The Importation of Female Genital Mutilation to the West: The Cruelest Cut of All

By Patricia A. Broussard*

Violence against women is perhaps the most shameful human rights violation. And, it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.[1]

Introduction

The recent widespread immigration of African and Middle Eastern people and the importation of their traditions and practices into Western societies have given Westerners a firsthand view of cultural practices once shielded by distance, silence, and a bit of disinterest. Such is the case with Female Genital Mutilation ("FGM"). Prior to its importation, most Westerners had not heard the term female genital mutilation and certainly did not know what its impact has been on girls and women in the countries that practice it.

Having "discovered" FGM, the West has become conversant with the justifications for FGM, including religion, assertions of male dominance, and outdated notions of cleanliness and marriageability.[2] However, many of these justifications are either outdated or based on half-truths. The main proposed solutions to what has become known as

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1. Press Release, Kofi Annan, Secretary-General, Violence Against Women 'Most Shameful,' Pervasive Human Rights Violation Says Secretary-General in Remarks on International Women's Day, U.N. Doc. SG/SM/6919 (Mar. 8, 1999), *available at* http://www.un.org/News/Press/docs/1999/19990308.sgsm6919.html.

2. For an extensive discussion on the reasons for FGM, see Patricia A. Broussard, *Female Genital Mutilation: Exploring Strategies for Ending Ritualized Torture; Shaming, Blaming & Utilizing the Convention Against Torture*, 15 Duke J. Gender L. & Pol'y 19, 29–36 (2008).

the "problem" of FGM are education[3] and punishment of the perpetrator,[4] usually the person performing the cutting. However, the importation of the practice of FGM to the West has shifted the conversation to identifying the new culprits and punishing them in an appropriate manner. Western countries that had been secure in their condemnation of those African and Middle Eastern countries that had allowed FGM within their borders are now faced with having to address this complex problem on their own soil. Mothers who have sought the safety of a nation that prohibits FGM nonetheless choose to return their female children to their native countries to be "circumcised," which begs the question—is that not the cruelest cut? Society must now balance punishing the mother, who was herself once a victim, yet is now complicit in the act, with addressing the strong sociocultural imperatives that perpetuate this cycle of torture. Should the mother, herself once a victim, be subjected to punishment for her complicity in the act? Or, is the cultural imperative so strong that it compels a mother to deliver her daughter to the tortures of female genital mutilation?

This Article will explore the phenomenon of the importation of the practice of female genital mutilation to the Western world and the legal steps some countries have taken to ban it from their borders. This Article will also attempt to identify the culprits in perpetuating FGM and proffer some solutions.[5]

I. Background

> *When you cut off a woman's genitals, when you sew them together, when you open them to have sexual relations, when you sew them up again when the husband is absent, open the genitals again to allow her to be penetrated by her husband, there's no need for explanation—everything is clear.*[6]

A. Definition of and Proffered Justifications for FGM

In the early 1990s, physicians at the District of Columbia General Hospital in Washington, D.C. were faced with a strange occurrence—

3. *See, e.g.*, WORLD HEALTH ORG., ELIMINATING FEMALE GENITAL MUTILATION: AN INTERAGENCY STATEMENT 14 (2008) (noting that programs emphasizing "empowering" education have proven successful at bringing about abandonment of female genital mutilation).

4. *See, e.g.*, 18 U.S.C. § 116 (2006); N.Y. PENAL LAW § 130.85 (McKinney 2006).

5. Though the problem of female genital mutilation is global in its reach, the focus of this Article will be the West.

6. ALICE WALKER & PRATIBHA PARMAR, WARRIOR MARKS: FEMALE GENITAL MUTILATION AND THE SEXUAL BLINDING OF WOMEN 288 (Mariner Books 1996) (1993) (interviewing Awa Thiam, a well-known and forceful African feminist).

a woman was presenting in the emergency room in labor, clearly ready to deliver a baby, but there was no vaginal opening from which the baby could emerge.[7] This situation repeated itself in other large cities when doctors were confronted with women who had been subjected to FGM.[8] In all cases, these women were immigrants mainly from African nations. In many instances, the woman's vaginal area was completely sewn closed and both major and minor labia were cut. Most of these doctors had no idea what they had encountered. At that time, American medical schools did not offer training in the area of foreign cultural traditions which could impact and impede their role of administering the standard of care to their patients. More shocking than encountering this practice for the first time was the insistence by these women that their vaginas be sewn back up before they left the hospital with their new infants. These doctors had their first experience with the practice known as female genital mutilation.

Female genital mutilation, also known as female circumcision,[9] is the practice of ritual cutting and alteration of the genitalia of female infants, girls, adolescents, and adult women.[10] Nearly four million in-

7. *See* Mary Ann French, *The Open Wound*, WASH. POST, Nov. 22, 1992, at F1. The article recounts the story of how the doctors dealt with one of the patients, a fifteen-year-old girl, who had been cut at age seven. It reads:

> They ordered her moved from a regular delivery room into an operating theater. There could be hemorrhaging, major complications, they told her older sister. They'd never seen such a thing, they said. What was it? How did it open? Throughout the delivery, the attending physician kept a pair of scissors in her hand, snipping here and there around the thick, unyielding keloid scarring characteristic of people of African ancestry. Her sister said that she was no expert, but that at home they cut upwards and sideways. No, that can't be so, the doctors told her. When the baby's head finally ripped through, the new mother was a pitiable, jagged wound.

This indicates that the most severe form of FGM has been performed. *See* Comm. on Bioethics, Am. Acad. Pediatrics, *Female Genital Mutilation*, 102 PEDIATRICS 153, 154 (1998) (discussing Type III FGM, in which the vaginal opening may be covered).

8. See Linda Burstyn, *Female Circumcision Comes to America*, ATLANTIC MONTHLY ONLINE, Oct. 1995, http://www.theatlantic.com/past/docs/unbound/flashbks/fgm/fgm.htm (quoting an internist: "My patients say doctors are often shocked when they see them and don't know how to help them").

9. The author acknowledges that some use the term female genital mutilation and female circumcision interchangeably, but takes issue with doing that. It is the author's contention that by calling FGM female circumcision, one can draw the comparison between it and the traditional act of male circumcision. That comparison is lacking, for when a male is circumcised, foreskin is removed. And though this process is painful and in some instances brutal, it does not compare to the removal of a part or the whole of a woman's genitalia. Thus, castration more precisely describes the procedure of female genital mutilation. Calling it circumcision makes it a more benign process.

10. Comm. on Bioethics, *supra* note 7, at 153.

fants, girls, and women[11] are subjected to FGM on a yearly basis. FGM ranges in severity from Type I clitorectomy to Type III infibulations ending with a general Type IV category that includes all other forms of vaginal cuttings.[12] Clitorectomy involves the excision of skin surrounding the clitoris with or without excision of part or the entire clitoris. Type III infibulations involve removal of the entire clitoris and some or all of the labia. The raw labia area is stitched together to cover the urethra, leaving a small posterior opening for urine and menstrual flow. Many times, non-thread material is used to sew up the opening.[13] In most cases, no anesthesia is used.[14]

FGM is a common practice in nearly thirty countries around the world.[15] The most common reasons articulated in favor of FGM are tradition, religion, hygiene, male superiority, female fidelity, and economic stability through marriage.[16] Most, but not all, of these justifications are illogical and unsubstantiated.

The practice of FGM goes back to antiquity.[17] To that extent, its practice qualifies as a tradition. However, merely substantiating the fact that this practice has been performed for centuries does not

11. *See id.* (estimating between four and five million FGM procedures are performed each year); *see also* WORLD HEALTH ORG., *supra* note 3, at 1 (estimating three million girls are at risk of undergoing FGM procedures every year).

12. WORLD HEALTH ORG., FEMALE GENITAL MUTILATION: A JOINT WHO/UNICEF/UNFPA STATEMENT 3 (1997). The World Health Organization has developed four categories of FGM: (1) excision of the clitoral hood with or without removal of part or all of the clitoris; (2) removal of the clitoris together with part of the labia minora; (3) infibulation—removal of part or all of the external genitalia and stitching or narrowing the vaginal opening leaving a small hole for urine and menstrual flow; and (4) all other operations on the female genitalia. *Id.*

13. For a more extensive description, see Broussard, *supra* note 2, at 24–25.

14. LAURA REYMOND, ASHA MOHAMUD & NANCY ALI, FEMALE GENITAL MUTILATION—THE FACTS, http://www.path.org/files/FGM-The-Facts.htm (last visited May 3, 2010). Sharp instruments can include razor blades, scissors, kitchen knives, and even broken glass. *Id.*

15. Wanda K. Jones et al., *Female Genital Mutilation/Female Circumcision*, 112 PUB. HEALTH REP. 368, 372 (1997). The African countries and percentages of prevalence are as follows: Egypt—80%; Benin—50%; Burkina Faso—70%; Cameroon—20%; Central African Republic—50%; Chad—60%; Cote d'Ivoire—60%; Djibouti—98%; Eritrea and Ethiopia—90%; Gambia—80%; Ghana—30%; Guinea—50%; Guinea-Bissau—50%; Kenya—50%; Liberia—60%; Mali—80%; Mauritania—25%; Niger—20%; Nigeria—60%; Senegal—20%; Sierra Leone—90%; Somalia—98%; Sudan—89%; Tanzania—10%; Togo—50%; Uganda—5%; Zaire—5%. *Id.*

16. *See* Hanny Lightfoot-Klein, *Prisoners of Ritual: Some Contemporary Developments in the History of Female Genital Mutilation*, FEMALE GENITAL CUTTING EDUC. & NETWORKING PROJECT, http://www.fgmnetwork.org/articles/prisonersofritual.php (last visited May 3, 2010).

17. *Id.*

speak to its value to society. In fact, the practice of FGM has been harmful to societies; thus, it should be discarded.

With respect to a religious justification for FGM, there is little actual support for the practice in religious scripture. The majority of those practicing FGM do so under the banner of Islam;[18] thus, the Koran would logically be the source of religious support for FGM. However, the Koran makes no mention of circumcision for either gender.[19] More commonly, FGM is justified through the Sunnah of Mohammed; that is, conversations that Mohammed had in his travels.[20]

Likewise, the claim that FGM contributes to hygiene has been disproven. Proponents of this claim assert that female genitalia "are ugly and dirty and will continue to grow bigger if they are not cut away."[21] This myth is proven especially ludicrous when juxtaposed with the fact that many females who undergo FGM are under the age of five.[22] Just how dirty and ugly can a five-year-old girl's genitalia be? In addition, the concern with hygiene is hypocritical because FGM actually spreads infectious diseases. For example, the risk of HIV is greatly increased when the same instrument, usually some commonly found sharp object, is used on a large number of females.[23]

Some justifications of FGM are supported by the cultural norms of the societies that practice it. For example, the claim that cutting and sewing up a woman's genitalia will promote marital fidelity is a rationale that can probably be substantiated. It is unimaginable to think that a woman who has undergone FGM would subject herself to sexual intercourse with another man more often than she would be required to do so by her husband. This is especially true when a woman has been subjected to the most severe form of cutting.

