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Final Cut: The West's Opportunity to Accommodate Asylee Victims of Female Genital Mutilation

Patricia N. Jjemba

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Final Cut: The West's Opportunity to Accommodate Asylee Victims of Female Genital Mutilation

Patricia N. Jjemba

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ABSTRACT

In an era where immigration and asylum is at the forefront of many western nationals' minds, so too should be the reasons behind an individual's intent to seek refuge in a new country. Statistics have shown that one of the pragmatic reasons women and girls, particularly from Middle Eastern and African nations, seek refuge through western asylum programs is to escape or recover from Female Genital Mutilation (FGM). While the practice has been a longstanding tradition in various communities around the world, modern western governments and international entities have moved to abolish the tradition completely, given its alarming implications against human rights.

In order to reconcile the stark differences between what many regard as a traditional practice and others now consider a human rights violation, there must be a comprehensive understanding of the history and evolution of FGM, its significance to female asylum seekers, and its implications for the future of western immigration processes.

AUTHOR NOTE

B.A. in Diplomacy & Foreign Affairs, 2012, Miami University. J.D., May 2016, Michigan State University.

I want to first thank the University of Massachusetts Law Review for the opportunity to publish what I consider to be not only a labor of love, but also an important contribution to the conversation of women rights and human rights at large. I would also like to thank Professor Hannah Brenner, Dr. and Mrs. Jjemba, Vonsheay Brown, Chantelle Dial, DeAndre' Harris, Ryan Ragland, and all of my colleagues at Michigan State University College of Law for constantly encouraging me to take on opportunities to write for a purpose. Finally, my hope is that this piece educates readers, advocates for the evolution of cultural practices, and provides a voice to the women and girls seeking refuge in our countries, who are much more than a number on an asylum application.

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I. INTRODUCTION

“Allau Akbar, Allau Akbar, Allau Akabar. . .”¹ Fauziya’s hands touched the cool, hard concrete floor as she fervently repeated her daily prayers.² “Kasinga! Kasinga!”³ The prison guard bellowed her name over the loudspeaker, insistently, as if to hurry her along.⁴ But after spending fourteen long months in this American prison, Fauziya refused to be rushed.⁵ Only nineteen years old, she was far away from her native home of Togo, and the four walls of this prison cell were now her reality.⁶ At the tender age of fifteen, her father’s death led her Uncle Mouhamadou to become her “legal guardian.”⁷

Uncle Mouhamadou and Fauziya’s aunt soon bargained with a man thirty years Fauziya’s senior for her hand in marriage.⁸ Arranged to be this man’s fourth bride, Fauziya was to have her “woman parts cut off before. . . [becoming] his wife.”⁹ Fauziya had heard stories of women spreading a girl’s legs, holding her down with all restraint, and the eldest woman using a knife to cut the girl’s woman parts off.¹⁰ *Kakia*, also known as female circumcision or female genital mutilation, was a common tradition within her tribe.¹¹ However, Fauziya’s father did not condone the practice and had protected Fauziya’s four older sisters from enduring such pain.¹² But Fauziya’s father had died just months before and now, without her father’s protection, she was expected to undergo the cut and marry.¹³ With her

¹ Fauziya Kassindja & Layli Miller Bashir, *Do They Hear You When You Cry* 1 (1998).

² *Id.*

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.* at 2.

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

mother and sister's heroic help, Fauziya fled and barely escaped *kakia*.¹⁴ She was now a refugee, seeking asylum in the United States, but also referred to as Inmate Kasinga.¹⁵ Today was Visitor's Day and Fauziya's lawyers were here to see her.¹⁶

While heartbreaking, Fauziya's story is all too common. This paper seeks to assess poignant pragmatic concerns related to female asylum seekers from countries charged with female genital mutilation ("FGM," "genital circumcision," "cutting"). These women request asylum on the basis of having experienced a violation of human rights through mutilation.

First, II. Background will provide thorough insight into the practice. This groundwork will offer a conceptual understanding of the practice and justifications for its global continuation. Readers will also be presented with varying perspectives on the grim tradition from both international and Western vantage points. Second, in III. Human Rights and Asylum at a Glance, a survey of international and American asylum and human rights laws will offer a juridical discussion of the legal doctrines and principles that apply to female asylum seekers. Third, in IV. Country Synopses, four case studies will illustrate issues related to genital mutilation-based asylum claims. Finally, V. Policy Recommendations will provide Western host countries with guidance on how to better accommodate these asylum seekers upon their arrival.

