also be re-infibulated

64. Lightfoot-Klein, note 16 above, 358.
65. A study by the WHO revealed that among infibulated women, in areas where the operation is practiced, few women even knew what a sexual orgasm was. *WHO Chronicle*, note 49 above, 33.
66. Lightfoot-Klein, note 16 above, 357.
67. Boulware-Miller, note 31 above, 169.
68. In my discussions with Mauritanian women, many expressed the fear of letting their enjoyment of sexual intercourse be apparent to their husbands. If the husbands suspected their wives of enjoying sex, this would be interpreted as potential promiscuity on the part of their wives.

at any time. In many countries women have themselves re-infibulated after each birth so that they may be as appealing to their husbands as when they were young brides.[69] In this way they would be as impenetrable as infibulated virgins, and the previous sexual encounters or births would be undetectable.

Although it would be difficult, given the social intimacy of most traditional third world communities, for such an operation to be used as a cover for one or more premarital sexual encounters, it is possible for an unmarried girl to have sexual intercourse and then be re-infibulated. In this way, her loss of virginity would be hidden, and her honor, as well as that of her family, would be protected. The argument in support of infibulation for the guarantee of virginity, therefore, has its weaknesses.

In some countries, such as Kenya, Burkina Faso, and Sierra Leone, the operation is often used as a symbol of adulthood—a puberty rite, or rite of passage.[70] For the most part, however, girls are being circumcised or infibulated at a younger age, and the mean age for the operation appears to be decreasing.[71] The practice is frequently performed on infants or even newborns.[72] Clearly, when performed on the very young, the operation cannot be considered a puberty rite or an initiation into adulthood.

C. Religion

In some areas, especially those influenced by Islam, one of the primary reasons given for the justification of female circumcision is that the practice is a formal religious requirement. Female circumcision, however, is not required by the Koran, nor is it part of the teachings of any formal religious doctrine.

There is no mention of either excision or infibulation in the Koran. Religious scholars acknowledge that there is "no doctrinal basis for the belief" that these practices are required for females, and that in Saudi Arabia, considered to be the "cradle of Islam," none of the various forms of the operation are performed.[73]

The less severe forms of female circumcision, where the clitoris is usually left intact, are mentioned in the Koran, along with male circumcision. The latter, however, is required, while female circumcision is specifically men-

69. The reinfibulated area provides a smaller, tighter vaginal opening which is said to be more pleasurable for a man.
70. Kenyatta, note 39 above, 133; Harden, note 3 above.
71. Hosken, note 1 above, 28.
72. The decreasing age of the girls being circumcised could be a reaction to the slow, but growing, resistance to the practice by younger generations. If the operation is done on infants, the problem of rebellion by those individuals is eliminated.
73. Harden, note 3 above.

tioned only as an optional tradition, or "embellishment." A statement in the Koran, which is attributed to the Prophet, declares that "[c]ircumcision is my way for men, but is merely ennobling for women."[74]

In her book *Sisters in Affliction,* Raqiya Abdalla states that there is evidence "to show that the attitude of Islam towards the sexual pleasure and enjoyment of both sexes is positive rather than the reverse."[75] The opinion of the Prophet (Mohammed), she argues, was one that supported sexual fulfillment for both men and women—an opinion that ran counter to a culture that favored inhibiting enjoyment of sex by women. For example, the Prophet is reported to have said, "touch but do not destroy," referring to the female sexual organs. In addition, the Prophet is said to have advised a woman who performed female circumcision: "Do not go deep. This is enjoyable to the woman and preferable to the husband."[76] These statements have been interpreted as advising "minimizing excision (simply removing the prepuce rather than total clitoridectomy), and other extensive operations such as are practiced in Somalia and Sudan."[77]

Unwritten cultural religion may be as important to societies as formal written religious doctrines. It is evident that a formal written doctrine was unnecessary for religions other than Islam to adopt female circumcision as a requirement, for example, Christians and Animists. Justification of the practice through unwritten doctrine can be made as forcefully as through written doctrine, which carries more official recognition. But, followers should know that female circumcision is not part of the formal doctrine of any religion. When so informed, people might well choose to reject female circumcision.

It is one thing for evolved forms of Islam to have incorporated female circumcision as an unwritten requirement. It is another, however, when knowledgeable religious leaders, who are aware of the misinterpretation of the Koran, continue to support the practice, or fail to oppose it, by perpetuating the belief that the practice is actually a part of the formal Muslim doctrine. In West Africa "it [has been] reported that the local religious men and chiefs reinforce [female] genital operations by telling the people that the operations have religious importance and that they are demanded by the Koran."[78] Since most people in societies where the practice continues cannot read (especially the women), they must take the word of those who can, and are led in many instances, to believe that female circumcision is a formal religious requirement. It seems clear from studies on the justification

74. Abdalla, note 21 above, 82.
75. Ibid., 83.
76. Abdalla, note 21 above, 82.
77. Ibid.
78. Abdalla, note 21 above, 84.

of the practice,[79] that many females are circumcised solely because those in the culture believe that the operation is required by religious doctrine, which is untrue.

D. Myths

"Myth not only validates or authorizes customs, rites, institutions, beliefs, and so forth, but frequently is directly responsible for creating them."[80] A number of myths—beliefs founded on fictitious information—are given in support of female circumcision. The clitoris sometimes is compared to a tiny penis,[81] and, as the myth goes, must be removed before a female can be considered a true woman.[82] Of course, the functions of each are quite different, but even if the two organs were similar, the argument that females should be rid of this "masculine" feature because men are equipped with a similar organ, seems weak when one considers the number of other characteristics shared between the sexes. It would be highly inappropriate, for example, to remove each of these shared characteristics (such as limbs) that are thought to be either masculine or feminine when they appeared on the opposite sex. One could also be confident that the tradition would not be acceptable in reverse; men would not be likely to give up their penises because women had similar organs.

Another myth is that the clitoris, if left intact, would grow to become the size of a penis. With rare exceptions, such as an abnormal enlargement due to an endocrine imbalance, the clitoris remains small. Removal on this account is unjustified.

In some countries, circumcision is performed because people believe that women are naturally sterile, and that infibulation or clitoridectomies will make them fertile.[83] Women have been known to request the operation when they have had difficulty in becoming pregnant. Clearly, however, women are not naturally sterile, and it is well known that clitoridectomy or infibulation cannot correct for sterility where it does exist. Ironically, the operation can, and often does, produce health problems that result in the opposite effect—sterility; hence, female circumcision performed with the belief that women will become more fertile is again unjustified.

In some cultures it is feared that the clitoris is dangerous—that it will

79. See El Dareer, note 21 above, 71; El Dareer, note 5 above, 143; UNESCO, note 35 above, 15.
80. Raphael Patai, *Myths and Modern Man,* (New Jersey: Prentice-Hall, Inc., 1972), 2.
81. *American Heritage Dictionary,* 2d ed. (Boston, MA: Houghton Mifflin Co. 1982).
82. Assaad, note 23 above, 4.
83. Boulware-Miller, note 31 above, 157.

harm a fetus, either physically or spiritually—if not excised.[84] There is no evidence that the clitoris is dangerous to a fetus; neither the shape nor the location could be harmful, and there are no known substances secreted from the clitoris that might prove dangerous. When considering the frequency with which health babies are born to uncircumcised women, it is inconceivable that the clitoris is a threat to the fetus.

On a spiritual level, the situation is less clear. It would be difficult to disprove scientifically that the clitoris has an adverse effect on the spiritual well-being of a fetus. Yet again, considering the number of "normal" babies born to uncircumcised mothers, it would seem that the effects must be either minimal or non-existent. Therefore, it can be argued then that the justification for the continuation of female circumcision, based on the belief that the clitoris is dangerous, is at best highly questionable, and at worst, invalid.