18. *See* Adrian Morgan, *Women Under Islam: Female Genital Mutilation*, ISLAM WATCH, July 6, 2007, http://www.islam-watch.org/AdrianMorgan/Women-Under-Islam4.htm.

19. Sami A. Aldeeb Abu-Sahlieh, *Male and Female Circumcision: The Myth of Difference*, *in* FEMALE CIRCUMCISION: MULTICULTURAL PERSPECTIVES 47, 55 (Rogaia Mustafa Abusharaf ed., 2006).

20. *Id.* at 56.

21. DEP'T OF WOMEN'S HEALTH, WORLD HEALTH ORG., FEMALE GENITAL MUTILATION: A HANDBOOK FOR FRONTLINE WORKERS 13 (2000), *available at* http://whqlibdoc.who.int/HQ/2000/WHO_FCH_WMH_00.5_eng.pdf.

22. P. STANLEY YODER, NOUREDDINE ABDERRAHIM & ARLINDA ZHUZHUNI, DEPT. HEALTH SERVICES COMPARATIVE REPORTS NO. 7, FEMALE GENITAL CUTTING IN THE DEMOGRAPHIC & HEALTH SURVEYS: A CRITICAL AND COMPARATIVE ANALYSIS 35 (2004), *available at* http://www.measuredhs.com/pubs/pdf/CR7/CR7.pdf.

23. *See* WORLD HEALTH ORG., *supra* note 3, at 33.

Likewise, there is a belief that the clitoris, if left uncut, will compete with the penis in both size and power.[24] Most cultures practicing FGM believe male superiority must be protected at all costs. Therefore, to ensure that there is no competition between the sexes, the female clitoris must be reduced in size.[25]

Another reason given for FGM is that an unclean, i.e., uncut, woman is not marriageable.[26] In most of the countries that practice FGM, a woman cannot survive without marriage. Marriage is an economic enterprise which allows a woman to survive outside of her parents' home. Without marriage, there is no survival for many women. Moreover, her family also suffers economically because no marriage means that two potential families' resources will not be joined to the benefit of all.

In other words, some rationales given to justify FGM can be substantiated to some degree. However, this substantiation does not diminish the horrific physical and psychological impact on the girls and women who are subject to FGM. Nor does it justify continuation of the practice.

B. Impact of FGM on Women and Girls

Women die from FGM on a regular basis. FGM is usually performed in rural communities—not in hospitals—and no medical personnel are in attendance. For these reasons, there are no available statistics on the number of women who die from the procedure,[27] and most reports of deaths are anecdotal.

The effects of the practice are far-reaching. Part of the genitalia is removed without the use of anesthesia, and women are exposed to severe pain and the danger of bleeding to death or contracting a fatal infection.[28] There are many long-term conditions and complications that result from FGM. Many women develop fistula and cysts, which, if untreated, can lead to lifelong incontinence.[29] In addition, female infertility and an increased risk of death to mother and infant are common, as is a woman's diminished sexuality. Some women are unable to achieve an orgasm when both the clitoris has been cut and many of

24. *See* Lightfoot-Klein, *supra* note 16.
25. *See id.*
26. WORLD HEALTH ORG., *supra* note 3, at 6.
27. *See* REYMOND, MOHAMUD & ALI, *supra* note 14.
28. *See id.*
29. WORLD HEALTH ORG., *supra* note 12, at 7.

the vulva nerve endings have been removed. Thus, many may derive little or no pleasure from sexual intercourse.[30]

In addition, women who undergo FGM are at risk for needing a caesarean section, an episiotomy, and an extended hospital stay.[31] According to a study done in one small village of Sierra Leone, eighty-three percent of women who had undergone FGM required medical attention for some condition or injury that resulted from having been cut.[32]

As stated above, few statistics are kept on the death rate of women who have been subjected to FGM, and no statistics are kept on the psychological damages caused by FGM. Little research has been done on this topic. Some researchers say that the psychological effects range from anxiety to severe psychosomatic illnesses.[33] One researcher noted, "Many children exhibit behavioral changes from FGM, but problems may not be evident until the child reaches adulthood."[34] One can only extrapolate from the fact that the physical ramifications of FGM are so great that there must be similar resultant psychological factors. The silence over the lack of knowledge about the psychological damages from FGM is deafening.

C. International Reaction to FGM: Imperfect Solutions

There is now a consensus in Western societies that FGM is torture and should be outlawed and punished when performed.[35] Although many practicing countries have moved away from issuing *fatwas*[36] in favor of FGM and some have even enacted laws against it, the practice continues in those countries and has now found its way to the shores of the Western world. Human rights activists from around the world have addressed FGM for many years and, to that end, the international community has enacted conventions which purport to protect women and children from violence and torture. These conventions,

30. *See* WORLD HEALTH ORG., *supra* note 3, at 34 (noting the detrimental impact, both physical and psychological, FGM often has on a woman's sexual life).

31. *See id.*

32. REYMOND, MOHAMUD & ALI, *supra* note 14.

33. Barbara Kolucki, *Female Genital Mutilation: Disabling Women, Disabling Society*, 22 DISABILITY WORLD 126, 129, (2004), *available at* http://www.disabilityworld.org/01-03_04/disabilityworld22.pdf.

34. REYMOND, MOHAMUD & ALI, *supra* note 14.

35. *See infra* Part II.

36. A *fatwa* is a clarification of "an ambiguous judicial point or opinion by a *mufti*, a jurist trained in Islamic law, in response to a query posed by a judge . . . or private inquirer . . . . It is not a binding judgment or verdict . . . ." SUAD JOSEPH & AFSANEH NAJMAHBADI, ENCYCLOPEDIA OF WOMEN AND ISLAMIC CULTURES: FAMILY, LAW AND POLITICS 171 (2005).

however, are often vague and nonbinding and have not eliminated FGM.

In 1948, *The Universal Declaration of Human Rights* ("UDHR")[37] was signed, and parts of it appear to be applicable to the issue of FGM. The UDHR states "[a]ll human beings are born free and equal in dignity and rights,"[38] it provides for the "right to life, liberty and security of person,"[39] and finally it prohibits the subjection of anyone to "cruel, inhuman or degrading treatment."[40] However, the UDHR does not specifically address women's issues or the problem with FGM, and there are no provisions for remedies and punishments for violating its provisions.

The United Nations *Convention on the Rights of the Child* ("CRC"),[41] adopted in 1989, appears to address some of the issues attendant to FGM in stating "[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."[42] The CRC clearly asserts that children should be protected from all forms of cruelty and makes it clear that this is a human right; these provisions certainly could be made applicable to FGM. However, other sections seem to conflict with such protection. Articles 14 and 31 vest a great deal of authority in parents, religion, and culture.[43] Therefore, those who argue that FGM is a religious directive that has been embedded into the culture for hundreds of years find support in these Articles. Moreover, under section 2 of Article 14, parents have both the right and responsibility to ensure the continuance of the culture by offering up their children at the altar of tradition.[44]

37. Universal Declaration of Human Rights, G.A. Res. 217A at 71–73, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948). "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood." *Id.* art. 1. "Everyone has the right to life, liberty, and security of person." *Id.* art. 3. "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." *Id.* art. 5.

38. *Id.* art. 1.

39. *Id.* art. 3.

40. *Id.* art. 5.

41. Convention on the Rights of the Child art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3. "No child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." *Id.* art. 37(a).

42. *Id.*

43. *Id.* arts. 14, 31.

44. *Id.* art. 14(2). This may be problematic if FGM is characterized as a religious tradition because it would appear that a parent then would have the authority to impose FGM.

The United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* ("CEDAW"),[45] adopted by the United Nations General Assembly in 1979, may be the most helpful in eliminating FGM. Article 5 requires state parties to take measures to achieve "the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes . . . ."[46] Though this does not address FGM, per se, it does allude to the fact that there are some cultural practices which are detrimental to women and inure to the benefit of men. Although CEDAW was adopted in 1979, as late as the early 1990s there was still a reluctance to characterize FGM as torture and it was, in fact, defended.[47] This avoidance of the issue of FGM might have been an indication that the world was not quite ready to summarily condemn torture disguised as culture.

Another Article of CEDAW addresses the socio-economic issue at the root of why so many women have "willingly" subjected themselves to FGM. Article 14 emphasizes the particular problems facing women in rural areas and their role in the economic survival of their families, and calls for measures "to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development . . . ."[48] One of the oft-stated reasons why women subject themselves to FGM is to make a good marriage. The subtext is that no man will want to marry a woman who is uncut and, hence, unclean. Marriage is still one of the most important socio-economic institutions in the world. Marriage is more than the joining of a man and a woman; in rural villages, it is the joining of families and the joining of land. Two families' survival becomes contingent on the marriage ability of one woman. Failure to undergo FGM can lead to the inability of

45. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13. The Convention states:

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

Id. art. 5(a).

46. *Id.*

47. *See* French, *supra* note 7. In fact, FGM was not deemed torture at this time by some African women. Mary Ann French quotes Yahne Sangarey, an international activist from Liberia, as saying that Westerners "always talk to African women like they are the ones taking the lead. . . . They have never come to us on an equal basis. There are certain issues we don't need white American women up front for. . . . Let them leave us alone." *Id.*

48. *Id.* art. 14(2).

a family to subsist. Therefore, sections 1 and 2 of Article 14, which provide for the equality of rural women in the economic scheme of their towns, empower women economically and may obviate the necessity to rely solely upon marriage for their survival. Without the economic need for marriage, the need for FGM would surely diminish and in time disappear.

In 1993, the United Nations declared, "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men."[49] The United Nations *Declaration on the Elimination of Violence Against Women*[50] accomplished at least two things: (1) it defined violence in broad and sweeping terms;[51] and (2) it called FGM by its new name—""mutilation."[52] There was no attempt at political correction and no fear of stepping on cultural toes. Unfortunately, this Declaration is not binding and offers no remedies for violation of its provisions. The United Nations must rely upon its member nations to adhere to the Articles and enact laws to ensure that women have the rights provided in the Declaration.

Additionally, there are regional human rights instruments with provisions that can be seen to prohibit FGM. For example, the African member states of the Organization of African Unity ratified the *African Charter on Rights and Welfare of the Child*.[53] This Charter calls for protection against harmful social and cultural practices, requiring state parties to take measures to eliminate "[t]hose customs and practices prejudicial to the health or life of the child," and those that are "discriminatory to the child on the grounds of sex or other status."[54]

49. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, ¶ 6, U.N. Doc. A/RES/48/104 (Dec. 20, 1993), *available at* http://www.un.org/documents/ga/res/48/a48r104.htm.

50. *Id.*

51. *Id.*

52. *Id.* art. 2(a).

53. African Charter on the Rights and Welfare of the Child, *entered into force* Nov. 29, 1999, OAU Doc. CAB/LEG/24.9/49 (1990):

> Article 21: Protection against Harmful Social and Cultural Practices
>
> 1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
>
> (a) those customs and practices prejudicial to the health or life of the child; and
>
> (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

Id. art. 21(1)(a)–(b).