II. BACKGROUND

A. A Conceptual Understanding

To fully conceptualize the data, arguments, and analysis that surround the practice, it is vital to understand the complexities of female genital mutilation. Also vital is an understanding of the communities that engage in the practice and their reasons for doing so.

The World Health Organization characterizes the practice as alteration or "injury to female genital organs" for purposes unrelated to

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3-4.

medical necessity.¹⁷ The procedure itself involves removal of the female genital organs, either completely or partially.¹⁸ A system of classification has emerged based in part on complete or partial removal of particular genital organs: Type I *Clitoridectomy*, Type II *Excision*, Type III *Infibulation*, and Type IV *total infibulation*.¹⁹

Type I, *Clitoridectomy*, involves the removal of all or part of a female's clitoris.²⁰ Type II, *Excision*, entails partial or total removal of both the clitoris and labia minora.²¹ This "involves excision of the clitoris and part of the labia majora."²² Known as *Infibulation*, Type III refers to instances whereby "cutting and repositioning the inner, or outer labia, with or without removal of the clitoris" tightens a woman's vaginal opening.²³ Finally, Type IV refers to all other detrimental methods used against genital organs for non-medical purposes.²⁴

B. Justifications for Female Genital Mutilation

More than three million girls are estimated to be at risk of some form of female genital mutilation.²⁵ Ultimately, girls and women that undergo the practice obtain absolutely no health benefit and instead in many instances suffer unwarranted physical, psychological, and emotional harm. One has to consider why the practice has persisted throughout various societies for hundreds of years. Among some of the reasons young girls and women undergo the practice are social pressure, tradition, preparation for adulthood and marriage, religion,

¹⁷ World Health Organization, *Female Genital Mutilation Fact Sheet No 241*, (Feb. 2017), <http://www.who.int/mediacentre/factsheets/fs241/en/> [<https://perma.cc/7HZ9-GGNN>].

¹⁸ *Id.*

¹⁹ Layli Miller Bashir, *Female Genital Mutilation in the United States: An Exemption of Criminal and Asylum Law*, 4 Am. U. J. Gender & L. 415, 420-21 (1996).

²⁰ *Id.* at 420.

²¹ *Id.*

²² *Id.*

²³ House of Commons Home Affairs Committee, *Female Genital Mutilation: Abuse Unchecked*, 2015-16, HC 390, <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/390/39003.htm#footnote-058> [<https://perma.cc/5WRU-532J>].

²⁴ *Id.*

²⁵ World Health Organization, *supra* note 17.

and even “cultural ideals of femininity and modesty[.]”²⁶ maintaining their sexual purity, upholding hygiene-related cleanliness, and adhering to religious practices. In some nations, FGM is considered a “rite of passage” into womanhood.²⁷ It has been practiced by Muslim, Jewish, and Christian people in Africa, the Middle East, some areas in Asia, and Western nations.²⁸

C. Varied Views on the Practice

1. The International Community

International bodies such as the United Nations have acknowledged and encouraged the overall respect of cultural practices.²⁹ However, as a whole, the international community has overtly condemned continuation of cutting as a practice and has deemed it a human rights violation.³⁰

The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) serves as an illustration of an international commitment to protecting people such as women and children exposed to various forms of torture. Article 1 defines *torture* as “an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for. . .any reason based on discrimination of any kind[.]”³¹

²⁶ *Id.*

²⁷ Sarah Boseley, *What is Female Genital Mutilation and Where Does it Happen?* The Guardian, (Feb. 6, 2014, 2:00 PM), <http://www.theguardian.com/society/2014/feb/06/what-is-female-genital-mutilation-where-happen> [<https://perma.cc/F2W9-4SW2>].

²⁸ Natalie J. Friedenthal, *It's Not All Mutilation: Distinguishing Between Female Genital Mutilation and Female Circumcision*, 19 N.Y. Int'l L. Rev. 111, 113-115 (2006) (discussing the general history of female genital mutilation, including the religious groups where most prevalent).

²⁹ *See, e.g.* U.N. Educ., Sci., & Cultural Org., Declaration of Principles on Tolerance, Gen. Conf. Res. 5.61, UNESCO Doc. 28 C/Res. 5.61 (Nov. 16, 1995).

³⁰ *The Truth About Female Genital Mutilation: UNICEF Unveils the Most Comprehensive Data Yet*, Int'l Bus. Times, (July 23, 2013, 7:04 AM), <http://www.ibtimes.com/truth-about-female-genital-mutilation-unicef-unveils-most-comprehensive-data-yet-1356515> [<https://perma.cc/GX8A-5ADQ>].