The belief that the clitoris is unclean and that it produces offensive odors and discharge has served as a catalyst for a number of societies to circumcise women.[85] There is no evidence, however, that the clitoris itself produces a hormone or any other substance that emits an odor offensive enough to justify its elimination or the elimination of an entire area around it. The glands of the vagina do produce hormones that can be sensed, just as with sweat glands or glands of the penis. There are a number of glands in the human body that produce detectable odors, and these odors can be intensified and unpleasant if the body is not cleansed on a regular basis. However, there are no societies where people remove flesh from under their arms to attenuate the odor of sweat. In a like manner, it would not seem reasonable to remove the female sexual organs to lessen their potential odor when similar results could be achieved by bathing. The continuation of the practice based on the belief that women are naturally "polluted," and that the removal of their genitals can correct this, is once again unjustifiable.

In analyzing circumcision as a consequence of cultural and religious myths, it is important to consider the role of myths in society in general. This role will vary considerably depending on how "modernized," or removed a culture is from traditional customs and rituals. Myths are evident in all societies; they assume ideological nature and provide a justification for institutions and customs. In modernized societies, myths tend to take the form of "belief statements rather than the narrative form of myth."[86] It would seem, however, that myths are more important in less developed, or less modernized societies.

84. Evelyn Shaw, "Female Circumcision: Perspectives of Clients and Caregivers," *Journal of American College Health,* 33 (1985): 194; Myers et al., note 9 above, 584–585.
85. As a Peace Corps volunteer in Mauritania, I was confronted with this justification for clitoridectomy many times.
86. Joseph Fontenrose, *The Ritual Theory of Myth,* (California: University of California Press, 1966), 58.

When myths become accepted and ingrained in a society, the extent to which they represent accurate information becomes less important. Myths need not be factual; they serve to give acceptable explanations to phenomena that are not otherwise well understood.[87] They may also serve to validate or justify an ideology of a people. In this manner, myths can serve to bind a community together and give people a sense of security with which to deal with life's uncertainties. Once a myth has been established within a community,

> [t]he myth itself assumes a new function: those who come under its influence experience a sense of gratification which can take any one of several forms. . . . It can be the gratification derived from the feeling of increased self-confidence, from the elimination of doubts and uncertainties, from having come into the possession of ultimate truth. . . . In any case, the myth is perceived as something extremely valuable and powerfully influential.[88]

It is easy to see how the myths associated with female circumcision have served as an effective means to perpetuate the practice that has become a fundamental part of the culture. But these myths, which are *not* based on factual information, serve to perpetuate a harmful, and sometimes life-threatening custom; it would seem, therefore, that the myths should be dispelled. Then, as with religion and health issues, once they are educated, people could knowledgeably decide for themselves whether they want to continue the practice.

V. FEMALE CIRCUMCISION IN WESTERN CULTURE

Various forms of female circumcision were practiced in Europe and, from about 1890 to the late 1930s, in the United States.[89] The West implemented circumcision as a surgical remedy for female masturbation (considered to be a cause of insanity)[90] and to control female sexuality.[91] This was a result of the belief that a "woman's entire psychology was governed by her sex organs."[92] In fact, some Western surgeons claimed to have invented the procedure.[93]

87. Some do not agree with this interpretation of myths. For example, Joseph Fontenrose argues that "myths are not explanatory tales devised to satisfy intellectual curiosity." Ibid., 57.
88. Patai, note 80 above, 3–4.
89. Hosken, note 1 above, 254.
90. Ibid., 253.
91. Ibid., 251.
92. G.J. Barker-Benfield, note 14 above, 96–97.
93. Ibid. Dr. Marion J. Sims was one of the physicians who claimed to have created the procedure.

The surgical procedure was believed to repress the sexual gratification of women, and was desirable to men. Physicians recommended clitoral operations to husbands as a means of saving them from their "wives' 'demanding explosive sexuality,'" and as a "means to secure sexual control over their wives."[94] In reality, doctors often advocated the operation for personal economic gain.[95]

Circumcision did, however, decline in the West after the danger of masturbation was exposed as a false myth, and women rejected routine female circumcision of newborn girls.[96]

VI. HUMAN RIGHTS VERSUS CULTURAL SELF-DETERMINATION

Support for continuation of female circumcision is justified by the following: the need to control the sexual behavior of females; the belief that circumcision is a religious requirement; the belief in myths that underlie the practice; and the desire to adhere to cultural tradition. The more compelling arguments, however, oppose the practice; there is no religious requirement for the practice, and control of the sexual satisfaction of women, even if considered desirable, is not necessarily achieved by the operation. Furthermore, there is irrefutable evidence on the health hazards associated with all types of female circumcision, especially with the more extreme forms. There is only one argument that cannot be refuted directly as either incorrect or ineffective—the one for cultural tradition. The controversy boils down to one of tradition versus health—the right to carry on a tradition versus the right to protect girls and women from unnecessary pain, health complications, permanent bodily damage, and even death.

A. Arguments in Favor of Female Circumcision from a Cultural Self-Determination Perspective

Regardless of the exposed myths, lack of religious base, and known adverse health consequences, many people belonging to cultures that still circumcise women argue that, above all, it is important to continue the practice to preserve tradition. They argue that it is their right of cultural self-determination to carry on this tradition. They believe that it is wrong for those who disapprove of the practice, particularly those from foreign cultures, to attempt to abolish it.

In defense of female circumcision in Kenya, it has been stated that "it

94. Hosken, note 1 above, 254.
95. Ibid.
96. Ibid., 255.

is unintelligent to discuss the emotional attitudes of either side, or to take violent sides in the question, without understanding the reasons why the educated, intelligent Gikuyu [prominent tribe in Kenya] still cling to this custom."[97] The defense of the custom of both male and female circumcision is not one of the operation in isolation of its cultural significance, but the defense of its representation as the "essence of an institution which has enormous educational, social, moral, and religious implications."[98]

In support of female circumcision for the sake of tradition, it has been argued that such a practice, which is deeply embedded in the society, is part of the intricate and complex cultural system, and that to eliminate it would be to impose outside values that might result in a disruption of this delicate cultural balance. Among the Gikuyu tribe in Kenya, the custom of circumcision serves as a rite of passage—a celebration of the entrance of a young man or woman into adulthood. "No proper Gikuyu would dream of marrying a girl who has not been circumcised, and vice versa."[99] It is, therefore, argued that the abolition of such a custom would result in the abolition of an entire institution, the abolition of a tribal law, and the end to a substantial aspect of Gikuyu morality.

The attempts by foreigners to try to change this custom are often looked upon by those who believe in the right of cultural self-determination as an unwarranted imposition on their cultural ways. "The overwhelming majority of [the local people] believe that it is the secret aim of those who attack this centuries-old custom to disintegrate their social order and thereby hasten their Europeanisation."[100]

The question, at this point, is whether a society has the right to carry on a tradition, simply for the sake of tradition, even if it is dangerous or possibly fatal. Certainly, this question is not new. There are many customs or traditions that exist in the Western world that are known to be unhealthy and dangerous. These practices range from smoking cigarettes and drinking alcohol to participating in dangerous sports, such as boxing.

A telling comparison to female circumcision in Africa might be cosmetic surgery in the United States. What would a Sudanese woman think if she were to hear about the women of America who have their ribs removed to appear thinner, their faces lifted to appear younger, and their noses made smaller and breasts made larger, all in the desire to become more attractive? How, in turn, would these American women feel if they were told that their actions were barbaric or immoral, or if they were prohibited by law to have such operations?

The frequency of cosmetic surgery in the United States cannot be com-

97. Kenyatta, note 39 above, 133.
98. Ibid.
99. Ibid., 132.
100. Ibid., 135.

pared to the frequency of circumcision in Africa. Furthermore, there is no social requirement for women to undergo cosmetic surgery in the United States; nor are such operations as medically dangerous as infibulation under "traditional" conditions. Yet, all surgery carries with it some degree of risk. At what point then, should we dismiss the cultural predisposition (and legal rights) to perform this potentially dangerous surgery and respond to pressure—either domestic or international—by imposing restrictions? Should we simply accept some degree of morbidity and mortality as the price of our cultural (and aesthetic) freedom?

These questions lead to broader issues of human rights. At what point should a practice be deemed dangerous enough to be a violation of human rights, and hence, worthy of external interference? How is this determined, and by whom? Does female circumcision fit into this category? The controversy may be restated as one of cultural self-determination versus human rights.