54. *Id.* art. 21(1)(a)–(b).

The Charter speaks rather clearly on harmful cultural traditions that are gender-based,[55] but it, like the others, stops short of identifying FGM or "female circumcision." There are provisions for reporting, monitoring, and investigating the Articles therein,[56] but there are no enforcement provisions or outline of the ramifications for violating the Charter.

Notwithstanding these conventions, the problem has continued. Many societies lack the capacity or, in some cases, the will to address the underlying issues of FGM. And the international community is reluctant to categorize FGM as violence and torture because it fears being seen as paternalistic for denigrating cultural rituals and traditions. This fear has caused a delay in recognizing the full impact of this practice on millions upon millions of females for centuries. Fortunately, that fear has diminished in part because the problem of FGM is now seen as a global problem. Taking one of the most important steps, the United Nations has said it will support the member states that grant refugee status[57] to women who have fled their country of origin and fear that they will be subjected to FGM if they return.[58]

55. *See id.*

56. *See id.* arts. 43, 45.

57. *See* UNITED NATIONS HIGH COMM'R FOR REFUGEES, GUIDANCE NOTE ON REFUGEE CLAIMS RELATING TO FEMALE GENITAL MUTILATION 6, at Part III.A.7 (2009), *available at* http://www.unhcr.org/refworld/pdfid/4a0c28492.pdf.

> FGM also constitutes torture and cruel, inhuman or degrading treatment as affirmed by international jurisprudence and legal doctrine, including by many of the UN treaty monitoring bodies, the Special Procedures of the Human Rights Council, and the European Court of Human Rights. To expel or return a girl or woman to a country where she would be subjected to FGM may thus amount to a breach by the State concerned of its obligations under international human rights law. Many States in which FGM is practised, including those with immigrant communities in which FGM occurs, have enacted laws that specifically prohibit FGM, or apply general provisions of their criminal codes with respect to intentional wounds or strikes, assault causing grievous harm, attacks on corporal and mental integrity, or violent acts that result in mutilation or permanent disability.

Id.

58. *See In re* Kasinga, 21 I. & N. Dec. 357 (B.I.A. 1996) (granting asylum to a woman from Togo on the grounds that her fear of undergoing FGM was well founded). *But see* Gomis v. Holder, 571 F.3d 353 (4th Cir. 2009). In July 2009, the Fourth Circuit denied Francoise Gomis a review of her asylum petition. Gomis alleged that if she were deported to Senegal, her father would circumcise her and marry her off to an older man. *Id.* at 355–56. Gomis came to the United States on a work visa that expired in 2003, and in 2005, she applied for asylum stating that she had learned that her fifteen-year-old sister, who resided in Senegal, had been forcibly circumcised. *Id.* The Board of Immigration Appeals ("BIA") denied Gomis's request, saying that she had failed to prove her case and that she did not file her petition in a timely manner, since the petition was not filed within one year of entering the country as required by the BIA. *Id.* at 356–57. Gomis then appealed to the Fourth Circuit, and the court denied her petition for review, stating that though female

II. The Importation of FGM to the West

Families migrating from African and Middle Eastern countries carried their traditions and cultural norms with them. As a result, Western nations were faced with enacting their own legislation not only to prohibit the practice of FGM but also to eliminate the underlying causes, such as poverty and male domination. The good news is that Western nations have taken off the blinders and have recognized FGM for what it is—torture. Many Western nations have taken legislative steps to outlaw and punish the practice of FGM on their soil. This awareness and attendant legislation is commendable. However, many of the laws fail to address the worldwide root causes of FGM. Unfortunately, it may be difficult to stem the practice of FGM in the West unless work is done within the countries that continue to explicitly or implicitly require that women be "cut."

A. United States

1. The Importation of FGM to the United States

Although physicians at District of Columbia General Hospital had their first experiences with FGM in the early 1990s, it was not until 2006 that many in the general public in the United States first heard about FGM. That year, an article in the *Atlanta Journal-Constitution* told the story of how Mr. Adem, a native of Ethiopia, had circumcised his two-year-old daughter in Georgia.[59] A friend of Adem's held the child down while Adem severed her clitoris with a pair of scissors. Because there was no Georgia legislation in place addressing FGM, Adem was charged with aggravated battery and cruelty to children, found guilty, and sentenced to ten years in prison.[60]

circumcision was abhorrent, the court must defer to the BIA, which found that Gomis had failed to prove it was "more likely than not" she would be circumcised. Gomis v. Holder, 585 F.3d 197, 197 (4th Cir. 2009) (denial of rehearing en banc). Judge Roger L. Gregory dissented from the order denying the rehearing en banc, writing, "[t]here is . . . one basis for asylum that is clearly established in both this Circuit and the other federal courts: protection from female genital mutilation. . . . Gomis's family made it clear that were she to return to Senegal, there is no chance she could escape circumcision at their hands." *Id.* at 198–99 (Gregory, J., dissenting). Judge Gregory added, "[n]either invocation of sympathy nor innovation in the law of asylum was necessary to grant Ms. Gomis's petition; it merely required the application of our precedent—simple justice." *Id.* at 199 (Gregory, J., dissenting).

59. *Father Jailed for US Mutilation*, BBC NEWS ONLINE, Nov. 2, 2006, http://news.bbc.co.uk/2/hi/americas/6108516.stm.

60. *Man Gets 10-year Sentence for Circumcision of 2-year-old Daughter*, USA TODAY, November 1, 2006, http://www.usatoday.com/news/nation/2006-11-01-georgia_x.htm.

The Adem case was not the first time someone had been charged in the United States for acts related to FGM, but it was the first case that was widely publicized and discussed in the media. In fact, a FGM "ring" had been discovered in 2004 in California. One man told an undercover officer that he had performed more FGMs than anyone in the Western world.[61] The importance of this discovery and the Adem case cannot be overstated—FGM had found its way to the United States, and it appeared there were many willing clients.

Actual statistics on the occurrence of FGM in the United States are difficult to find for obvious reasons—neither the victims, parents of the victims, or the actual persons who have performed the cutting will report it to authorities. Notwithstanding the lack of hard statistics, it is clear that FGM occurs in the United States because it continues to occur within the same populations within their home countries. In other words, the cultural tradition transcends geographical borders and immigrates along with the people to the new land. Notwithstanding the lack of hard statistics for the actual performance of FGM in the United States, there are an estimated 228,000 girls and women deemed to be "at risk."[62] This number is based on the states with the largest African immigrant populations.[63]

61. *California Couple Charged with Agreeing to Circumcise Young Girls*, WOMEN'S HEALTH WKLY., February 5, 2004, at 55.

62. AFRICAN WOMEN'S HEALTH CTR., BRIGHAM & WOMEN'S HOSP., NUMBER OF WOMEN AND GIRLS WITH OR AT RISK FOR FEMALE GENITAL CUTTING IS ON THE RISE IN THE UNITED STATES, http://www.brighamandwomens.org/africanwomenscenter/research.aspx (last visited Mar. 23, 2010). Based on Population Reference Bureau data from the 2000 Census, the report estimates the following number of women per state to be at risk of FGM: Alabama—657; Alaska—96; Arizona—2741; Arkansas—157; California—38,353; Colorado—1885; Connecticut—1008; Delaware—375; District of Columbia—2619; Florida—4894; Georgia—9531; Hawaii—103; Idaho—528; Illinois—6420; Indiana—1480; Iowa—828; Kansas—114; Kentucky—1052; Louisiana—1239; Maine—0; Maryland —16,264; Massachusetts—5231; Minnesota—13,196; Mississippi—46; Missouri—1320; Montana—4; Nebraska—497; Nevada—604; New Hampshire—92; New Jersey—18,584; New Mexico—123; New York—25,949; North Carolina—4297; North Dakota—1134; Ohio—4834; Oklahoma—410; Oregon—3524; Pennsylvania—6508; Rhode Island—1271; South Carolina—680; South Dakota—1344; Tennessee—2823; Texas—13,100; Utah—377; Vermont—97; Virginia—17,980; Washington—7292; West Virginia—257; Wisconsin—791; Wyoming—0. *Id.* tbl.4, *available at* http://www.brighamandwomens.org/africanwomenscenter/FGCbystate.aspx.

63. AFRICAN WOMEN'S HEALTH CTR., BRIGHAM & WOMEN'S HOSP., BACKGROUND ON THE FGC STATISTICS, http://www.brighamandwomens.org/africanwomenscenter/research2.aspx (last visited May 3, 2010). The Prevalence of FGM for regions in Africa was factored into the estimation of the occurrence of FGM in the United States. *Id.* Reports from these regions indicate the following in percentages of girls and women undergoing FGM: Egypt—80%; Benin—50%; Burkina Faso—70%; Cameroon—20%; Central African Republic—50%; Chad—60%; Cote d'Ivoire—60%; Djibouti—98%; Eritrea and Ethiopia—90%;

Some maintain that the only way to obtain truly accurate numbers on the number of girls and women who have been subjected to FGM in the United States is to perform a physical examination on all of them.[64] Putting aside the difficulty of such an undertaking, this still would not answer the question of whether the FGM was performed in the United States. Another suggestion for getting accurate FGM statistics is to code the birth certificates of mothers who have been cut to keep a record of those who might be more inclined to endorse the procedure for their daughters.[65] Again, such a task is nearly impossible because of the vast coordination of governmental and social agencies it would require, as well as the monetary implications involved in such a large endeavor.

2. The United States Reacts: Enacted Legislation

The United States has made great strides in enacting legislation that deals specifically with the issue of female genital mutilation. Unfortunately, much of the legislation may prove to be merely symbolic. Attempts to obtain statistics on FGM within the United States, which were mandated to be kept by Congress in 1997, proved to be impossible. One could conclude that FGM is not occurring in the United States or that it is in fact occurring, but records are not being kept and the law is being ignored.

a. Federal Legislation

In 1995, the U.S. Congress enacted legislation that made performance of FGM in the United States illegal.[66] Congress followed this by passing a bill which required the Secretary of Health and Human Services to "compile data on the number of females living in the United States who have been subjected to female genital mutilation."[67]

Gambia—80%; Ghana—30%; Guinea—50%; Guinea-Bissou—50%; Kenya—50%; Liberia—60%; Mali—80%; Mauritania—25%; Niger—20%; Senegal—20%; Sierra Leone—90%; Somalia—98%; Sudan—89%; Tanzania—10%; Togo—50%; Uganda—5%; Zaire—5%. Jones et al., *supra* note 15, at 372.

64. *See* Jones et al., *supra* note 15, at 375. Wanda K. Jones and her fellow authors all worked with the Center for Disease Control.

65. *Id.*

66. *See* Federal Prohibition of Female Genital Mutilation Act of 1995, Pub. L. No. 104–208, § 645, 110 Stat. 3009, 708–09 (1996) (codified as 18 U.S.C. § 116 (2006)). Democratic Senator Harry Reid of Nevada introduced the Bill.