³¹ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, U.N. A/Res/ 39/46, Annex (Dec. 10, 1984), at <http://www.un.org/documents/ga/res/39/a39r046.htm>. [hereinafter Convention Against Torture].

Under this definition, the painful, physically-invasive and surgical abscission of one's genital organs would likely constitute a form of torture. Furthermore, exposure of genital mutilation to females alone, as opposed to their male counterparts, exhibits discrimination based on sex, thus, satisfying the second requirement outlined in Article 1.³²

Likewise, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) serves as another example of an international pledge to protect women and girls subject to genital mutilation. Under this Convention, "discrimination against women" is defined in Article 1 as "any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women [.]"³³ Again, genital circumcision undeniably thrives on its distinction of exclusively subjecting females to the practice. This discriminatory distinction should raise concern among member states given its explicit prohibition under CEDAW.

The preceding distinction has been qualified in some societies as a means of preserving a woman's chastity or restraining her potential desire for sexual satisfaction.³⁴ Yet, this ultimately exhibits the social and cultural patterns that CEDAW seeks to curb. In fact, Article 5 encourages member states to take "appropriate measures" to reshape cultural and social patterns associated with men and women.³⁵ Article 5 goes on to assert CEDAW's comprehensive intent to eliminate biases and practices "based on the inferiority or superiority of either of the sexes[.]"³⁶ Consequently, CEDAW's provision epitomizes the international move to break free from of the gender biases associated with age-old traditions such as genital circumcision.

Numerous global entities have embarked on campaigns to educate people about the dangers associated with female genital mutilation as part of an effort to encourage a worldwide abandonment of the

³² *See id.*

³³ Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S. 13, U.N. Doc. A/34/180 (Dec. 18, 1979), at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. [hereinafter CEDAW]. CEDAW entered into force on Sept. 3, 1981.

³⁴ *See Female Genital Mutilation: Frequently Asked Questions*, U.N. Population Fund (Dec. 2015), <http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#why> [<https://perma.cc/GU44-F5YD>].

³⁵ CEDAW, *supra* note 33 at art 5.

³⁶ *Id.*

practice. For example, February 6th has become known as “International Day of Zero Tolerance to FGM/C,” whereby people, entities, and communities all over the world advance awareness about the practice and seek means to bring it to an end.³⁷ The first annual Girl Summit was also held in the summer of 2014.³⁸ Movements such as these have been vital to the global effort to raise awareness about female genital mutilation and bring about an end to the practice.

2. Western Views

Generally, Westerners have a limited understanding of the existence of genital cutting. Those familiar with the practice are still ignorant as to the deep-rooted reasons for its continuation. Westerners, however, are increasingly becoming strong proponents of an end to the age-old tradition. Westerners take into account variables like the harsh health risks, violent nature of the practice, and physical and psychological repercussions of genital mutilation.³⁹

One could argue that the West’s increasing interest in the practice relates to its growing existence in the shadows of Western societies. As immigration and globalization rapidly expand, traditions such as cutting, thus, cross geographical borders. While many see female genital mutilation as a problem for African and Middle Eastern countries, the reality is that the practice has had rippling effects in the West, too.⁴⁰ Recognizing this, Western nations have begun implementing laws to discipline those who fail to comport to their standards and continue the cutting practice.⁴¹ For instance, in the

³⁷ *International Day of Zero Tolerance to FGM/C*, USAID (Feb. 3, 2017), <http://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment/international-day-zero-tolerance-fgmc> [https://perma.cc/Q2N7-LLSE].

³⁸ *Girl Summit 2014: A Future Free from FGM and Child and Forced Marriage*, GOV.UK, <https://www.gov.uk/government/topical-events/girl-summit-2014> (last visited Feb. 27, 2017) [https://perma.cc/H9EH-ZPCH].

³⁹ See Guest Blogger for Gayle Tzemach Lemmon, *The West Steps Forward in the Fight Against Female Genital Mutilation*, Council on Foreign Relations (Oct. 1, 2014), <http://blogs.cfr.org/development-channel/2014/10/01/the-west-steps-forward-in-the-fight-against-female-genital-mutilation/> [https://perma.cc/96PD-2MTH].