B. Arguments Against Female Circumcision from a Human Rights Perspective.

In December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Among the articles included in the Declaration are: Article 3, "Everyone has the right to life, liberty and the security of person"; Article 5, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"; and Article 15, "Everyone has the right to a standard of living adequate for the health and well-being of himself," and "Motherhood and childhood are entitled to special care and assistance."[101] Female circumcision pertains to all four of these articles.

Similar articles are included in the African [Banjul] Charter on Human and People's Rights, that was unanimously adopted in 1981 by the Assembly of Heads of State and Government of the African Organization of Unity (OAU), and came into force on 21 October 1986.[102] The articles, or portions

101. Universal Declaration of Human Rights, *adopted* 10 December 1948; G.A. Res. 217A (III), U.N. Doc. A/810 (1948).
102. African [Banjul] Charter on Human and People's Rights, *adopted* 27 June 1981, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 International Legal Materials 58 (1982). *International Human Rights Instruments* at 530.1, ed. Richard B. Lillich (Buffalo, NY: William S. Hein Co., 1986). A simple majority of member states of the OAU were required for ratification. The countries that have deposited instruments of ratification with the OAU secretariat include: Benin (20 January 1986), Botswana (17 July 1986), Burkina Faso (6 July 1984), Central African Republic (26 April 1986), Chad (22 July 1986), Comoros (1 June 1986), Congo (9 December 1982), Guinea (16 February 1986), Guinea-Bissau (4 December 1985), Liberia (4 August 1982), Mali (21 December 1981), Mauritania (no date), Niger (15 July 1986), Nigeria (22 June 1983), Rwanda (15 July 1983), Saharawi Arab Democratic

thereof, relevant to female circumcision include: Article 4, "Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right,"; Article 5, "All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited"; Article 16, "Every individual shall have the right to enjoy the best attainable state of physical and mental health . . ."; and Article 18, "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

In addition to articles similar to the ones listed above, the Draft Charter on Human and People's Rights in the Arab world contains the following articles: Article 15, "The State shall provide care and protection to mothers and infants"; Article 16, "The State shall care for the physical and mental health of minors and protect them from social and economic exploitation"; and Article 19, "The State shall, by all available means, provide youth with possibilities for their physical and intellectual development."[103]

Female circumcision can be seen as a violation of the right to health. In many, if not most, countries practicing female circumcision, women and children are operated on in unsanitary conditions that frequently result in health problems that can be both severe and chronic, and that can adversely affect the next generation as a result of problems during childbirth.

The practice of female circumcision also can be considered a violation of the rights afforded women and children.[104] Circumcised mothers and children are subjected to dangerous, health compromising, and unnecessary operations. This is especially unfortunate because most of the countries where these operations take place have little in the way of health care facilities to deal with even the natural and unavoidable medical needs of women and children.

Republic (2 May 1986), Sao Tome and Principe (23 July 1986), Senegal (13 August 1982), Sierra Leone (21 September 1983), Somalia (31 July 1985), Sudan (18 February 1986), Togo (5 November 1982), Tunisia (16 March 1983), Uganda (10 May 1985), Tanzania (18 February 1984), Zambia (10 January 1984), and Zimbabwe (30 May 1986). In addition, Algeria, Cape Verde, Lesotho, and Libya have signed but not ratified the Convention. "Banjul Charter Comes into Force," 11, no. 3 *Human Rights Internet Reporter* 46, ed. Laurie S. Wiseberg (Human Rights Internet: Cambridge, Mass., 1986).
103. Draft Charter on Human and People's Rights in the Arab World, (Siracusa, Italy: International Institute of Higher Studies in Criminal Sciences, 1987), 10, 11.
104. The "Convention on the Elimination of All Forms of Discrimination Against Women," adopted by the U.N. General Assembly in December 1979, is an important international human rights document for women and especially pertains to female circumcision. Articles 10(1) (h), 12(1), 12(2), 14(2) (b), and 16(1) (e) clearly set out the right to health, which is violated each time a woman is circumcised. Reprinted in Lillich, note 12 above, 220.1–220.24.

As evidenced above, the operation is not medically necessary.[105] Even in the countries where medical treatment is superb and operations are safe, it is strongly advised that all unnecessary operations be avoided. Even under the best of conditions, there is always some risk of complication. The risk of complication increases substantially when an operation is done under unsanitary conditions and by nonmedical personnel. Female circumcision often leads to medical complications, and with the extreme forms, has led to the death of both women and their children. Clearly, this should be considered a violation of the "right to life."

Female circumcision also should be considered a violation of the right to life from the perspective of reproduction. When the very organs that allow human beings to reproduce and to give life to future generations are mutilated, there has been a violation of one of the fundamental human rights.

When a young girl is infibulated, on a dirty mat by a nonmedical woman with an old razor, then sewn up with acacia thorns, all without the use of anesthesia, this should be considered a form of torture and a human rights violation. The pain of the operation alone is often intense, as is the pain of post operative "healing"; there can also be pain of infection, which so often accompanies the more severe forms of the operation. In addition, the resulting scars of the mutilated area might well be a source of emotional pain.

From a feminist human rights perspective, female circumcision denies women and girls their sexual and corporal integrity.[106] This argument "stresses that female circumcision violates a woman's right to control her own body and is intended to deprive her of her sexuality."[107] The objection is two-fold. First, is the objection to the belief that a woman should be deprived of her natural sexual desire. Why should a woman's sexual desire be any more immoral or socially threatening than a man's sexual desire? Second, is the objection to the belief that a woman should be deprived of her natural physical female characteristics. The operation both disfigures and limits the woman's natural features. "Those who endorse this approach agree that female circumcision permanently impairs and degrades women's sexual organs."[108]

In addition to the concerns of human rights in general, female circumcision can be seen as specifically compromising the rights of children, both directly and indirectly. In 1959, the General Assembly of the United Nations

105. Occasionally in the United States, an operation is performed where the clitoral prepuce is removed to help women attain an orgasm who were previously unable to do so. *WHO Chronicle*, note 49 above, 32.
106. See e.g., Mary Daly, "African Genital Mutilation: The Unspeakable Atrocities," *GYN/ECOLOGY: The Metaethics of Radical Feminism* (Boston: Beacon Press, 1978), 153–178.
107. Boulware-Miller, note 31 above, 169.
108. Ibid.

adopted The Declaration of the Rights of the Child.[109] The heart of this declaration lies in Principle 2 that states:

> [T]he child shall enjoy special protection, and shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.

Recently, the rights of children have been addressed even more completely in the Draft Convention on the Rights of the Child, as adopted by the UN Open-Ended Working Group on the Question of a Convention on the Rights of the Child: 1979–1988. Article 12 *bis* recognizes the "right of the child to the enjoyment of the highest attainable standard of health and to medical and rehabilitation facilities," and urges full implementation through appropriate measures to "diminish infant and child mortality" and to "ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care." Article 12 *bis* (3) directly pertains to female circumcision: "State Parties to the present Convention shall seek to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." Any form of the operation practiced on a child should be considered a violation of these rights, and states should work to prevent such violations.[110]

The difficulty in dealing with female circumcision, as it affects the rights of children, as opposed to dealing with racial discrimination or slavery, is that families do not circumcise their daughters in an attempt to harm or abuse them. The practice is done because it is thought to be in the best interest of the child—either socially or physically.

> To challenge female circumcision as a violation of the rights of the child suggests that women who permit the operation are incompetent and abusive mothers who, in some ways, do not love their children. . . . While women may not wish to see their daughters harmed, they may also feel strongly that they should be able to rear their children according to their own cultural norms and traditions.[111]

One of the most important aspects in determining the point at which a practice becomes a violation of human rights—the point where people from other cultures may be justified in attempting to stop or change such practices—is the extent to which innocent people are harmed or killed as the result of the practice. History is replete with examples of traditions so in-

109. Declaration of the Rights of the Child, *adopted* 20 November 1959; G.A. Res. 1386 (XIV), U.N. Doc. A/4354 (1959).
110. Copies available by writing Defense for Children International U.S.A., 534 Eighth Street, Brooklyn, NY 11215.
111. Boulware-Miller, note 31 above, 169.

human that those opposed felt justified in interfering and attempting to eliminate them. Wife burning in India is a telling example, as is the murdering of baby girls in the pre-Mohammed days of the Arab world. These practices were deemed unjustifiable and illegitimate, even though they had become the custom. In the same vein, Hitler did not convince the rest of the world that his country had the cultural self-determination to massacre millions of Jews, simply because he wanted it to be a tradition to do so.