67. The Federal Prohibition of Female Genital Mutilation Act of 1995, Pub. L. No. 104–208, § 644, 110 Stat. 3009, 708–09 (1996) (codified as 8 U.S.C. § 1374 (2006)).

Then, in 1997, Congress enacted legislation to make it a crime throughout the United States[68] to circumcise a minor. The applicable statute states: "Whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 shall be fined under this title or imprisoned not more than five years, or both."[69] The statute also states:

> A surgical operation is not a violation of this section if the operation is—(1) necessary to the health of the person on whom it is performed . . . or (2) performed on a person . . . who has just given birth and is performed for medical purposes connected with that labor or birth . . . .[70]

The statute clearly prohibits exemptions to this law based on religious beliefs or personal convictions.[71] It should be noted that this statute does not apply to adult women. The omission of adult women from the statute may prove to be problematic when familial coercion or some other force is used to compel a woman, who had escaped being cut in her homeland, to undergo FGM before she can marry in her new homeland. Moreover, if a woman is in a questionable position with respect to her immigration status, she may be disinclined to report that she has been coerced into undergoing FGM.

In addition to enacting this criminal statute, Congress directed the Immigration and Naturalization Service to provide information on both the legal and health ramifications of FGM to all aliens who are issued a U.S. visa, and it also directed the Department of Health and Human Services to compile data on FGM in the United States.[72]

It is unclear what the effects of this federal legislation will be. In a time of national financial crisis, when prosecutors' budgets are limited, it is difficult to determine how robust the federal government's prosecution of these crimes will be.

b. State Legislation

Eighteen states have enacted legislation prohibiting FGM. Arkansas,[73] California,[74] Colorado,[75] Delaware,[76] Georgia,[77] Illinois,[78] Mary-

68. *See* 18 U.S.C. § 116 (2006).
69. *Id.*
70. *Id.*
71. *Id.* The statute notes "no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that person, or any other person, that the operation is required as a matter of custom or ritual." *Id.* § 116(c).
72. 8 U.S.C. § 1374 (2006); Act of Apr. 26, 1996, Pub. L. 104–134, title I, § 101(d), 110 Stat. 1321–211, 1321–250 (codified as amended in 42 U.S.C. § 241).
73. ARK. CODE ANN. § 9-13-402 (2008).

land,[79] Minnesota,[80] Missouri,[81] Nevada,[82] New York,[83] North Dakota,[84] Oregon,[85] Rhode Island,[86] Tennessee,[87] Texas,[88] West Virginia,[89] and Wisconsin[90] have enacted legislation which closely mirrors the federal law, but there are some distinctions:

- The California law requires certain state agencies to coordinate efforts with their federal counterparts to engage in education, preventive, and outreach activities.[91]
- Colorado mandates that the statutory privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for the violation of the law prohibiting FGM.[92]
- Minnesota requires its health commissioner to create an outreach program to educate targeted communities.[93]
- The New York Act mandates a complete study of the health risks, both physical and mental, associated with FGM. The Act requires the state's Departments of Social Services and the Department of Health to conduct this study.[94]
- Oregon law also requires the creation of programs aimed at education, prevention, and outreach to appropriate communities.[95]

It should be noted this legislation is important for two reasons: (1) by enacting laws prohibiting FGM, states have acknowledged the fact that it is a crime; and (2) states are attempting to both deter and to stop FGM in the United States and abroad. Unfortunately, enforcing FGM statutes does not appear to be a high priority of most states because of

74. CAL. PENAL CODE § 273.4 (West 2008); CAL. HEALTH & SAFETY CODE § 124170 (2006).
75. COLO. REV. STAT. § 18-6-401 (2009).
76. DEL. CODE ANN. tit. 11 § 780 (2001).
77. GA. CODE ANN. § 16-5-27 (2007).
78. 720 ILL. COMP STAT. ANN. 5/12–34 (West 2002).
79. MD. CODE ANN., HEALTH–GEN, § 20-601, § 20-602, § 20-603 (LexisNexis 2005).
80. MINN. STAT. ANN. §§ 609.2245, 144.3872 (West 2003).
81. MO. ANN. STAT. § 568.065 (West 2008).
82. NEV. REV. STAT. ANN. § 200.5083 (LexisNexis 2006).
83. N.Y. PENAL LAW § 130.85 (McKinney 2009).
84. N.D. CENT. CODE § 12.1-36-01 (1997).
85. OR REV. STAT. § 163.207 (2007).
86. R. I. GEN. LAWS § 11-5-2(c)(3) (2006).
87. TENN. CODE ANN. § 39-13-110 (2006).
88. TEX HEALTH & SAFETY CODE ANN. § 167.001 (Vernon 2009).
89. W. VA. CODE ANN. § 61-8D-3a (LexisNexis 2006).
90. WIS. STAT. ANN. § 146.35 (West 2006).
91. CAL. HEALTH & SAFETY CODE § 124170.
92. COLO. REV. STAT. § 18-6-401(3).
93. MINN. STAT. ANN. § 144.3872.
94. Legislative Note, N.Y. PENAL LAW § 130.85. From 1997 Sess. Laws of N.Y., ch. 618 (S. 2163-A, A. 3379-A).
95. OR. REV. STAT. § 431.827 (2007).

competing needs and limited state budgets. Nonetheless, enacting legislation sends a strong positive message to women around the world and this is a good thing.

B. Canada

Canada appears to be doing a good job in combating FGM within Canada. The main thing that the Canadian government has done is to educate the average Canadian about the practice of FGM. In addition, Canadian laws attempt to combat FGM around the world. This has proven to be a daunting challenge, but it demonstrates an awareness of the true breadth of the problem.

1. The Importation of FGM to Canada

The Canadian Women's Health Network writes that the number of women in Canada who have undergone FGM has increased because of the rise in immigration to Canada from countries that practice FGM;[96] specifically, Somalia, Ethiopia, Sudan, and Nigeria where FGM is practiced against a large portion of the population.[97] Hard statistics on the prevalence of FGM in Canada are not available. However, an estimate can be extrapolated by identifying the number of female immigrants from practicing countries who have already been subjected to FGM and counting the number of female children who live with these women. Unless there is a claim for asylum, there is a great possibility that those female children who reside with them are in danger of being subjected to FGM. In addition, for those families unable to afford to send their daughter back to the country of origin, the procedure will more likely than not take place in Canada.

2. Canada Reacts: Enacted Legislation

In 1997, Canada amended its criminal code to include the offense of female genital mutilation. It prohibits wounding or maiming, defined to include the "excis[ion], infibulat[ion] or mutilat[ion], in whole or in part, the labia majora, labia minora or clitoris of a per-

96. Patricia Huston, Canadian Women's Health Network, Female Genital Mutilation and Health Care: Current Situation and Legal Status Recommendations to Improve the Health Care of Affected Women 1 (2000), http://www.cwhn.ca/resources/fgm/fgm-en.pdf.

97. According to a World Health Organization study, the following is the prevalence of FGM in girls and women from ages one through forty-nine years: Somalia—97.9%; Sudan—90%; Ethiopia—74.3%; Nigeria—19%. World Health Org., *supra* note 3, at 29.

son . . . ."[98] Although exceptions are made if the person is at least eighteen years old and if there is "no resulting bodily harm,"[99] consent is not valid for those under the age of eighteen.

The Canadian code recognizes the fact that relatives may send a girl back to her homeland to be subjected to FGM and thereby circumvent the law. Therefore, Canada has further crafted the law in such a way to protect "Canadian" residents all over the world: if a parent arranges for their daughter, a Canadian resident, to be sent to the country of origin to undergo FGM, then the parent would be criminally liable under the statute.[100] In addition, some Canadian provinces require physicians to report and incidents of FGM that they might encounter in their practice.[101]

Canada's Immigration and Refugee Board has issued guidelines that allow women who are at risk for FGM to stay in the country.[102] Notwithstanding Canada's willingness to provide asylum to women who fear FGM, it may still be difficult to prove that the fear of FGM is justifiable. This occurs most often when the offending country has laws that prohibit FGM, but does nothing to enforce the law—consequently, the practice of FGM continues to flourish. One may still argue a woman seeking asylum is in no true peril where FGM is prohibited, and, therefore, should not be granted refugee status.

98. Canada Criminal Code, R.S.C., ch. C-46, § 268(3) (1985), amended by 1997 S.C., ch. 16, § 5.

99. *Id.*

100. Canada Criminal Code, R.S.C., ch. C-46, § 273.3(1)(c),(2) (1985), amended by 1997 S.C., ch. 18, § 13.

101. *See, e.g.*, *The Child and Family Services Act*, R.S.O. 1990, ch. C.11, § 72, amended by S.O. 1999, ch. 2, §§ 22(1), 38. Under Ontario's *Child and Family Services Act,* there is a duty to report information with respect to a child who is in need of protection, and the duty exists despite the provisions of any other Act. *See id.* If a person has reasonable grounds to suspect that a child is or may be in need of protection—for example, from physical harm such as FGM—the person is obliged to report the suspicion to appropriate authorities. *See id.* The duty to report under the Act applies to all members of the public and those who perform professional or official duties with respect to children. *Id.*; *see also* ONTARIO HUMAN RIGHTS COMM'N, POLICY ON FEMALE GENITAL MUTILATION 15 (2000), *available at* http://www.ohrc.on.ca/en/resources/Policies/PolicyFGM2/pdf (describing the policy of the College of Physicians and Surgeons of Ontario under the Regulated Health Professions Act, 1991 S.O., ch.18., § 85, amended by 1993 S.O., ch. 37, § 23).

102. CANADIAN IMMIGR. & REFUGEE BD. GUIDELINES, ISSUED BY THE CHAIRPERSON PURSUANT TO SECTION 65(3) OF THE IMMIGRATION ACT, GUIDELINE 4, WOMEN REFUGEE CLAIMANTS FEARING GENDER-RELATED PERSECUTION, effective date November 13, 1996, *available at* http://www.irb-cisr.gc.ca/eng/brdcom/references/pol/guidir/Pages/women.aspx; *see also* James Rice, *A Successful Case Is Made for Granting Refugee Status to a Woman Fleeing Her Own Country to Protect Her Daughter from Female Genital Mutilation*, 4 GONZ. J. INT'L L. 43, 50 (2000).