⁴⁰ *Id.*

⁴¹ See *id.*; see also Lydia Bradbury, *Female Genital Mutilation in Western Countries*, Liberty Voice (May 25, 2014),

British government has introduced legislation targeting female genital mutilation performers and guardians of girls forced to undergo female genital mutilation abroad.⁴² Also, the United States is actively working to end female genital mutilation across the globe through women's empowerment and the implementation of laws combatting the practice.⁴³

The West has also exhibited its opposition to the practice through grassroots efforts. Western-led groups such as the American Academy of Pediatrics have sought to encourage communities that practice genital mutilation to replace the tradition with alternative ceremonial rituals instead.⁴⁴ The West has an overall negative view of female genital mutilation and is working to eliminate the practice.

III. HUMAN RIGHTS AND ASYLUM AT A GLANCE

A. The Western Front: How United States Asylum Laws Address Female Genital Mutilation

Asylum based on claims of genital mutilation is an infant concept in American law. Decided in 1996, *In re Kasinga* was the first immigration decision to recognize that female genital mutilation could be a form of persecution that warranted refugee status.⁴⁵

As a general matter, Section 1158 of the United States Code provides that,

[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States

<http://guardianlv.com/2014/05/female-genital-mutilation-in-western-countries/>
[<https://perma.cc/M8E5-2SWZ>].

⁴² See Guest Blogger for Gayle Tzemach Lemmon, *supra* note 39.

⁴³ *The U.S. Government Working Together for the Abandonment of Female Genital Mutilation/Cutting*, USAID (Feb. 5, 2014), <https://www.usaid.gov/news-information/fact-sheets/jan-2014-us-government-working-together-abandonment-female-genital-mutilation> [<https://perma.cc/67J6-95NJ>].

⁴⁴ See Guest Blogger for Gayle Tzemach Lemmon, *supra* note 39.

⁴⁵ See *In re Kasinga*, 21 I. & N. Dec. 357 (B.I.A. 1996).

*waters) irrespective of such alien's status, may apply for asylum [. . .].*⁴⁶

However, Section 1158 merely provides the backdrop for asylum. C.F.R. Section 1208.13 offers explicit guidelines as to what an asylum seeker must establish to earn eligibility.⁴⁷ Under the regulation, the applicant bears the burden of proof to establish: past persecution,⁴⁸ well-founded fear based on past persecution or otherwise well-founded fear of future persecution,⁴⁹ and reasonableness of internal relocation.⁵⁰ Courts have deconstructed the statute to three prongs which require evidence of: 1) persecution or fear of persecution in the alternative; 2) membership to a particular race, religion, nationality, social group, or political opinion; and 3) well-founded fear of persecution based on one's membership in one of the aforementioned classes.⁵¹

Consequently, a woman or girl seeking asylum in the United States on the basis of genital mutilation, must establish that: 1) she is a female; 2) she belongs to a specific group; and 3) the group she belongs to practices female genital mutilation.⁵² The United States further offers refuge via asylum programs to “persons *outside* the U.S. and their immediate relatives and. . .for persons *in* the U.S. and their immediate relatives.”⁵³ This is often referred to as derivative asylum.

⁴⁶ 8 U.S.C.A. §1158 (2009).

⁴⁷ Establishing Asylum Eligibility, 8 C.F.R. § 1208.13 (2013).

⁴⁸ *Id.*; see also *INS v. Cardozo-Fonseca*, 480 U.S. 421, 449 (1987) (The Court determined an alien does not need to prove that it is more likely than not that he or she will in fact be persecuted in his or her country of origin.).

⁴⁹ 8 C.F.R. §1208.13.

⁵⁰ *Id.*

⁵¹ Yule Kim, Cong. Res. Serv. Asylum Law and Female Genital Mutilation: Recent Developments 1-2 (2008) <https://fas.org/sgp/crs/misc/RS22810.pdf> [<https://perma.cc/2DTE-SKQG>].

⁵² *Id.*

⁵³ Daniel C. Martin & James E. Yankay, U.S. Dep't of Homeland Security Office of Imm. Statistics, Annual Flow Report: Refugees and Asylees 1 (2014), http://www.dhs.gov/sites/default/files/publications/ois_rfa_fr_2013.pdf [hereinafter Annual Flow Report] [<https://perma.cc/M6LT-PCBH>].

B. The Western Front: How European Asylum Laws Address Female Genital Mutilation

Law and policy promoters in the European Union (EU/Union) have also sought to provide access to refugees but the EU's unique makeup of sovereign states has resulted in a confusing "intergovernmental" approach to asylum.⁵⁴ In pursuit of homogenization of the asylum process amongst EU member states, the Union constructed the Common European Asylum System (CEAS).⁵⁵ However, members have struggled "to ensure that member states adhere to common standards with respect to asylum seekers."⁵⁶ Ultimately, EU states have struggled with the "intertwined responsibilities under CEAS. . .EU law"⁵⁷ and arguably, individual state law.