These examples could be considered the extremes—cultural practices that routinely result in the death of innocent human beings. To be inhuman, however, a practice need not be this extreme. A hypothetical tradition that demanded poking out the eyes of all second born male children would also not be acceptable as a legitimate tradition simply because a particular society desired it to be so.

VII. INVOLUNTARY VERSUS VOLUNTARY PARTICIPATION

An important consideration in the determination of whether a practice can be considered a violation of human rights is the extent to which the "victim" of a certain harmful tradition is a participant on an involuntary or voluntary basis.

A. Involuntary Participation

Most cultures would adhere to the notion that it is unjust to have the health or well-being of people who cannot decide for themselves compromised as a result of action taken by others. It is generally accepted that a harmful or mutilating practice should not be carried out on someone without that person's understanding or consent. Such would be the case with infants or unsuspecting adults. Most people would consider it inhuman, for example, even among those in whose cultures the practice exists, to blind or to mutilate young children so that they can more successfully beg in the streets of India.

Examples do exist, however, where potentially harmful practices, such as tattooing and scarring, are performed on children when one of the goals is to promote strength, courage, and ability to endure pain.[112] But, fortunately, traditional practices that leave the victims severely maimed and disabled are not common.

The primary question is one of consent. What decisions should be left

112. Elaborate tattooing occurs in societies such as the Toda in the Nilgiri Hills of south India, the Lua in northern Thailand, and the Marquesan people in the Marquesas Islands of the South Pacific. National Geographic Society, *Vanishing Peoples of the Earth,* (Washington, DC: National Geographic Society, 1968).

to individuals? What decisions can rightfully be made by others? When a child needs medical care in the United States or Canada, responsibility rests with the parents or legal guardians to assure that care is provided. "The most important reason for assigning child decision-making authority to others is the child's diminished capacity. Undoubtedly, children of certain ages are unqualified to make any medical decisions for themselves."[113] Much of the discussion regarding medical treatment and consent for children, however, seems to revolve around the issue of parents requiring their children to be treated even if the child would refuse, and the requirement that doctors obtain consent from the parents before medical action is taken (except in the case of emergencies).[114]

In addition, the right of parents to refuse medical treatment for their children on the basis of religion, for example, the Jehovah's Witnesses, needs to be addressed. Those who follow this doctrine believe that it is sinful to accept blood transfusions. According to the laws of the United States that support the right to practice a religion freely, an adult may accept the responsibility for his or her own health and refuse a medical procedure. However, when a child of parents who are Jehovah's Witnesses becomes gravely ill and will die unless she received a blood transfusion, the situation is more complex. The parents believe that the child will be spiritually condemned if the procedure is carried out and that the state has no right to interfere with their religious practices.

The medical profession, on the other hand, argues that a young child is not emotionally capable of making such a life or death decision. Whether a person is ideologically committed to a religion to the extent that she would risk her life to follow the doctrine, is a decision that requires intellectual maturity. It is argued that since at an older age, the child might choose to accept the transfusion and stay alive, she should be kept alive until capable of making the decision on her own. U.S. law agrees with the medical profession on this issue.

> Having held that the state may protect children from physical harm at the hands of their religiously motivated parents or guardians, the Court found it easy to decide summarily that a parent could not, even on religious grounds, withhold a blood transfusion from a child in need of such a transfusion to save the child's life, and lower courts have likewise had little difficulty in concluding that parents cannot prevent their children, on religious grounds or otherwise, from receiving

113. Tania E. Wright, "A Minor's Right to Consent to Medical Care," *Howard Law Journal* 25 (1982): 532.
114. Margaret Sommerville, *Consent to Medical Care* (Ottawa, Law Reform Commission of Canada, 1979) viii 186, (ISBN 0 662 10452 8); *Medical Treatment and Criminal Law* (Ottawa: Law Reform Commission of Canada, 1980), 136, (ISBM 0 662 50670 7); G. Robertson, "Informed Consent to Medical Treatment," *Law Quarterly Review*, 97 (1981): 102–126.

> medical treatment without which their children's health would be seriously jeopardized.[115]

There have been several similar cases over the last five years, such as the manslaughter charge given to two Boston parents when they sought religious prayer for their gravely ill two-and-a-half-year old son rather than seeking medical care.[116]

A similar situation exists with female circumcision. The parents of the baby girls who are excised or infibulated sincerely believe that their decision is in the best interest of their children. They believe that their girls will be unhealthy or behave immorally if the operation is not performed, and they believe that it is both their duty and cultural right to carry out such procedures.

As in the case of the Jehovah's Witnesses, however, it seems unjust that the decision to have an operation performed on a baby girl—one that could risk her life or health, one that will permanently change her physical characteristics and may even harm her future children—should be made without her understanding or her consent. It is unacceptable for a person to have no choice in a matter that concerns her own sense of health, well-being, and physical existence.

Such would appear to be the case, therefore, with the more severe forms of female circumcision performed on newborns or young girls. Hence, infibulation performed on a five-year-old girl should be considered a violation of human and child rights, because the child has no say in the matter. Such a decision is better postponed until the individual can decide for herself—until the time she has reached adulthood.

B. Voluntary Participation

The situation changes, however, when an adult decides of her own free will, after being informed of the physical consequences, to follow tradition and have herself circumcised. People in most societies are generally free to treat their bodies as they please, even if this means compromising their own health and well-being.

The most extreme example of a decision to harm oneself is suicide. Although the issue is highly controversial, many people believe that the decision to live or die should be a personal one and that the act of suicide is the prerogative of each individual. This belief is reflected in the laws of

115. Lawrence H. Tribe, *American Constitutional Law* (New York: The Foundation Press, Inc., 1978): 850. This refers to the case of *Jehovah's Witnesses v. King County Hospital*, 390 U.S. 598 (1968).
116. Alex Beam, "Christian Scientists Uneasy as Beliefs Go on Trial," *The Boston Globe*, 2 May 1988, referring to David and Ginger Twitchell, direct indictments 069757, 069517, Suffock Superior Criminal Court.

a number of societies, such as Japan; yet, there are few societies that allow their citizens to take the lives of other, unwilling members.[117]

Less controversial than suicide, however, are the cases that involve limited mutilation of an individual. There are few laws that would prohibit a grown man from cutting off his own arm, if he so desired. But, it would not be acceptable if the same man were to cut off the arm of his young child. When a man in East Africa decides to have his entire body tattooed, this is looked on from most perspectives as being his right and prerogative. The same would apply to an American women who has her face lifted or a man from New Guinea who wears large rings in his nose.

People who "voluntarily" engage in potentially harmful practices, however, may not be entirely aware of the possible consequences of their decisions. It is conceivable that if the consequences of some potentially dangerous cultural operations were known in advance, the decision of a person to proceed might well be reversed. The initial decision, therefore, to become engaged in a potentially harmful practice should only be considered truly voluntary if it is made with full awareness of the possible outcomes.

This consideration can be aptly applied to the issue of female circumcision. Those who support the practice state that most of the women or older girls who are circumcised have made to decision to do so themselves. It is not clear, however, that the women are actually aware of the extent to which they may be harmed or deformed by the practice. Many of the arguments in defense of the practice are based on false information (for example, myths and religious requirements). Can the argument for personal choice be legitimate if the reasons for choosing are unfounded? If women understood that a normal clitoris does not grow to the size of a man's penis, they might well refuse to have themselves excised. If women knew that infibulation might risk their lives, or the lives of their children, they might be less inclined to comply with tradition.

Unfortunately, the level of education, especially for women, is low in most of the countries where female circumcision is routinely practiced. Accordingly, there is little access to information that might shed light on the subject. Little about the health hazards of circumcision is available in print, but even if the information were more available, the illiteracy rate is so high that dissemination would still be difficult.