3. The Impact of Canadian Legislation

The asylum case of Oumou Toure[103] is an example of how difficult it can be to prove that a woman's fear is justified. Ms. Toure fled from violence in her native Guinea and arrived in Montreal. Ms. Toure had already been subjected to FGM in Guinea when she arrived in Canada.[104] She applied for asylum shortly after arriving in Canada, but her request was denied.[105] She filed two more applications based on humanitarian grounds; both of those applications were also denied and Ms. Toure was scheduled to be deported.[106] To further complicate the situation, shortly after arriving in Canada, Ms. Toure gave birth to a daughter, who would presumably be a Canadian citizen and thus protected.[107]

Ms. Toure's case is compelling for two reasons. First, her stepmother was the official circumciser.[108] And second, because her daughter was born during the interim period of waiting for a decision from the Canadian Department and Citizenship and Immigration. Her Canadian-born daughter is presumably the very individual contemplated in the Canadian law prohibiting FGM at home or abroad. Ms. Toure argued that her daughter would be subjected to FGM, just as she had been.[109] Because Ms. Toure did not have the child when she first applied for asylum and because Guinea has a law prohibiting FGM,[110] which would purportedly protect her daughter, the Department of Immigration ruled against her.[111]

However, Guinea's law did not comport with the practice of FGM in its country. Guinea's law prohibited mutilation except where "seri-

103. Theresa Braine, *Guinea Woman Savors Victory in Hard-Won FGM Case*, WOMEN'S E-NEWS, July 29, 2007, http://www.womensenews.org/story/genital-mutilation/070729/guinea-woman-savors-victory-in-hard-won-fgm-case.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*; *see* CTR. FOR REPRODUCTIVE RIGHTS, GAINING GROUND: A TOOL FOR ADVANCING REPRODUCTIVE RIGHTS REFORM 61 (2006), *available at* http://reproductiverights.org/sites/default/files/documents/pub_bo_GG_FGM.pdf (stating genital cutting has been a criminal offense in Guinea since 1965 and Guinea's code of medical ethics also prohibits unnecessary cutting).

111. Braine, *supra* note 103.

ous medical grounds" existed.[112] Yet it is estimated that Guinea has a 95.6% prevalence of female genital mutilation.[113]

After a great deal of publicity and public outcry, the Canadian Department of Citizenship and Immigration reconsidered Ms. Toure's case on June 9, 2007, and granted her permanent residence on humanitarian and compassionate grounds.[114] Ms. Toure came extremely close to being deported back to the country which had inflicted a great deal of physical and mental abuse upon her and threatened to do the same to her young daughter.

Canada's system is imperfect, as Ms. Toure's case proves all too well, but much has been done to address FGM.

C. United Kingdom

Not surprisingly, FGM is alive and well in the United Kingdom. Ironically, because the sun never set on the British flag, many of those who lived in other nations under that flag have returned "home." This has resulted in a huge immigrant population in the United Kingdom with many of the immigrants coming from countries that practice FGM.

1. The Importation of FGM to the United Kingdom

A March 2004 BBC News headlined shouted, "Female Circumcision 'On the Rise.'"[115] Sadly, the headline meant on the rise in the United Kingdom. Adwoa Kwateng-Klviste, director of the Foundation for Women's Health and Research, stated she did not find this news "surprising."[116] The United Kingdom was a colonial power in many of the countries that practice FGM. As a result, there is a history of migration from those former colonies to the United Kingdom. In addition, in recent years, civil unrest and wars in a few African nations

112. *See* CTR. FOR REPRODUCTIVE RIGHTS, *supra* note 110, at 61 (citing Article 40 of Guinea's code of medical ethics (Decree No. D/96/205/PRG/SGG of 5 December 1996 promulgating the Code of Medical Deontology art. 40 (Guinea)), which states, "[n]o mutilating intervention may be performed without serious medical grounds and, except in the event of emergency or impossibility, without informing the person concerned and obtaining his consent").

113. World Health Org., Female Genital Mutilation and Other Harmful Practices: Prevalence of FGM, http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/index.html (last visited May 4, 2010).

114. Braine, *supra* note 103.

115. *Female Circumcision "On the Rise,"* BBC NEWS, March 24, 2004, http://news.bbc.co.uk/2/hi/uk_news/3564203.stm.

116. *Id.*

have increased immigration to the United Kingdom. Together, these factors have provided a population that is at risk for FGM.[117]

A recent study of girls born in England or Wales between 1993 and 2004 to mothers who were born in countries that practice FGM, estimated how many of the girls were at risk for FGM.[118] The study not only estimated the risk of FGM, but also estimated the risk for the types of FGM.[119]

J. A. Black, a retired consultant pediatrician in England, reported: "There is evidence that the operation is being perform[ed] illegally in Britain by medically qualified or unqualified practitioners and that children are being sent abroad for a 'holiday' to have it done."[120] The United Kingdom considers FGM a form of child abuse because it is usually practiced on girls between the ages of seven and nine.[121]

Although there are no hard figures on the number of girls and women who have undergone FGM while in the United Kingdom, it is clear that FGM has found a foothold there; both the physical and statistical evidence support this fact.[122] One study estimated that 279,000 women, all current residents of the United Kingdom, underwent FGM in their home countries.[123] One can assume from this large number that many of their female children are at risk for the same procedure.[124]

2. The United Kingdom Reacts: Enacted Legislation

The United Kingdom enacted the Prohibition of Female Circumcision Act in 1985.[125] On March 3, 2004, the newly enacted Female

117. *See generally* EFUA DORKENOO ET AL., FORWARD, A STATISTICAL STUDY TO ESTIMATE THE PREVALENCE OF FEMALE GENITAL MUTILATION IN ENGLAND AND WALES (2007) (describing immigration trends lending to the rising concern about FGM within the United Kingdom).

118. *Id.* at 25.

119. *Id.* tbl.7.

120. J. A. Black, *Female Genital Mutilation in Britain*, 310 BRIT. MED. J. 1390, 1390–91 (June 17, 1995).

121. *Id.*

122. *See generally* DORKENOO ET AL., *supra* note 117, at 27 (estimating that nearly 66,000 women with FGM were living in England and Wales in 2001).

123. *See id.* at 9–10 (referring to a previous study based on WHO estimates of the prevalence of FGM figures in practicing countries, and applying these estimates to the number of women who reported six of these countries as their countries of origin in a labor force study).

124. *Id.* at 11.

125. The Prohibition of Female Circumcision Act, 1985, c. 38 (U.K.).

Genital Mutilation Act 2003 became law.[126] The 2003 Act repealed the 1985 Act, but reenacted most of the provisions to make them stronger. The Act states a person is guilty "if he excises, infibulates or otherwise mutilates the whole or any part of a girl's labia majora, labia minora or clitoris."[127] There are exceptions if the procedure is done by an approved professional and is necessary for the girl's mental or physical health. Of note, the 2003 Act specifically provides that cultural or traditional norms cannot be taken into account when determining whether the procedure should be done for the girl's mental health.[128]

In addition, the 2003 Act extends criminal liability to U.K. residents for the performance of FGM when it is done outside the United Kingdom. Therefore, parents who send their female children on "holiday" to have the procedure done can be prosecuted; as can any U.K. resident who leaves the country to perform FGM on a U.K. resident.[129]

Scotland passed the Prohibition of Female Genital Mutilation Act in 2005.[130] Section 1 of the Act changed the legal definition of FGM to include the excision, infibulation, or otherwise mutilation of "the whole or any part of the labia majora, labia minora, prepuce, clitoris or vagina of another person."[131] Section 4 of the Act increased the maximum penalty for FGM to fourteen years in prison.[132] Aside from these additions, the Scottish Act mirrors the U.K. Act.

The purpose of these Acts was to stop FGM in the United Kingdom, but, unfortunately, there have been no criminal prosecutions for FGM in the United Kingdom as of the writing of this Article.[133]

3. The Impact of Legislation in the United Kingdom

An October 2009 exchange between Parliament member Christopher Huhne and the Parliamentary Under-Secretary and Minister of Justice Claire Ward is telling about the relative ineffectiveness of FGM

126. Female Genital Mutilation Act, 2003, c. 31 (U.K.).
127. *Id.* 1(1).
128. *Id.* 1(5).
129. *Id.* 3(1)–(2).
130. *See* The Prohibition of Female Genital Mutilation (Scotland) Act, 2005, (A.S.P. 8).
131. *Id.* 1(1).
132. *Id.* 5(a).
133. Jo-Ann Goodwin, *The Unspeakable Practice of Female Circumcision That's Destroying Young Women's Lives in Britain*, MAIL ONLINE, http://www.dailymail.co.uk/femail/article-505796/The-unspeakable-practice-female-circumcision-thats-destroying-young-womens-lives-Britain.html (last visited May 4, 2008).

laws. When Huhne asked about the number of prosecutions and convictions there had been for FGM offenses in the last five years, Ward responded that although data for 2008 was not then available, there had "been no prosecutions or convictions for [FGM] reported to the Ministry of Justice up to the end of 2007."[134]

Thus, it appears that the law is having very little direct impact on FGM. However, there now does appear to be a national awareness of and, more importantly, a dialogue on the problem of FGM. In fact, Ruth Rendell, a world renowned British mystery writer, made FGM the subject of her 2007 novel.[135] This has had a powerful impact on the national discourse.

Most recently, a medical consortium has commissioned a study to gain more knowledge on the prevalence of FGM in the United Kingdom. The study began in September 2009 and was funded by the Department of Health, FORWARD, Royal College of Nursing, Royal College of Midwives, Royal College of Obstetricians and Gynecologists, King's College London, and Florence Nightingale School of Nursing and Midwifery.[136] The study is in two parts: (1) a survey of females affected by FGM; and (2) a survey of the health profession on the knowledge and training needed to combat FGM.[137] One goal of the survey is to provide accurate data on the incidence of FGM in the United Kingdom.[138]

In addition to enacting legislation and promoting education, the United Kingdom is now allowing more asylum claims based on FGM. This is due in large part because of the decision in the case of Zainab Esther Fornah.[139] The Fornah case is considered the seminal case on the issue of granting asylum for FGM in the United Kingdom.[140] The

134. *Female Genital Mutilation: Prosecutions*, HOUSE OF COMMONS HANSARD WRITTEN ANSWERS, October 13, 2009, http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091013/text/91013w0026.htm#0910155000716.

135. *See generally* RUTH RENDELL, NOT IN THE FLESH (2007). The novel tells the story of how the star detective learns that a five-year-old is due to undergo FGM. He attempts to stop it using the U.K. laws which are in place, but is unsuccessful. In the end, he vows to change the law. This novel is a commentary on the strongly held anti-FGM beliefs of the author and the reality of what the legislation has actually been able to accomplish.

136. *See* FORWARD, *FGM Study: September 2009*, Aug. 26, 2009, http://www.forwarduk.org.uk/news/news/562.

137. *Id.*

138. *Id.*

139. *See* Fornah v. Sec'y of State for the Home Dep't, [2005] EWCA (Civ.) 680 (appeal taken from Eng. & Wales), *available at* http://www.unhcr.org/refworld/docid/43fc2eb011.html.

140. The U.N. High Commissioner for Refugees was an intervener in this case and wrote a lengthy, well-reasoned intervention that fully outlines why FGM sufferers should

question before the House of Lords was whether women from societies that practiced FGM could be given refugee status based on that fact.[141] The majority of the Court of Appeals had held that, although FGM was torture and persecution, young women could not qualify for refugee status.[142] The House of Lords overturned that decision and held that women from countries which practiced FGM were members of a particular social group that could qualify for refugee status under the Refugee Convention.[143]

FGM is on the rise in the United Kingdom, but conscious efforts are being made to effectively address the problem. The United Kingdom has taken the most important step—recognizing that female genital mutilation is torture.