Enacted in December 2005, the Asylum Procedures Directive (the Directive) sought to close the gap on these discrepancies.⁵⁸ The Directive provides general guidance as to how EU members should provide adequate access to procedure to applicants for asylum.⁵⁹ Furthermore, the Directive calls for applicants to qualify under refugee status as defined in Council Directive 2004/83/EC,⁶⁰ partake in a personal interview,⁶¹ and obtain proper legal assistance,⁶² while allowing states more autonomy in implementing their own specific asylum requirements.

⁵⁴ See Randall Hansen, *Asylum Policy in the European Union*, 14 Geo. Immigr. L. J. 779, 781 (2000).

⁵⁵ Sillas W. Allard, *Casualties of Disharmony: The Exclusion of Asylum Seekers Under the Auspices of the Common European Asylum System*, 24 Emory Int'l L. Rev. 295, 295-96 (2010).

⁵⁶ Lillian M. Langford, *The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unraveling of EU Solidarity*, 26 Harv. Hum. Rts. J. 217, 218 (2013) (describing European Union states' struggle with maintaining obligations to CEAS and the EU).

⁵⁷ *Id.*

⁵⁸ See Council Directive 2005/85/EC, 2005 O.J. (L326) 13 (establishing minimum requirements for granting or withdrawing an applicant refugee status), <http://eur-lex.europa.eu/eli/dir/2005/85/oj> [<https://perma.cc/Z2ZV-ZDV8>].

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at art. 12.

⁶² *Id.* at art. 15.

For example, France generally requires an applicant first obtain refugee status as defined either under the Geneva Convention, paragraph 4 of the Preamble of the French Constitution, or articles 6 and 7 of the United Nations High Commissioner for Refugees.⁶³ An applicant must then either make a claim for subsidiary protection or stateless person status.⁶⁴ Under the subsidiary protection claim, most applicable to FGM assertions, protection may be granted to one “who establishes she is exposed to . . . death penalty; torture or inhuman or degrading sentences or treatments; serious, direct and individual threat to a civilian’s life or person[.]”⁶⁵

IV. COUNTRY SYNOPSES

A. The Frightening Four: Genital Cutting Practices in Guinea, Egypt, Ethiopia, and Yemen

Cases involving female genital mutilation encompass distinct complexities. This synopsis will assess data from women hailing from the following countries: Guinea, Egypt, Ethiopia, and Yemen. Guinea, Egypt, and Ethiopia represent countries with some of the highest rates of mutilation, while Yemen simply serves as a non-African country that perpetuates the practice mainly for patriarchic purposes. More importantly, each of these countries represents a different cultural experience in terms of a woman’s contact with genital mutilation. Thus, each cultural experience results in various obstacles to overcome in a woman’s quest for asylum in a Western country. This piece will essentially highlight some of the intricate points of concerns women in such positions face. While the countries will serve as vivid case studies, the problems highlighted are not necessarily unique to asylum seekers from that country alone.

B. Informed Consent

Those against genital mutilation tend to be most concerned with issues of consent and whether or not a girl or a woman has had a choice to undergo the procedure.

⁶³ Republic of France Ministry of the Interior, Guide for Asylum Seekers in France 4 (2015), www.immigration.interieur.gouv.fr/content/.../Guide-DA-France_EN_nov.2015.pdf.

⁶⁴ *Id.* at 3.

⁶⁵ *Id.*

1. Inside Guinea

Twelve year-old Fatou was excitedly discussing her upcoming summer plans with her brothers when her aunt approached her to go on a walk.⁶⁶ Fatou found it peculiar that as they walked, other girls, their aunts, and grandmothers joined them one by one and soon took the girls to bath.⁶⁷ The women then draped Fatou and the other girls in towels and led them into a room.⁶⁸ Although she was unable to see, Fatou heard horrendous cries and sobs as each girl went into another room.⁶⁹ Fatou soon learned the reasons for the sobs, as she underwent the traditional cut—without anesthesia.⁷⁰

To date, Guinea has the highest rate of women and girls who have undergone female genital mutilation. Despite being nationally outlawed, an estimated 99% of women ages 15-49 have undergone the procedure.⁷¹ Those who oppose female genital mutilation often reference the idea of consent.⁷² Consent in this instance often involves pressure from the community, is not informed, and lacks free disposition.⁷³ A girl should fully comprehend the physical stress, pain, and potential complications she may endure from having undergone female genital mutilation.