Social pressure also influences the degree to which behavior can be considered voluntary. Underlying the importance of tradition to a culture is the fear of the consequences that might result from disregarding the traditions. "It is believed that any attempt to abandon such customs would be met by the disapproval of society manifested in ostracism and insults."[118]

117. An obvious exception to this general rule is capital punishment.
118. El Dareer, note 21 above, 69.

The same qualities of a tradition that serve to bind a society together in a positive way, can also serve to intimidate members of that society into conforming to its mandates. It would appear, therefore, that inherent in the justification of female circumcision on the grounds of tradition, especially in poor rural communities with ancient customs, is "the fear that any deviation from tradition means being disapproved of or ostracized by society."[119] Can the decision to be circumcised even when all the facts and risks are known, be considered truly voluntary when the only alternative is to be ostracized for such aberration? "Faced with this societal mandate that circumcision improves their feminine anatomy and morality, women 'consent' to be circumcised."[120] One study in Nigeria showed that even educated women who were opposed to the practice succumbed to tradition because of family and social pressures.[121]

In addition to cultural pressures, economic and social concerns may compel women to consent "voluntarily" to these operations. In most of the countries where female circumcision is still practiced, marriage is the only hope that women have for social and economic survival: poverty, illiteracy and low status of women are combined with hunger, ill-health, overwork, and lack of clean water, and an uncircumcised women is stigmatized and not sought in marriage. It is, therefore, understandable that the victims of the practice are also its strongest proponents. A woman who questions tradition loses the support of the community that is necessary for her survival.[122]

The conditions under which the practice takes place including age, type of circumcision, extent of social and economic pressure, must all be taken into consideration before it can be determined whether female circumcision is a violation of human rights. The more factors there are to consider, the more nebulous the determination becomes. This should not, however, keep us from making judgments, at least about extreme examples of violations. To paraphrase Samuel Johnson, just because one cannot tell the difference between dawn and dusk, does not mean one cannot tell the difference between night and day. Most would probably agree that if an educated, married women decides to have a sunna (mild) operation, it would be her prerogative to do so; and to argue that under this set of circumstances, is a violation of human rights would be difficult. It is also clear, however, that the rights of a baby girl are being violated when she is infibulated in unsanitary conditions that result in her death. Most people would consider this case to be a violation of the child's human rights.

119. *The Lancet,* note 13 above, 569.
120. Boulware-Miller, note 31 above, 157.
121. Modupe O. Onadeko and Lola V. Adekunle, "Female Circumcision in Nigeria: A Fact or a Farce?" *Journal of Tropical Pediatrics,* 31, no. 4 (1985): 183.
122. *WHO Chronicle,* note 49 above, 33.

VIII. APPLICABILITY OF HUMAN RIGHTS ON A UNIVERSAL BASIS

Are human rights a Western concept, not applicable to cultures, such as those that practice female circumcision? Are there universal human rights that can be applied without cultural imposition? How is it to be determined what constitutes a violation of these rights? These are difficult questions because "what is held to be a human right in one society may be regarded as anti-social by another people, or by the same people in a different period of their history."[123]

On the one side of the argument are those who take the cultural relativity approach. According to this view, there are many diverse cultures in the world, and it is not possible to apply successfully the same set of values and behavioral standards to all of them. The concept of human rights, they argue, is one of Western philosophy and ideology, and to impose Western values on other parts of the world is tantamount to cultural imperialism.

> It is becoming increasingly evident that the Western political philosophy upon when the . . . [Universal] Declaration of [Human Rights is] based provides only one particular interpretation of human rights, and that this Western notion may not be successfully applicable to non-Western areas for several reasons: ideological differences whereby economic rights are given priority over individual civil and political rights and cultural differences whereby the philosophic underpinnings defining human nature and the relationship of individuals to others and to society are markedly at variance with Western individualism.[124]

There are, however, divided views among the promoters of the cultural relativism approach. There are those who argue that each culture should be left without interference to live as they please and carry out their traditions as they see fit. It would be unjust, according to this view, to try to put an end to such customs as wife burning in India and female circumcision in Africa.

There are those who take a less extreme view, but still believe there are serious problems with the present application. Re-thinking and re-working of the concept are advocated. According to this view, traditions, religions, and other cultural aspects of societies often provide a personal protection that could be seriously harmed if the Western version is imposed. There are societies in which the concept of "human dignity is culturally defined in terms of excelling in the fulfillment of one's obligation to the group."[125] In this sense, female circumcision could be viewed as playing a functional

123. "Statement on Human Rights," *American Anthropologist,* 49, no. 4 (1947): 542.
124. Adamantia Pollis and Peter Schwab, eds., "Human Rights: A Western Construct With Limited Applicability," *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger Publishers, 1979), 1.
125. Pollis and Schwab, note 124 above, 15.

role. The infibulation of a young girl is a way for her to fulfill her clearly defined and socially important role of a morally and physically pure female.

Proponents of this modified cultural relativist view argue that there is no single ideology of human rights that can be used to unify successfully the world's societies. "If the notion of human rights is to be a viable universal concept it will be necessary to analyze the differing cultural and ideological conceptions of human rights and the impact of one on the other."[126] It is necessary, therefore, when formulating a workable concept of human rights, to incorporate a broader interpretation of protection of individuals and responsibilities of states.

The concept of a set of fundamental human rights, primarily based upon the concern for the protection of the individual, is a new one for most of the third world nations. In Africa, for example, "in the days before independence . . . [African leaders] did not distinguish between categories of rights, but insisted on political, civil, cultural, social, and economic rights for all Africans. . . . Human rights were a topic of debate at the United Nations and an instrument to be used against vestiges of colonial rule and European domination on the continent, but not a universal set of standards to be applied to themselves."[127] In attempting to establish a universal standard, there needs to be a balance between "the respect for the personality of the individual as such, and his right to its fullest development as a member of his society," and "respect for the cultures of differing human groups."[128]

From another perspective, there are those who believe that a universal standard is not only possible, but essential, for present-day societies. In smaller more traditional societies, the structure of government was more successful in protecting the individual while simultaneously maintaining a cohesive group identity. "In every stable and just human community the rulers have always striven to ensure the common good, which includes also the realization of the interests or rights of the individual. . . . "[129] There has been an evolution of the "modern state" in almost every country, however; regardless of whether traditional cultures persist, the state machinery has become so domineering that the initial protection afforded the individual has been seriously eroded. In Western states, the concept of individual rights was born as a defense against the powers and abuses of the state. Now, in many parts of the third world, "it has become necessary to counter-balance that authority [of the state] by rights granted to the citizen. . . . Given the preponderance of the new governmental structures, little can be placed on

126. Ibid.
127. Warren Weinstein, "Human Rights and Development in Africa: Dilemmas and Options," *Daedalus,* 112, no. 4 (1983): 173, 175.
128. "Statement on Human Rights," note 122 above, 539.
129. C. Tomuschat, "Human Rights in a World-Wide Framework—Some Current Issues," *Zeitschrift fur Auslandisches Offentliches Recht und Volkerrecht,* 45, no. 3 (1985): 558.

traditional safeguards which in the past were a natural and inherent element of society."[130]

It is argued that the issue of human rights in developing countries entails a distinction between human rights as an inherent part of one's humanity and the concept of human dignity. "The argument that different societies can have different concepts of rights is based on an assumption that confuses human rights with human dignity. . . . Concepts of human dignity do indeed vary. They are embedded in cultural views of the nature of human beings, which in turn reflect the social organizations of particular societies. In Africa, idealized versions of human dignity reflect idealized interpretations of precolonial social structure."[131] It is this idea of human dignity to which critics of the Western version of human rights are referring.

If human rights are not simply a Western ideology, but are inalienable—entitled to all human beings, and cannot be denied by a "state" or government—then developing countries cannot deny these rights to their people. Governments have an obligation to humanity, therefore, to acknowledge these rights and adopt policies to implement and enforce them.

It is their emphasis on the group, as opposed to the individual, that is often used by opponents of universal human rights. Yet, the traditional group community structure is undergoing substantial change in most developing countries. With the growth of the cities, an increase in international interaction, and overall modernization, the role of the tight community seems to be less and less important. " '[M]odernization' is useful to describe certain social-psychological processes of individuation that have been occurring in Commonwealth Africa over the last hundred years, if not longer, and which strongly imply the need for individual human rights."[132] Perhaps resistance to the implementation of human rights is merely an attempt on the part of those in power to hold on to what is left of the extant community structure.