D. European Union

1. The Importation of FGM to Europe

There are no hard statistics on the practice of FGM in the European Union; however, there are some estimates based upon the countries of origins from which many immigrants come.

France has seen an increase of immigration since the 1960s with the bulk of the new immigrants being women.[144] In France alone, there are an estimated 4500 girls at risk.[145] In 2001, there were a total of 10,501 women living in Switzerland from practicing countries, such as Somalia, Ethiopia, and Eritrea—countries that not only have a high prevalence of FGM, but also have a high percentage of the most severe form of FGM.[146] Other countries, such as Belgium, Germany, Italy, and Sweden, have also experienced an increase in immigrant

receive refugee status. *See* Brief for U.N High Comm'r for Refugees as Intervener, Fornah v. Sec'y of State for the Home Dep't, [2006] UKHL 46 (appeal taken from HM Ct. of App.), *available at* http://www.unhcr.org/refworld/docid/45631a0f4.html.

141. *Id.*

142. *Id.*

143. Sec'y of State for the Home Dep't v. K; Fornah v. Sec'y of State for the Home Dep't, [2006] UKHL 46 (appeal taken from HM Ct. of App.), *available at* http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd061018/sshd-1.htm. For the definition of who qualifies for refugee status, see U.N. Convention Relating to the Status of Refugees arts. 1, 11, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

144. Armelle Andro & Marie Lesclingand, *Female Genital Mutilation: The Situation in Africa and in France*, 438 POPULATION & SOCIETIES 1, 3 (2007).

145. COMFORT MOMOH, FEMALE GENITAL MUTILATION 73 (2005).

146. Clare Thierfelder et al., *Female Genital Mutilation in the Context of Migration: Experience of African Women with the Swiss Health Care System*, 15 EUR. J. PUB. HEALTH 86, 87 (2005).

populations from practicing countries.[147] The women and girls within this immigrant population are at risk for FGM in the European Union.

2. Europe Reacts: Enacted Legislation

The growing awareness of the status of women worldwide, the increases in immigrant populations to Europe from countries that practice FGM, and the resolutions passed at the United Nations Fourth World Conference on Women in Beijing[148] prompted European officials to act. The European Union took up the mantel and urged the passage of laws that would criminalize FGM and thus fulfill the spirit of the resolutions from the Beijing Conference. Both the European Parliament[149] and the Council of Europe[150] urged its mem-

147. *See* Els Leye & Alexia Sabbe, Intl. Ctr. for Reproductive Health, Responding to Female Genital Mutilation in Europe: Striking the Right Balance Between Prosecution and Prevention 5–6 (2009), *available at* http://www.icrh.org/files/ICRH_rapport%202009_def%20-%20high%20resolution.pdf (noting international migration has extended the practice of FGM to Europe).

148. Fourth World Conference on Women, Sept. 4–15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/Conf.177/20 (Oct. 17, 1995).

149. *See* Resolution Towards an EU Strategy on the Rights of the Child, §§ 47–48, Eur. Parl. Doc. A6 0520 (2007) Jan. 16, 2008. Pertinent portions—sections 47 and 48—state:

> 47. Calls on the Member States to introduce compulsory recording by healthcare workers of all cases of female genital mutilation, and also to record cases where there is a suspicion that genital mutilation may take place;
>
> 48. Calls on the Member States to speak out against tradition-based violence against women, to condemn family-induced violations of immigrant girls' human rights, and to check which laws may be applied to hold family members responsible, especially in cases of so-called honour crimes.

Id.

150. *See* Eur. Parl. Ass., *Female Genital Mutilation*, Resolution 1247(2001), *available at* http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta01/ERES1247.htm. The relevant five sections state:

> 1. The Assembly recalls and reaffirms Resolution 1018 (1994) and Recommendation 1229 (1994) on equality of rights between women and men and the Declaration on Equality of Women and Men adopted by the Committee of Ministers on November 16, 1988. It also recalls the European Convention on the Exercise of Children's Rights (1996), ETS No. 160, as well as Recommendation 1371 (1998), banning the abuse and neglect of children.
>
> 2. The Assembly also refers to Articles 2 and 3 of the European Convention on Human Rights, Article 25 of the Universal Declaration of Human Rights, Article 12.1 of the International Covenant on Economic, Social and Cultural Rights and Article 16 of the African Charter on Human and People's Rights.
>
> 3. The Assembly also endorses the position of the World Health Organisation, Unicef, the Office of the United Nations High Commissioner for Refugees and the United Nations Commission on Human Rights, which have described genital mutilation as torture and called for it to be banned and the perpetrators prose-

ber nations to implement better laws to serve the immigrant women within their borders.

Scandinavia seems to have been ahead of the curve and enacted legislation long before the call came from the Parliament or the Council. Sweden,[151] Norway,[152] and Denmark[153] all enacted legislation prohibiting FGM in 1982, 1995, and 2003 respectively. Scandinavian leaders have refused to succumb to the pleas of their immigrant population, who insist that what they are doing is best for their daughters, and are "doggedly pursuing perpetrators of FGM"[154]—the immigrant mothers of the young girls who have been subjected to FGM. These countries have utilized "jail sentences, record damages, and controversial immigration laws" to end FGM.

In Sweden, the first western nation to legislate against female genital mutilation,[155] it is illegal "even if it happens in another country and even if the practice is legal in that country. It does not matter if the victim said yes, it is still illegal."[156]

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cuted in accordance with the texts resulting from the United Nations Cairo Conference (1994) and Beijing Conference (1995).

4. The Assembly declares that the universal principles of respect for individuals and their inalienable right to bodily integrity, as well as complete equality between men and women, must take precedence over customs and traditions.

5. Every year, 2 million women reaching the end of their pregnancies are at risk because they have suffered genital mutilation. Moreover, the practice appears to be becoming increasingly common in Council of Europe member states, especially among immigrant communities.

Id.

151. *See* Lag med Förbud mot Könsstympning av Kvinnor (Svensk författningssamling [SFS] 1982:316) (Swed.), unofficial English translation available at http://www.sweden.gov.se/content/1/c6/02/56/50/57ffc446.pdf. Sweden was the first western country to legislate against the practice and, in 1998, changed the terminology in the *Act Prohibiting Genital Mutilation in Women* from "female circumcision" to "female genital mutilation." More severe penalties for breaking the law were imposed, and revision in 1999 removed the principle of double incrimination. *See* LEYE & SABBE, *supra* note 147, at 12.

152. Norway adopted a specific criminal law in 1996, and altered the law on May 23, 2004 to include the statutory *duty to report* for professionals and employees in various public services and religious communities. *See* LEYE & SABBE, *supra* note 147, at 12.

153. Denmark enacted a criminal law applicable to clitoridectomy, excision, and infibulation in 2003. *See id.* at 17 (describing section 245A of the Criminal Code of Denmark).

154. Marcus Oscarsson, *Scandinavia Fights Female Circumcision*, GLOBAL POST, Sept. 19, 2009, http://www.globalpost.com/dispatch/europe/090916/scandinavia-female-genital-mutilation.

155. *See* Els Leye et al., *An Analysis of the Implementation of Laws with Regard to Female Genital Mutilation in Europe*, 47 CRIME, L. & SOC. CHANGE 1, 4–5 (2007).

156. Oscarsson, *supra* note 154.

Likewise, in Norway, extreme measures have been taken to end FGM. The Ministry of Children and Equality developed an action plan against FGM.[157] One step taken by the country has been to deny passports to any girl under eighteen for fear that she will return to her native country to undergo FGM.[158] Norway has also allocated specific funds to be used solely to combat the problem of FGM[159] and is also debating a plan to have mandatory regular check-ups of the genitals of these high-risk girls.[160]

In addition to the Scandinavian countries mentioned above, Austria,[161] Belgium,[162] Cyprus,[163] Italy,[164] Portugal,[165] and Spain[166] have enacted specific criminal provisions dealing with FGM. For example, Austrian law provides that one cannot "consent to a mutilation or other injury of the genitals that may cause a lasting impairment of sexual sensitivity."[167] Austria also requires doctors to report any indication of FGM from patients they examine.[168] Although the law addresses the issue of FGM, it does not appear to be as strong as the laws in other countries. Notwithstanding this attempt at punishing FGM, there are no published convictions for this crime.

Belgium's law has been bolstered to exact harsh penalties if FGM is discovered and prosecuted. It provides for three to five years of im-

157. *New Implications for Embassies Regarding FGM*, NOR. AGENCY DEV. COOPERATION, July 2, 2008, http://www.norad.no/en/about–orad/news+archive/129463.cms.

158. NOR. MINISTRIES, ACTION PLAN FOR COMBATING FEMALE GENITAL MUTILATION 10 (2008), *available at* http://www.regjeringen.no/upload/BLD/Kjonnslemlestelse/Handlingsplan_kjønnsl_eng_nett.pdf.

159. *New Implications for Embassies Regarding FGM*, *supra* note 157.

160. *See* Oscarsson, *supra* note 154.

161. *See* LEYE & SABBE, *supra* note 147, at 16 (referring to § 90 of the Penal Code of Austria (2002)).

162. *See* ELYS LEYE & JESSIKA DEBLONDE, INT'L CTR. FOR REPRODUCTIVE HEALTH, ICRH PUBL'NS NO. 8: A COMPARATIVE ANALYSIS OF THE DIFFERENT LEGAL APPROACHES TOWARDS FEMALE GENITAL MUTILATION IN THE 15 EU MEMBER STATES AND THE RESPECTIVE JUDICIAL OUTCOMES IN BELGIUM, FRANCE, SPAIN, SWEDEN, AND THE UNITED KINGDOM 62 (2004), *available at* http://www.icrh.org/files/icrh%20publications%20n°8%20comparative%20analyse 2.pdf (referring to Article 409 of the Penal Code of Belgium (2001)).

163. *See* LEYE & SABBE, *supra* note 147, at 16 (citing Article 233A of the Penal Code of Cyprus (2003)).

164. *See id.* at 120 (referring to an Italian criminal law enacted in 2006).

165. *See id.* at 22 (citing Article 144 of the Penal Code of Portugal (2007)).

166. *See* LEYE & DEBLONDE, *supra* note 162, at 64–65 (referring to the amendment to Article 149 of the Penal Code of Spain (2003)).

167. *See* U.N. SEC'Y-GEN., UNITED NATIONS SECRETARY-GENERAL'S DATABASE ON VIOLENCE AGAINST WOMEN, http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=10056&baseHREF=country&baseHREFId=164 (citing Article 90(3) of the Austria Criminal Code (2002)) (last visited May 10, 2010).