⁶⁶ Timothy La Rose, *In Guinea, One Girl's Story of Violence Reveals Commonplace Nightmare*, UNICEF (Jan. 23, 2014), https://www.unicef.org/infobycountry/guinea_71072.html [<https://perma.cc/6QVL-EA54>].

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Guinea FGM/C Country Profile*, UNICEF 3 n. 4 (Nov. 2005), https://data.unicef.org/wp-content/uploads/country_profiles/Guinea/FGMC_GIN.pdf [<https://perma.cc/3CT2-QRDH>]; see also *Too Much Pain: Female Genital Mutilation & Asylum in the European Union*, UNICEF 3 n. 4 (May 2008) [hereinafter *Too Much Pain*] [<https://perma.cc/4MUV-HRH8>].

⁷² Found. for Women's Health, Res., & Dev., *Female Genital Mutilation: Frequently Asked Questions: A Campaigner's Guide for Young People 10* (2008), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332732/FGMfaqFORWARD.pdf [<https://perma.cc/4SX9-DMCR>].

⁷³ *Id.*

Note 10 of UNHCR's Guidance Note on Refugee Claims Relating to Female Genital Mutilation (Guidance Note) identifies informed consent as a point of great concern as it relates to children subject to female genital mutilation.⁷⁴ It correctly recognizes the frequent instance where a young girl has an inability to vocalize her fear.⁷⁵ A girl may also be ignorant to the potential risks or hazards associated with genital mutilation. Under some circumstances, a young girl may even anticipate the tradition.⁷⁶ She may, nevertheless, experience fear or apprehension related to the looming procedure.⁷⁷ Such fear or apprehension can be considered legitimate, given cutting is treated as a form of persecution.⁷⁸ Moreover, fear of the ambiguous nature associated with cutting is a precise indicator that the young girl is in fact unassuming. Lacking full depth and understanding of what will take place during the practice demonstrates that she is unable to give proper consent.

Note 10 also places a charge on the "decision-makers to make an objective assessment of the risk facing the child, regardless of the absence of an expression of fear."⁷⁹ Such analysis in many ways reflects consent from the caretaker's point of view over a practice many Guinean girls and women do not fully comprehend. As a result, in situations where infibulation is against a minor child, many states outside Guinea incorporate parental or guardian-consent on behalf of the child by implementing prohibitive statutes. American jurisprudence provides a colorful illustration as to the kinds of laws local jurisdictions implement as a means to punish parents, guardians, and anyone else engaged in genital mutilation of another.

Given these kinds of proscriptions, the cutting experience in Guinea is of grave concern. The Population Reference Bureau purports that as of 2017, more than 50% of cut girls and women endure the

⁷⁴ *Guidance Note on Refugee Claims Relating to Female Genital Mutilation*, Div. of Int' Prot. Serv. 7 (May 2009), <http://www.refworld.org/pdfid/4a0c28492.pdf> [hereinafter *Guidance Note*] [<https://perma.cc/UDR3-NCTN>].

⁷⁵ *Id.*

⁷⁶ *Id.* at 7.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

genital mutilation by the time they reach the age of nine.⁸⁰ Even more alarming, 14% were cut by the age of four.⁸¹ These numbers cause great concern because children of such ripe ages are unable to consent to such traumatic procedures as female genital mutilation.

2. Western Trends

As of 2011, UNHCR statistics show Guinean women are primarily seeking asylum in the following European Union countries: Belgium, France, Italy, and Sweden.⁸² As the highest documented rate, the estimated number of female applicants for asylum in Belgium, ages 14-64, reached 626 out of 655 total.⁸³ All of these girls and women likely possessed some sort of connection to FGM.⁸⁴ The second highest documented rate, France female asylum applicants ages 14-64, connected in some way to FGM reached an alarming 593 out of 620 total.⁸⁵ The next highest rate was the Netherlands, where FGM has affected 100 out of 105 female applicants from the aforementioned age range.⁸⁶ Few or none of statistics show where in the United States Guinean asylees are seeking refuge, but they are seeking refuge.

C. Medical Emergency—Egypt

Medicalization of the practice is a new phenomenon that poses great risk to girls and women around the world.

1. Inside Egypt

It was not until just recently that the Egyptian government made true on its promise to reprimand medical professionals who refused to halt the practice in their hospitals and clinics. In early January of 2015, Dr. Raslan Fadl was convicted of manslaughter and sentenced to two years in prison after a young girl died in his care, making him the first medical professional in Egypt to be convicted of engaging in female

⁸⁰ *Female Genital Mutilation/Cutting: Data and Trends*, Population Reference Bureau 5 (2017), <http://www.prb.org/pdf17/FGMC%20Poster%202017.pdf>. [https://perma.cc/M28W-M2EG].