A distinction between the principle and the practice of human rights is often made by third-world citizens. From their point of view, an important consideration in evaluating the applicability of human rights in third-world countries, given the pervasive poverty, hunger, and illiteracy, is the extent to which these countries can be expected to adopt and implement the necessary measures to protect human rights, even when they might wish to do so. Means to do so are often limited, and the social and economic concerns are diverse and conflicting. Can the government of a country in which female circumcision is practiced be expected to wage a campaign against this practice when the majority of the people within the country are struggling merely to feed their families and find work? As one African woman described

130. Ibid., 559.
131. Rhoda E. Howard, *Human Rights in Commonwealth Africa* (New Jersey: Rowman & Littlefield, 1986), 17.
132. Ibid., 27.

the situation, "women who have undergone excision are far more concerned about the struggle for their family's survival that they wage for 15 or 16 hours every day. They have no time to ask themselves questions about their body."[133]

Given the continued support of the Universal Declaration of Human Rights in recent years, however, it appears that "the idea of establishing world-wide standards of human rights has lost nothing or only very little of its former appeal."[134] Most would agree that such a set of standards would not be established with the intention to restructure each society to resemble a Western community. There is a good deal of agreement that in order to live in a progressively shrinking and ever more interactive world, there must be some method by which each society and culture can live more harmoniously with others. Perhaps, if the most fundamental of the proposed human rights, such as those to life and health, and those protecting against slavery and torture, were universally adopted, there would be less conflict of culture, and violations of such rights would be more conspicuous and easily identified.

One of the problems in dealing with a universal declaration designed to be followed as international law is enforcement. Violations of international law are ubiquitous; to achieve universal compliance will be most difficult. Yet, there is potential for substantial worldwide reform—beginning with statements of intent by the individual governments—particularly if governments are granted some degree of flexibility in their implementation of human rights policies.

Clearly, it would be difficult to establish universal standards that would prohibit sunna circumcision on educated, consenting female adults. A worldwide acceptance of, let alone adherence to, such a prohibition would be virtually impossible. It is conceivable, however, that a universal consensus could be attained that would establish a prohibition against practices, such as infibulation, performed on newborn and infant girls too young to decide for themselves.

IX. CHANGE—PREVIOUS ATTEMPTS AND PROSPECTS FOR THE FUTURE

If it can be determined that there are basic inviolate human rights that are applicable on a universal level, a strong argument can be made that some forms of female circumcision should be controlled or eliminated.

Although female circumcision has been practiced for over two thousand

133. Savane, note 42 above, 39.
134. Tomuschat, note 128 above, 553.

years, "attempts to prohibit the circumcision of women only began in comparatively recent times. Possibly this is because the custom is very old and deeply rooted and also because, like many customs, it was accepted without question, no one dared to examine its malevolent effects or even, it seems, to be fully aware of them."[135] The attempts that have been made to put an end to female circumcision on an international, as well as a local level, generally have had little success.

A. Measures Taken for Elimination of Female Circumcision

1. Legislation

Actions to eliminate or control female circumcision through the legal system have been attempted in a number of countries.[136] For the most part, however, legislation has been ineffective. Laws that prohibit behavior that is deeply embedded in a culture are neither likely to find much support nor produce much change. This is especially true if the laws are generated from external sources (for example, from a colonial power) and are underenforced by local officials.

In Kenya, attempts at legal prohibition began as early as 1906 by the Church of Scotland. Support was so limited, however, that no further legal action has been taken since 1926, and the practice continues today much as it did at the turn of the century.[137] "In 1982, although his immediate predecessor [Kenyatta] had endorsed the practice, Kenyan President Moi condemned female circumcision and called for prosecution of individuals who perpetuate it. Notwithstanding Moi's call to discard the 'useless' cultural practice of female circumcision, Kenya still has no legislation banning it. Thus, despite these legislative efforts, all three forms of circumcision are still practiced [here]."[138]

In 1946 the Sudanese Ministry of Health launched a campaign against female circumcision and succeeded in getting a law passed that prohibited infibulation, but allowed sunna. In the legal code it stated that "[w]hoever voluntarily causes hurt to the external genital organs of a woman is said, save as hereinafter accepted to commit unlawful circumcision. . . . It is not an offense against this section merely to remove the free and projecting part of the clitoris."[139] The penalty for violation of the law was seven years

135. El Dareer, note 21 above, 92.
136. *The Lancet,* note 13 above, 569; El Dareer, note 21 above, 95; Assaad, note 23 above, 5; Kenyatta, note 39 above.
137. El Dareer, note 21 above, 92; Kenyatta, note 39 above; Cutner, note 17 above, 442.
138. Boulware-Miller, note 31 above, 159.
139. Sudanese Penal Code, reprinted in El Dareer, note 21 above, 95.

imprisonment. This law, however, was passed primarily in response to pressure from the British colonial powers. Little action was taken to enforce the law, and eventually, it was rare to hear of any legal cases. The fact that infibulation had been made illegal "did not diminish its practice, but served merely to reduce its ritual and celebratory trimmings,"[140] and infibulation is still widespread even today.[141]

The legal status of female circumcision in Egypt is unclear. Most of the educated people in the country believe that the practice has been outlawed, and one article has affirmed that "President Nasser passed a decree in April 1958 prohibiting the practice of clitoridectomy and punishing the offenders by fine or imprisonment."[142] Another source, however, reports that "Egypt signed a resolution in 1959 recommending that only a partial clitoridectomy be performed, and then only with consent and by a physician, but violations of this provision do not bring penal sanctions."[143] Since even the existence of the law itself is in dispute, clearly the law cannot have had much effect on the practice; excision and infibulation are still prevalent in Egypt.

There are several reasons for the failure of these laws. Most of the laws were the by-products of external pressure and did not reflect the desire of the local people to suppress the tradition. The operations tended to be carried out in private places, and detection was unlikely. Since the local people were not in support of the laws, reported cases were rare. "Wherever a colonial administration of the past or a government of today has tried to ban it outright, it has simply been practiced with greater secrecy, and those suffering health complications have been inhibited from seeking professional help."[144] One of the weaknesses of the law in Sudan was that "it forbade only one type of circumcision," therefore making the distinction between right and wrong forms of the practice unclear.[145]

An additional problem is that most of these countries are not culturally accustomed to legally punishing women. Since those who initiate and perform the practice are primarily women, the laws and their methods of punishment are not acceptable to the local people.[146]

2. Religion

Missionaries have played the primary role in attempting to eliminate female circumcision for religious reasons. "In Kenya in 1929, the Church

140. Constantinides, note 8 above, 687.
141. The prohibition on infibulation did lead to the practice of an intermediate form of female circumcision. "Local resentment and resistance was intense and gave rise in 1950 to the intermediate type of circumcision which was developed by a Sudanese midwife to circumvent the law which specifically applied only to the Pharaonic circumcision." Cutner, note 17 above, 442.
142. Assaad, note 23 above, 5.
143. Boulware-Miller, note 31 above, 158–159.
144. *WHO Chronicle,* note 49 above, 34.
145. El Dareer, note 21 above, 95.
146. Ibid.

of Scotland mission forbade children to attend its school unless their parents renounced the rite."[147] Similar attempts by other Christian missionaries have been made in a number of countries, including Senegal, The Gambia, and Egypt. "Roman Catholic missionaries in Ethiopia in the sixteenth century tried to stop the practice among their converters, but when men refused to marry the girls a reversal of the policy had to be demanded urgently from Rome."[148] Even today, one of the few economic alternatives for women who have been ostracized by their society (i.e., those who could not be married and play their required role) is to move to one of the larger cities and become prostitutes.

Almost nothing has been done under the domain of Islam to eliminate female circumcision. The number of people in each of the countries who believe that the practice is a religious requirement is great, and virtually none of the Islamic or other religious leaders has taken a stand and spoken out on the issue to expose the religious misunderstandings.