168. LEYE & SABBE, *supra* note 147, at 34–35.

prisonment for anyone who promotes or facilitates FGM and increases that to five to seven years if done on a minor.[169] If the FGM causes a "lasting incapacity for work, the punishment is confinement of five to ten years."[170] Finally, if "the mutilation results in death, even though there was no intent to kill, the punishment is confinement of ten to fifteen years."[171] Belgium also provides for a right to report which gives doctors the ability to report cases of FGM, without compromising their doctor-patient privilege.[172] In addition, there are general child protection procedures in place along with a legislated duty to help a person in great danger.[173]

In Finland,[174] France,[175] Germany,[176] Switzerland,[177] and Luxembourg,[178] FGM is forbidden under general criminal law. France has prosecuted more cases of FGM than any other country. As recent as June 2009, thirty-seven cases had been prosecuted at the highest court in France under general criminal statutes.[179] France boasts the work of a prominent women's group that has been fighting to end FGM in France.[180] France also lays out aggravating factors that will enhance the crime of FGM and increase the penalty for the crime up to twenty years.[181]

In addition to the statutes that have been enacted, both general and specific, most European countries have laws that require doctors to report cases of FGM; laws that prosecute for the unlawful practice of medicine; laws that require the public to report abuse; and some even have laws that impose a duty upon the public to help a person in danger.[182]

169. *See* LEYE & DEBLONDE, *supra* note 162, at 62 (citing Article 409, §§ 1–2 of the Code of Criminal Law of Belgium (2001)).

170. *See id.* at 62 (citing Article 409, § 3 of the Code of Criminal Law of Belgium).

171. *See id.* (citing Article 409, § 4 of the Code of Criminal Law of Belgium).

172. *See* LEYE & SABBE, *supra* note 147, at 33.

173. *See* LEYE & DEBLONDE, *supra* note 162, at 63–64.

174. LEYE & SABBE, *supra* note 147, at 18 (referring to the Finnish Penal Code).

175. *Id.* at 18 (referring to Article 222–9/10 of the Penal Code of France).

176. *Id.* at 19 (referring to Articles 224, 226 of the Penal Code of Germany).

177. *Id.* at 24 (referring to Articles 122–123 of the Swiss Criminal Code).

178. *Id.* at 20 (referring to Article 392 of the Luxembourg Penal Code).

179. *See id.* at 40.

180. Les Mutilations Genitales Feminines ("GAMS") is a nonprofit organization that was established in Paris in 1982 and composed of African and French women working for the "abolition of female genital mutilation." *See* Le GAMS, Presentation of the GAMS, http://pagesperso-orange.fr/. .associationgams/gamsiteeng/pages/presgams.html (last visited May 10, 2010).

181. *See* Leye et al., *supra* note 155, at 4, 6.

182. *See generally* LEYE & SABBE, *supra* note 147 (reviewing and comparing legislation enacted in Europe in response to FGM). Austria, Cyprus, Denmark, Finland, France, Italy,

Moreover, because FGM is considered child abuse in Europe, laws that deal specifically with the protection of children from abuse can be used.[183] This is especially important because these laws can be utilized for girls at risk for FGM.[184]

In addition to enacting legislation to criminalize FGM, European countries have launched education initiatives aimed at the prevention of FGM.[185] The problem of FGM has reached magnitude proportions in Europe. This might appear to be hyperbole but, in just a few years, FGM has gone from being an African/Middle Eastern problem to a serious problem that requires large financial and human resources to combat it.

3. Results of the Legislation

The most reliable information on the prevalence of FGM comes from the actual court cases that have been adjudicated in a few countries. A Denmark court handed down a two-year jail sentence to a mother from Eritrea who sent her two daughters, ages ten and twelve, to Sudan in 2003 to undergo FGM.[186] Authorities discovered this fact when the two daughters alerted them before their six-year-old sister could be sent to Sudan for the same purpose.[187] Notably, the father was acquitted in this case; he claimed that he had no knowledge of what his wife had done, and the court apparently believed him.[188]

In June 2008, Norway charged a couple under the law against FGM for sending five of their daughters to Gambia to undergo FGM.[189] This case is of interest because all of the daughters were born in Norway and are Norwegian citizens.[190]

In 2000, Kadra, a young Somali girl living in Norway, caused a firestorm when she wore a hidden camera while talking with a local

and Sweden require doctors to report FGM. *Id.* at 34. Cyprus, France, Norway, Spain, and Sweden impose an additional duty on the public to report FGM to social services or prosecution authorities. *Id.*

183. *See id.* at 26.

184. *Id.* Some of the child abuse laws deal directly with FGM, for example, the U.K. Department of Health has released a policy document to safeguard girls' welfare that refers specifically to FGM. *Id.*

185. *Id.* The purpose of many of these initiatives is to educate health professionals, authorities, and police officers. *Id.*

186. *See* Oscarsson, *supra* note 154.

187. *Id.*

188. *Id.*

189. *Couple Charged in Norway over Mutilation of 5 Daughters*, WELT ONLINE, June 6, 2008, http://www.welt.de/english-news/article2074592/Couple_charged_in_Norway_over_genital_mutilation_of_5_daughters.html.

190. *Id.*

Imam about FGM. The camera caught the Imam trying to convince Kadra to have the procedure performed.[191] As a result of Kadra's actions, she was threatened and eventually beaten senseless.[192]

In Italy, Gertrude Obaseki, a Nigerian woman, was arrested for having allegedly performed FGM on a three-month-old girl.[193] This was problematic for more than the obvious reason. The law in Italy addressed the actions of the cutter but did not specifically address the actions of the parents who delivered their three-month-old infant daughter to this woman to be cut.[194] This case has not yet been resolved.

These cases illustrate that FGM has made its way to Europe. The limited numbers of countries discussed above indicate that what was once thought of as an "African" problem has become a world problem. Throughout the years, European nations have been signatories on various declarations and conventions condemning FGM; thus, it must be difficult to acknowledge that these previous attempts did not stem the practice because it is now being done within their own borders. It is both the right thing and a good thing to have enacted legislation to prevent female genital mutilation. However, it appears that the most effective way to stop FGM in Europe is to stop it in the nations where it originated. So, although the legislation is necessary and welcomed, it is not enough to stop FGM. Women around the world, once educated, must collectively say no to FGM. As Alice Walker said in her novel *Possessing the Secret of Joy*, "resistance is the secret of joy!"[195]

III. Identifying the Culprits of FGM in the West

Once again the question must be asked—why would a family, presumably safely ensconced in a country that bans FGM, opt to either send their female children back to their home country to have FGM performed or seek out a cutter in their new homeland?

A recently published article by Saba W. Masho and Lindsey Matthews outlined several common factors which determined whether Ethiopian women supported the continuation of FGM. Those factors

191. *FGM Exposed*, Ms. Mag., July 10, 2001, http://msmagazine.com/news/uswirestory.asp?id=6214.

192. Jonathan Tisdall, *Kadra Attacked in Public*, Aftenposten, Apr. 13, 2007, http://www.aftenposten.no/english/local/article1734869.ece.

193. *Italy Continues Crackdown on FGM*, Xinhua News, Aug. 21, 2007, http://news.xinhuanet.com/english/2007-08/21/content_6574143.htm.

194. *Id.*

195. Alice Walker, Possessing the Secret of Joy 281 (1st Pocket Books prtg. 1993) (emphasis omitted).

included age, marital status, religion, lack of education, rural residency, whether the woman was already circumcised, and little or no exposure to mass media.[196]

Not surprisingly, the culprits responsible for the continued prevalence of FGM have not changed; they have merely taken up residence in the West alongside the people who have immigrated. In rounding up the usual suspects, one can see that lack of assimilation, poverty, lack of education, and the devaluation of women all contribute to perpetuating the practice of FGM in the West.

A. Lack of Assimilation and Cultural Isolation Contribute to FGM in the West

Immigrants often find themselves in a new environment that does not embrace them or their culture. Many have immigrated to the West seeking a better life and opportunities for themselves and their children. While there may be job opportunities for them, assimilation into the culture is often slow or non-existent. In addition, failure to learn the common language places the immigrant in a vulnerable position.

As a result of non-assimilation, immigrants tend to seek out the temples of their familiar and end up in neighborhoods and communities of their countrymen/women. This has the effect of replicating the very environment which they presumably left behind. Once the community is re-established, the traditions and mores take on the same stature as they had in the homeland. Thus, not being able to escape the cultural imperative that now exists in the new homeland, many immigrants will rely upon the traditions from home.

Girls and women are still subjected to FGM in the West because there is a need for acceptance in these newly reformatted communities. Although the new country has become the place of residence, the insular community has become home. There is no denying that FGM is linked to culture; therefore, lack of assimilation into the new culture means that immigrants will continue their traditions. This would seem to be the most compelling reason for families where there is some education and there does not appear to be dire poverty. In situations where families send their female children back to their country

196. Saba W. Masho & Lindsey Matthews, *Factors Determining Whether Ethiopian Women Support Continuation of Female Genital Mutilation*, 107 INT'L J. GYNECOLOGY & OBSTETRICS 232, 233 (2009).

of origin to have FGM performed, there is an adherence to tradition bolstered by the transplanted community in the West.

B. Poverty Contributes to FGM in the West

> *"Women do two-thirds of the world's work . . . [y]et they earn only one-tenth of the world's income and own less than 1 percent of the world's property. They are among the poorest of the world poor."*[197]

Poverty and the feminization of poverty play a major role in the migrating of FGM to the West. Professor Richard Robbins wrote the following in 1999: "The informal slogan of the Decade of Women became 'Women do two-thirds of the world's work, receive 10 percent of the world's income and own 1 percent of the means of production.'"[198] He added to this by stating,

> At the same time that women produce 75 to 90 percent of food crops in the world, they are responsible for the running of households. According to the United Nations, in no country in the world do men come anywhere close to women in the amount of time spent in housework. Furthermore, despite the efforts of feminist movements, women in the core [wealthiest, Western countries] still suffer disproportionately, leading to what sociologists refer to as the "feminization of poverty," where two out of every three poor adults are women."[199]

The frightening fact is that, over the last decade, little has changed with respect to the economic status of women.

> Seven out of 10 of the world's hungry are women and girls, according to the UN World Food Program. When women are afforded the equality of opportunity that is their basic human right, the results in terms of economic advancement are striking. *The Economist* estimates that over the past decade, women's work has contributed more to global growth than China. The East Asian "economic miracle" of unprecedented growth from 1965 to 1990 offers an example of how all elements of the poverty puzzle must fit together. Gender gaps in education were closed, access to family planning was expanded and women were able to delay childbearing and marriage while more work opportunities increased their participation in the labour force. The economic contribution of women helped reduce poverty and spur growth. Being deeply affected by poverty, women also hold great potential to end it. But until their potential is recog-

197. Barber B. Conable, Jr., President of the World Bank & Int'l Fin. Corp., Address to the Board of Governors in Wash., D.C. (Sept. 29, 1987) (as cited in Ibrahim F. I. Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of* Achievements, 17 DENV. J. INT'L. L. & POL'Y 39, 58 (1988)). Unfortunately, little has changed since 1987.