⁸¹ *Id.*

⁸² *Too Much Pain*, *supra* note 71, at 19.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

genital mutilation.⁸⁷ Thirteen-year-old Suhair al-Bataa was forced by her father to undergo the procedure under Dr. Fadl's supervision.⁸⁸ Originally acquitted of all charges, Dr. Fadl's conviction was monumental in the judicial system's monitoring of medical professionals' role in curbing continuation of genital mutilation.⁸⁹

Female genital mutilation in Egypt is particularly compelling because in many instances, trained healthcare professionals have historically performed the procedure. This includes trained doctors, nurses, and midwives. Approximately 77% of women who have reportedly undergone female genital mutilation indicate that a medical professional conducted the operation.⁹⁰ The theory here being that girls and women experience far fewer health-related problems, when a trained healthcare professional performs the operation. However, that has not always been the case. Considering the procedure provides no medical benefit whatsoever, complications are almost inevitable.

Despite Egypt's attempt at the medicalization of genital mutilation, the physical risks and consequences of the practice remained a primary point of contention. The reality was that even in a medical setting, women and young girls still faced the risk various genealogical complications that include sexual abnormalities and dysfunctions, lingering pain, scarring, complications passing urine, and dysmenorrhea.⁹¹ Finally, acknowledging these astounding risks and facing pressure from the United Nations, Egypt finally banned all forms of the practice in 2007.⁹²

⁸⁷ Emma Batha, *Egypt Doctor Convicted Over Girl's Death in Landmark FGM Case*, Thomas Reuters (Jan. 22, 2015, 9:07 AM), <http://www.reuters.com/article/us-egypt-trial-fgm-idUSKBN0KZ11Q20150126> [https://perma.cc/6U36-ALXC].

⁸⁸ Guerlin Orla, *Egypt's FGM Trial 'Convicts Doctor of Manslaughter'*, BBC News (Jan. 26, 2015), <http://www.bbc.com/news/world-middle-east-30983027> [https://perma.cc/CW6N-AVNL].

⁸⁹ Batha, *supra*, note 87.

⁹⁰ *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change*, UNICEF 2 (July 2013) [https://perma.cc/BSZ6-AL55].

⁹¹ *Id.* at 146-48, 166.

⁹² Ian Black, *Egypt Bans Female Circumcision After Death of 12-Year-Old Girl*, The Guardian (June 29, 2007, 7:21 PM), <http://www.theguardian.com/world/2007/jun/30/gender.humanrights>. [https://perma.cc/HY3V-C7LB].

While the Egyptian government initially banned female genital mutilation in 1997, it made various exceptions that allowed the practice to continue.⁹³ However, in 2007, the government found itself combatting outrage over the death of a twelve-year old girl who had undergone the procedure for nine dollars at private clinic.⁹⁴ The young girl suffered immensely during the course of her procedure, which was considered by many as a mishandled operation.⁹⁵ She went on to suffer further as the medical team gave her an overdose of anesthesia, ultimately resulting in her death.⁹⁶ Members of the Egyptian Health Ministry finally spoke up and implemented an overarching ban prohibiting *any* medical professional from conducting the operation in public or private practice.⁹⁷ The Ministry threatened grave consequences for any healthcare professional that ignored the ban and proceeded to conduct cutting operations.⁹⁸

Yet, although medical professionals are now legally restricted from perpetuating the practice, many still continue to provide female genital mutilation services in government and private clinics.⁹⁹ The physical ramifications of female genital mutilation has just recently been introduced in Egyptian medical schools, which still leads many doctors, nurses, and midwives to believe the practice remains of some medical benefit or necessity.¹⁰⁰ While some healthcare professionals have argued that they are simply adhering to the cultural demand for the procedure, the reality is that the practice area is extremely lucrative.¹⁰¹

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Magdi Abdelhadi, *Egypt Forbids Female Circumcision*, BBC News (June 28, 2007), http://news.bbc.co.uk/2/hi/middle_east/6251426.stm. [https://perma.cc/WUF7-ZVC5]

⁹⁸ *Id.*

⁹⁹ Hanan Fayed, *Licensed Doctors Performed 76% of Egypt's FGM: Health Ministry*, Cairo Post (March 2, 2015, 1:46 PM), http://www.thecairopost.com/news/139710/inside_egypt/licensed-doctors-perform-76-of-egypts-fgm-health-ministry. [https://perma.cc/H9D7-U6SX].