One attempt at the local level to condemn the practice on religious grounds took place in Sudan, after it was clear that the legal prohibition was ineffective. A campaign was begun by local women—schoolmistresses and midwives—who toured the provinces to discuss the issue with other local women in an effort to persuade them that the practice (specifically Pharaonic circumcision) was contrary to the teachings of Islam. The campaign lasted for several years, and although it resulted in some decline in infibulation, "the practice of female circumcision still continues in the Islamic North on an extensive scale. . . ."[149]

3. Health Education

Although activities designed to educate both men and women about the health consequences of female circumcision have been initiated only recently, they are the most effective of the campaigns so far. "Health education over the past decades . . . has led to a slowly increasing acceptance that the most widely practiced form, the so-called Pharaonic circumcision, can be deleterious to the health of the woman concerned and affect her capacity for childbearing."[150] Furthermore, the exposure of myths and the presentation of adverse health effects have been fairly successful in changing the behavior of the more educated citizens and those who had doubts of their own about the worth of the practice. In addition, the health approach is not culturally biased and is easier for people to understand and accept

147. Harden, note 3 above, 5.
148. *WHO Chronicle,* note 49 above, 34.
149. Marjorie Hall and Bakhita Amin Ismail, *Sisters Under the Sun: The Story of Sudanese Women,* (New York: Longman, 1981), 96.
150. Constantinides, note 8 above, 687.

than approaches that attack the practice from a religious or cultural perspective.

Within the past decade, action against female circumcision has been taken both locally and internationally with the support of a number of international development organizations, such as the World Health Organization, UNICEF, Terre des Hommes, and the United States Agency for International Development. In 1979, at the World Health Seminar in Khartoum, Sudan, female circumcision was for the first time brought before the international public as an important issue.

The topic of the seminar was "Traditional Practices Affecting the Health of Women and Children." This seminar "took a major and unprecedented step in formulating recommendations for governments on measures to be taken to eradicate [female circumcision]."[151] The primary emphasis was on general education that stressed the health problems of the practice. The recommendation was to formulate national commissions responsible for the coordination of activities, and in collaboration with UNICEF, to provide support for research and the dissemination of information. "In this connection, special attention would be paid to the training of health workers at all levels and in particular to that of traditional birth attendants, midwives, healers and all other traditional practitioners."[152]

It was the United Nations Working Group on Traditional Practices Affecting the Health of Women and Children that helped to generate this seminar. The main objective of the Working Group was to initiate activities on a local, grassroots level, designed to "sensitize women on the health dangers of f.c. [female circumcision]."[153]

The most substantial work on activities on a regional and national level has been done through the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children in Africa, established in 1984 in Senegal by UNICEF. This committee has been responsible for creating national sections in African countries, such as Benin, Djibouti, Egypt, The Gambia, Ghana, Liberia, Mali, Senegal, Sierra Leone, and Togo. The primary aim of this committee is to collect and disseminate health information on a community level.

A number of independent activities also have been initiated in individual countries. In Sierra Leone, a program was formed in local communities designed to provide information on the medical dangers of the practice. In Egypt, a community program was established whereby local workers would educate people about the hazards of infibulation. This program also en-

151. UNESCO, note 35 above, 18.
152. Ibid.
153. Ibid., 19.

couraged the involvement of religious leaders to help in the education process. In Sudan, the Ahfad College of Women is supporting a research and information campaign to educate both students and citizens about the problems associated with female circumcision.

Although these activities (especially those concentrating on health education), have made a dent in the practice of female circumcision—most evident in the number of people now choosing less severe forms of circumcision other than infibulation—serious problems remain. It is difficult to be effective with large-scale education programs in countries where the illiteracy rate hovers around 80 percent, and even higher for women.

In addition, discussion of the issue itself is often taboo, particularly in a public forum. One African woman questions whether it is even justified "to conduct a public debate on a subject that those women only talk about with the utmost discretion."[154] Another impediment to change is the cultural importance attributed to the tradition; even when highly educated people are aware of the dangers and are opposed to the practice, many still insist on following tradition, or feel so bound by social pressure that they succumb to the operation.

4. Comparison with Chinese Footbinding

An interesting parallel to female circumcision is the once ubiquitous practice in China of footbinding. It is estimated that this custom began during the 1300s in the Ming Dynasty among the highest classes. Bound feet were a sign of conspicuous leisure and served to suppress women both physically and emotionally and to render them inactive and dependent.

Analogous to female circumcision, Chinese footbinding was said to increase the male's sexual pleasure; tiny footed women supposedly gave the "same sensation to the male as a virgin (due to the pressure which [they were] able to bring to bear upon the male member)."[155] Footbinding also was used to control women's sexuality; because of their deformed feet, women were unable to move about freely in society and, therefore, unable to socialize with men other than those approved of either by the women's father or husband. If a woman failed to please her husband or father, pain could easily be inflicted by binding the feet too tightly, grasping the feet, or whipping the unbound feet. The tenderness and vulnerability of the feet served as a constant reminder of the woman's inferiority.

As with female circumcision, the social pressures to conform to this custom were such that "women instructed their daughters that without bound

154. Savene, note 42 above, 39.
155. Howard S. Levy, *Chinese Footbinding: The History of a Curious Erotic Custom* (New York: Walton Rawls Pub., 1966), 130.

feet no suitable marriage proposals would be forthcoming."[156] Similar to female circumcision, the experience was extremely painful and often resulted in damage above and beyond what was intended. The feet were first wrapped when the girls were between four and eight years old. Several years later the girls could then decide whether to continue the procedure; the alternative being social ostracism. "After a year of intense pain, during which the four smaller toes became broken and portions of flesh sloughed off from the foot, the feet became numb. . . . If the binding was too tight or if proper hygiene was not observed, the girl might become afflicted with ulceration, paralysis, gangrene, or mortification of the lower limbs."[157]

Opposition began with the intelligencia of China around the 1700s, but efforts to stop footbinding were sporadic and weak. Some authors in the 1700s and the 1800s condemned the practice through their writings, and various government officials made statements denouncing the custom. The most concentrated and conspicuous efforts to abolish the practice came with the Western missionaries beginning around 1840. "Missionaries and other Western women in China did not conceal the shock and disgust footbinding aroused in them. . . . This indirect influence of the missionaries via Western public opinion proved immensely important in encouraging the indigenous Chinese anti-footbinding movement."[158]

Their efforts ranged from creating organizations to educate people about the harmful effects, to barring families from missionary schools for supporting the practice. Yet, it was not until the efforts of abolition were perceived as oriental in nature that widespread action began, both legally and socially, and the practice became culturally unacceptable. The extinction of the practice occurred over a 200-year span as a result of both internal and external pressures. The final blow to the custom came in 1911 with the revolution.

As engrained in the society as footbinding was for approximately 750 years, the practice was not as tenacious and as resistent to change as female circumcision, which began well over two thousand years ago and still persists today. There are several reasons for this contrast with footbinding.

First, the results of female circumcision are more easily concealed from the public—especially from those outside the culture—and women can still be active and perform their social duties. Second, the topic of feet, although delicate in the Chinese culture at that time, was not as taboo as the topic of genitalia. Third, the attempts to abolish footbinding were less inhibited by tenacious myths and religious requirements. Finally, the atmosphere of

156. Alison R. Drucker, "The Influence of Western Women on the Anti-Footbinding Movement 1840–1911," Richard W. Guisso and Stanley Johannesen, eds., *Women in China: Current Directions in Historical Scholarship,* (Youngstown, New York: Philo Press, 1981), 180.
157. Ibid., 180–181.
158. Ibid., 183.

anticolonialism was not as pervasive in nineteenth century China as it is in Africa today.

B. Prospects and Recommendations for Change

Clearly, change in the practice of female circumcision will be difficult and slow. The general consensus, however, based on human rights and health perspectives, from both local and international sources seems to be that infibulation or Pharaonic circumcision, and perhaps even excision, should be eliminated, especially in the cases of newborns and infants.

One of the most important aspects of any program to encourage change is that it is supported, if not initiated, on a local level. It is crucial for the survival of any such program to have both the support and commitment of those whose culture is to be altered.