198. RICHARD H. ROBBINS, GLOBAL PROBLEMS AND THE CULTURE OF CAPITALISM 354 (1999).

199. *Id.*

> nized and realized, women will remain the missing piece of the poverty elimination puzzle, and will not fully enjoy the benefits of the economic growth to which they contributed.[200]

Poverty brings with it an imperative to marry. In many of the countries where FGM is practiced, a woman cannot "make a marriage" if she is viewed as unclean.[201] Therefore, in order to be able to marry a daughter off, she must undergo FGM to be acceptable, not only to the new groom and his family, but to the society in general.

Many times the poverty, which caused a woman to leave her native land, follows her to her new homeland. Poverty, coupled with social isolation, narrows the choices that a woman may believe that she has. Also, the ties that bind immigrant women to their native country are strong and enduring.

If some Western nations offer few financial supports to new immigrant women, they must in turn rely on some support from their family back home. As a result of relying upon support from family, there is pressure to conform to traditions.

C. Violence Against Women Contributes to FGM in the West

As long as violence against women is acceptable around the world, there will be FGM around the world. Female genital mutilation is ritualized torture.[202] It is no different from rape and, in fact, it may be characterized as the rape of a woman's soul. If violence is viewed as the norm, then FGM fits right into the scheme. Below are just a few examples of the violence that women suffer on a daily basis.

- In the United States a women is raped every six minutes and a woman is battered every fifteen seconds.[203]
- Every year in Bangladesh more than 200 women are disfigured by acid burnings by spurned husbands and suitors.[204]
- Massive rapes of women continue to be used in Rwanda and elsewhere as an instrument of armed conflict.[205]

200. U.N. Dev. Fund for Women, World Poverty Day 2007: Investing in Women—Solving the Poverty Puzzle (2007), *available at* http://www.womenfightpoverty.org/docs/WorldPovertyDay2007_FactsAndFigures.pdf.

201. *See generally* Ellen Gruenbaum, The Female Circumcision Controversy: An Anthropological Perspective 76–101 (2001) (discussing the importance of virginity at marriage for women in countries practicing FGM and the use of FGM as an alleged way of effecting control over a woman's virginity and sexuality in such countries).

202. *See generally* Broussard, *supra* note 2 (contending that FGM is a form of torture).

203. Amnesty Int'l USA, Violence Against Women: A Fact Sheet, http://www.amnestyusa.org/violence-against-women/violence-against-women—-a-fact-sheet/page.do?id=1108440 (last visited May 10, 2010).

204. *See* H.R.J. Res. 10, 111th Cong. (2009) (denouncing violence against women).

205. *See id.*

- Up to 25,000 women a year are burned to death in India because their dowries are deemed too small.[206]
- More than 15,000 Chinese girls and women are being kidnapped each year and sold as sex slaves.[207]
- In the Russian Federation at least 36,000 women are beaten by a partner every day.[208]
- The leading cause of death worldwide among girls and women from ages fourteen to forty-four is domestic violence.[209]
- Each year, more than three million girls and women are estimated to be at risk of being subjected to female genital mutilation.[210]

Nicholas D. Kristof of the New York Times wrote:

> The global statistics on the abuse of girls are numbing. It appears that more girls and women are now missing from the planet, precisely because they are female, than men were killed on the battlefield in all the wars of the 20th century. The number of victims of this routine "gendercide" far exceeds the number of people who were slaughtered in all the genocides of the 20th century.[211]

Simply put, unchecked violence against women is the reason why violence is able to continue; it has become a self-fulfilling prophecy. Violence and the threat of violence indicate that women continue to be valued less than their male counterparts. Because of this diminution of value, women worldwide are used as fungible commodities. As the above-quoted statistics indicate, women are abused at an alarming rate and on a daily basis. Without an outcry from women and those who purport to be champions of women, the abuse and torture of women will continue. Included in that litany of "wrongs" is female genital mutilation. No matter what spin is put on the practice of FGM, it must resume its rightful place among the statistics that proclaim the annual abuse, torture, and death rates that are visited upon women worldwide.

Until every country, that claims to want to put an end to FGM, stops the violence against women within their own borders and around the world, there will be no end to FGM. As long as violence in any form is acceptable, FGM will be acceptable.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *See* WORLD HEALTH ORG., *supra* note 3, at 6.

211. Nicholas D. Kristof & Sheryl WuDunn, *The Women's Crusade*, N.Y. TIMES, Aug. 23, 2009 (Magazine), at 33–34.

D. Lack of Education Contributes to FGM in the West

One of the factors listed as a reason why Ethiopian women continue to support FGM is lack of exposure to mass media or, in other words, lack of education.[212] That is, they lack both the education to understand that they do not have to be subjected to FGM, and they lack the credentials which education bestows upon one which would allow them to transcend the circumstances that dictate the necessity for FGM.

According to Nicholas D. Kristof, "[t]here's a growing recognition among everyone from the World Bank to the U.S. military's Joint Chiefs of Staff to aid organizations like CARE that focusing on women and girls is the most effective way to fight global poverty and extremism."[213]

The World Education Organization wrote in an article entitled *Girls' and Women's Education Initiative*: "For girls and women living in poverty, education is not only the key to a brighter future it is also a key to survival."[214] The article lists a number of key facts about education, such as, "[m]illions of women in America have difficulty understanding practical health information,"[215] and "[m]ore than 60% of the 110 million children out of school are girls."[216]

The article stated that helping girls stay in school would improve the economic opportunity for all citizens, as well as lead to "reduced child mortality, improved family nutrition and health, and increased prevention of HIV and AIDS."[217] The article also proposed that integrating literacy with health education would teach girls and women about "the dangers of early marriage, and how to protect themselves from exploitation."[218]

It is no mystery why many African nations have undertaken grassroots education policies to eradicate FGM. Knowledge is power. In Kenya, under the leadership of the Women's Global Education Project and partner-organization the Tharaka Women's Welfare Program, 260 girls have said "no" to female genital mutilation since 2007.[219]

212. *See* Masho & Matthews, *supra* note 196, 233–34.
213. Kristoff & WuDunn, *supra* note 211, at 28.
214. World Education, Girls' and Women's Education Initiative, http://www.worlded.org/WEIInternet/gwe/index.cfm (last visited May 10, 2010).
215. *Id.*
216. *Id.*
217. *Id.*
218. *Id.*
219. Women's Global Education Project, Women's Global Fights FGM, http://www.womensglobal.org/What%20We%20Do/FGM.html (last visited Mar. 23, 2010).

If women are immigrating to the West from countries which are experiencing dire statistics on education for girls and women, without some sort of intervention, then these girls and women will bring their ignorance with them and will thus be more susceptible to the continuation of FGM.

E. Devaluation of Women Contributes to FGM in the West

Women simply are not valued in many societies. This devaluation contributes to the atrocities that are committed against women around the world on a daily basis. Representative Sheila Jackson Lee gave some startling facts about the value of women: "In many societies baby girls are denied food, drowned, suffocated, abandoned, or their spines are broken simply because they are born girls. . . . The inequalities between women and men have persisted and major obstacles remain, with serious consequences for the well-being of all people."[220]

This is the legacy of many of the women who make up the pool of immigrants who have made the West their new home. This legacy follows them and many times dictates the behavior which would make it permissible to subject their daughters to FGM.

If women believe their only value is what men and the culture say it is, then they will act to fulfill that belief. Thus, an uneducated, poor woman who does not know her own value, but believes it to lie between her legs, will also submit her daughter to the knife to guarantee her daughter some status. It becomes irrelevant if the act takes place on a woven mat in a small Ghanaian village or if it takes place on the South Side of Chicago.

Female genital mutilation has come to the West because it exists in places where very little has been done to eradicate it. The only real surprise is that it did not arrive in the West sooner than it did. Or, maybe it has been on our shores longer than we realize, but we were just too disinterested to notice.

Conclusion

> *Study after study has taught us that there is no tool more effective for development than the empowerment of women.*[221]

220. H.R.J. Res. 10, 111th Cong. (2009).

221. Kofi Annan, Sec'y-Gen., Speech, 49th Sess. of the Comm'n on the Status of Women (Feb. 28, 2005), Press Release SG/SM/9738, *available at* http://www.un.org/News/Press/docs/2005/sgsm9738.doc.htm.

Ending FGM in the West means eliminating it at its sources. When xenophobia ceases to exist on such a large scale; when ending poverty and hunger becomes the number one priority in the world; when global violence against women ceases; when girls and women are educated in greater numbers; and when women are truly valued, FGM will be eradicated.

Some positive steps have been taken. Enacting legislation makes the bold statement that governments acknowledge that FGM is torture and should not be tolerated. Enforcing that legislation will make an even bolder statement. Creating outreach programs and holding national conversations are also powerful tools that governments are utilizing. However, more steps are needed.

Empowering women worldwide will also help in the fight against FGM. To this end, the United Nations has finally[222] established a "super" agency for women.[223] Hopefully this agency will be fully funded and supported so that it can do the important work that needs to be done to help women reach their full potential on the planet.

Supporting grassroots education movements in practicing countries will also teach women they can just say "no" to FGM. Some have suggested creating non-harmful rituals to take the place of FGM.[224]

Also, asylum laws must be reexamined to see if they can be fashioned in a way to make it easier for women to prove that they are entitled to remain in the host country.[225]

Finally, it appears that importing FGM to the West, by either sending female children back to practicing countries or by actually

222. The word finally is an editorial choice of the author's. Although the United Nations has been mandated from its inception to deal with the genders equally, women's issues appear to have gotten lost in the shuffle.

223. Editorial, *A New UN Agency for Women*, 374 LANCET 1038, 1038 (2009).

224. Fabio Turone, *Controversy Surrounds Proposed Italian Alternative to Female Genital Mutilation*, 328 BRITISH MED. J. 247, 247 (2004), *available at* http://www.bmj.com/cgi/content/extract/328/7434/247-b. In 2004, Italian physician, Dr. Omar Abdulcadr, proposed an alternative ritual to FGM wherein the clitoris would be punctured under local anesthesia and a few drops of blood would symbolize the cutting. *Id.* Needless to say, this has caused quite a controversy.

225. Both Norway and Canada are attempting to do this. *See* NORWEGIAN MINISTRIES, ACTION PLAN FOR COMBATING FEMALE GENITAL MUTILATION 27 (2008), *available at* http://www.bufetat.no/Documents/Ny%20filstruktur/Bufetat.no/Kj%C3%B8nnslemlestelse/Handlingsplan_kjnnsl_eng_nett.pdf; *see* Clyde H. Farnsworth, *Canada Gives Somali Mother Refugee Status*, N.Y. TIMES, July 21, 1994, *available at* http://www.nytimes.com/1994/07/21/world/canada-gives-somali-mother-refugee-status.html?pagewanted=1 (describing the refugee case of Khadra Hassan Farah, and noting that Canada was the first country to acknowledge that FGM is a form of persecution and to acknowledge the protection rights of women and girls threatened with FGM).

having it done in that western nation, is the cruelest cut. Yet in reality, the cruelest cut is ignoring the plight of women worldwide that provides the conditions for FGM to thrive.