> Genital mutilation must be fought against. But the priorities and the weapons to be used in the battle must be chosen by Africans themselves, and more especially the women. For these practices will not disappear of their own accord for a very long time. Outside support can only be effective and perceived as non-imperialist if it takes its starting point as information and education activities necessarily carried out in each country.[159]

1. International Efforts

Several nongovernment international organizations have been successful in at least bringing the issue of female circumcision to the surface so that it may be dealt with on a public level. These organizations, however, face a number of inherent weaknesses in dealing with such an issue. Many different nations are included in these organizations. Reaching a consensus concerning the problems and how they should be dealt with can be difficult, if not impossible. A second concern is that "even if the groups were to reach a consensus, many African member states believe that they presently cannot 'afford' to obey the decrees of international organizations . . . the eradication of female circumcision and the issue of women's rights in general simply are not a priority in countries with scarce economic resources."[160]

Still, such organizations, and other international and foreign activities, can be beneficial in the fight against female circumcision. They can provide funds, medical assistance, and information to assist actions taken on the local level, and they can "provide a forum within which national groups and governments can discuss new proposals and methods to attack the practice."[161]

159. Savene, note 42 above, 39.
160. Boulware-Miller, note 31 above, 163.
161. Ibid.

2. Health Education Programs

In recent years there has been an increase in the amount of research on female circumcision. This has generated a variety of suggestions and recommendations regarding its eradication. The most forceful recommendation is that the number of locally based programs that educate people regarding the health problems associated with the practice be strengthened and reinforced.[162] These "awareness campaigns" suggest the adoption of clear national policies to provide dissemination of health information, facts about the practice, and basic sex education. The education process should be targeted to health professionals, social and community health care workers, and local midwives and maternity personnel, who in turn can educate the people of their communities about the dangers of the practice.

The Working Group on Traditional Practices Affecting the Health of Women and Children recommends that governments prioritize the eradication of female circumcision; "competent public services should describe the adverse effects of female circumcision to birth attendants, nurses, mobile health teams, social workers, rural teachers and community auxiliaries at the beginning of their courses, not forgetting vocational health personnel and any other socio-vocational category concerned."[163]

3. Socially Influential Role Models

Another recommendation is that role models—socially influential leaders both in the local communities and in larger societies—be encouraged to speak out against the continuation of the practice and show that they have chosen not to go along with the tradition themselves.[164] Community leaders, politicians and other decisionmakers, educators, and professional medical personnel could be helpful in this regard. It would be easier for local citizens to justify a break from the tradition if they were to do so on the recommendations of these influential people.

Support for eradication of the practice would be augmented greatly if religious leaders would take a stand against the practice and clear up the misconceptions concerning its relation to Islam. Religious leaders could also help to disassociate chastity from circumcision. "The perpetuators of the custom need to be convinced that premarital chastity is a moral issue and that modern . . . uncircumcised girls value premarital chastity just as much as circumcised girls."[165]

162. Olalekan Adetoro and Ehigie Ebomoyi, "Health Implications of Traditional Female Circumcision in Pregnancy," *Asia-Oceania Journal of Obstetrics and Gynecology* 12, no. 4 (1986): 492; Lightfoot-Klein, note 16 above, 359; Cutner, note 17 above, 443; Assaad, note 23 above, 9.
163. U.N. Doc. E/CN.4/AC.42/1986/L.2, at 25 (1985).
164. El Dareer, note 5 above, 144; Assaad, note 23 above, 9; *The Lancet,* note 13 above, 569.
165. Assaad, note 23 above, 9.

4. Legislation and Multidisciplinary Approach

Those who argue for legislative action believe that, first there must be active, consistent support and enforcement by each government. Second, legislative action must be taken in combination with other activities. "Legislation could work if people were made aware of the hazards of the practice and this should be done through education of both men and women, as this concerns the entire community."[166]

This multidisciplinary approach has been suggested by a number of authors.[167] Due to the complexity of the problem, the sensitivity of the issue, and the extent to which the tradition is culturally rooted, one method alone will not succeed. Legislation, education, and role modeling must be combined with support from professionals and religious leaders if there is to be any substantial change in the occurrence of the practice. In addition, it is crucial that the majority of the programs be supported and run by local people. Outside support, however, can greatly help such local initiatives.[168]

With regard to economic considerations, unless the men in these cultures begin to accept the idea of marrying uncircumcised women, the prognosis for change is poor. Women cannot take the economic risk of being ostracized and prevented from marriage because they have not been circumcised. Consideration must also be given to compensation for the midwives and women who perform the operation because they often depend on the income for this service for their livelihood. Any approach to eradicate female circumcision that ignores the dependency of people on the practice will not be successful. Such an approach "ignores the need to replace the practice and not merely repress it: girls and women need to find other forms and types of social status, approval, and respectability."[169]

Among the various efforts to eliminate female circumcision, the one with the most potential is the one designed to educate people about the health hazards associated with the practice. This approach is based on the belief that women and children have the right to be made aware of the potential dangers and to be protected from them; these women have a right to their health, and at least the most severe forms of female circumcision should be stopped because they threaten basic human rights. "While many African women who would like to stop the practice of female circumcision agree that women have the right to sexual and corporal integrity and that children have the right to develop 'in a healthy way,' given Africa's socio-economic make-up, they find these exclusive approaches politically less

166. El Dareer, note 5 above, 144.
167. *Second Preliminary Draft Report of the Working Group on Traditional Practices Affecting the Health of Women and Children,* U.N. Doc. E/CN.4/AC.42/1986/L.2, at 4 (1985); El Dareer, note 5 above, 144; Assaad, note 23 above, 9.
168. *WHO Chronicle,* note 49 above, 35.
169. Ibid., 34.

acceptable. The right to health argument integrates the issues of physical, mental, and sexual health as well as child development."[170]

As for the government of these countries, they will be more easily convinced of the importance of dealing with the issue of circumcision if it is linked with the right of their people to have decent health.

170. Boulware-Miller, note 31 above, 176–177.

HUMAN RIGHTS QUARTERLY

The 39th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities

Sonia Rosen and David Weissbrodt

The 39th session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) was held from 10 August through 4 September 1987 in Geneva, Switzerland. The Sub-Commission, established in 1947 as a subsidiary body of the Commission on Human Rights (Commission), is composed of 26 experts who are elected by the Commission. The experts are elected in their individual capacities rather than as representatives of their governments. The Sub-Commission meets annually in August–September to undertake studies and make recommendations to the Commission on a wide range of human rights topics.[1]

1. The official report of the 39th session of the Sub-Commission may be found in U.N. Doc. E/CN.4/1988/37 and U.N. Doc. E/CN.4/Sub.2/1987/42 [hereinafter cited as 1987 Report]. For analyses of past sessions of the Sub-Commission see generally Tolley, H. Jr., *The U.N. Commission on Human Rights,* (1987); Haver, *The United Nations Sub-Commission on the Prevention of DIscrimination and the Protection of Minorities,* 21 Colum. J. Transnat'l L. 103 (1982); Garber and O'Connor, *The 1984 U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities,* 79 AJIL 168 (1985); Hantke, *The 1982 Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Current Developments,* 77 AJIL 651 (1983); Gardeniers, Hannum and Kruger, *The U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Recent Developments,* 4 Hum. Rts. Q. 353 (1982); Gardeniers, Hannum and Kruger, *The 1981 Session of the U.N. Sub-Commission on Prevention of Discrimination and the Protection of Minorities: Current Developments,* 76 AJIL 405 (1982); Hannum, *Human Rights and the United Nations: Progress at the 1980 Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities,* 3 Hum. Rts. Q. 1 (1981); Hannum, *The Thirty-Third Session of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities,* 75 AJIL 172 (1981); Humphrey, *The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities,* 62 AJIL 869 (1968). Further information concerning the Sub-Commission and human rights in the United Nations may be found in the Human Rights Internet Reporter, the ICJ Review (published by the International Commission of Jurists), the AIUSA Legal Support Network Newsletter, and the newly established Analytical Reports of the International Service for Human Rights.

Human Rights Quarterly 10 (1988) 487–508 © 1988 by The Johns Hopkins University Press