¹⁰⁰ Patrick Kingsley, *In Egypt, Social Pressure Means FGM is Still the Norm*, The Guardian, <http://www.theguardian.com/world/2015/feb/06/female-genital-mutilation-egypt> (last visited February 6, 2015). [https://perma.cc/Q68J-EK7A].

¹⁰¹ Fayed, *supra* note 99.

2. Western Trends

As of 2011, UNHCR statistics indicate that the majority of Egyptian women ages 14-64 who have likely been exposed to female genital mutilation are seeking asylum in the United Kingdom.¹⁰² Ultimately, 50 out of 55 girls and women asylum aspirants bore some likely connection to female genital mutilation.¹⁰³ Sweden, France, and Italy tie for second place in terms of female asylum applicants in the aforementioned age range, whereby each country is documented as having had 27 applicants each.¹⁰⁴ With all three countries each possessing 30 female applicants overall.¹⁰⁵ Few or none of statistics show where in the United States Egyptian asylees are seeking refuge.

D. Reasonable Fear of a Child—Ethiopia

Considering many young girls undergo female genital mutilation, the practice in many ways conflicts with international doctrines set in place to protect the rights of children.

1. Inside Ethiopia

Plaintiff Abay, seeking asylum for herself and minor-aged daughter narrated her own horrific encounter with female genital mutilation at the hands of her mother.¹⁰⁶ What proved to be generational and cultural pressure to continue the practice with her four daughters led Abay to flee to the United States from her native Ethiopia.¹⁰⁷

While the immigration judge in the matter found no “‘imminent fear [of female genital mutilation], but rather a general ambiguous fear[,]” the appeals court placed great emphasis on the minor-child’s fear of being succumbed to the tortious practice upon return to her grandmother in Ethiopia.¹⁰⁸ Most paramount, was the court’s reference to the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (1992).¹⁰⁹ The

¹⁰² *Too Much Pain*, *supra* note 71, at 18.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Abay v. Ashcroft*, 368 F.3d 634, 639 (6th Cir. 2004).

¹⁰⁷ *Id.* at 639.

¹⁰⁸ *Id.* at 639-40.

¹⁰⁹ *Id.* at 640.

Handbook instructs adjudicators to analyze claims for asylum while bearing in mind that “very young children may be incapable of express fear to the same degree or the same level of detail as adults.”¹¹⁰ Given this guidance, the court found Abay’s daughter sufficiently proved fear as required to establish oneself as a “refugee” under the Act.¹¹¹

Considered an honored tradition, statistics show close to 80% of women in Ethiopia, ages 15-49, undergo female genital mutilation.¹¹² Most alarming, is Ethiopia’s tremendously high rate of infant girls enduring any form of female genital mutilation.¹¹³ Statistics indicate that more than half of the women who have undergone the procedure, have been cut in their infancy stages, that is before their first birthday.¹¹⁴ This raises a critical point, given the international community’s adamant assertion of the rights of a child.

The United Nations Convention on the Rights of the Child (CRC) serves as an example of the international world’s commitment to advocacy and protection of children. Enacted in November 1989, the CRC undoubtedly seeks to protect the rights and autonomy of a child. In its preamble, the CRC even references its legislative predecessor, the Geneva Declaration of the Rights of the Child of 1924 by stressing that “‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.’”¹¹⁵ Although the CRC alludes to the vitality of traditional and cultural values of a people, Article 19 of the Convention vigorously imposes upon its members a responsibility to safeguard children from physical or mental violence and abuse.¹¹⁶ Under the CRC, “[s]tates parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury, or abuse[.]”¹¹⁷ Thus, an infant child’s exposure to

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Female Genital Mutilation/Cutting*, UNICEF (Nov. 2005), http://www.childinfo.org/files/Ethiopia_FGC_profile_English.pdf. (on file with author).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Convention on the Rights of the Child, 1577 U.N.T.S. 3, 28, I.L.M. 1448, (Nov. 20, 1989) [hereinafter CRC].

¹¹⁶ *Id.*

¹¹⁷ *Id.*

such physical stress and infiltration can assuredly be categorized as violence, which is prohibited under the guide of the CRC. Ethiopian parents' consent to the practice overtly contradicts their responsibility outlined in the CRC's preamble. The Convention commands families of member states to uphold responsibility to protect children primarily because of their vulnerability.¹¹⁸

Furthermore, African countries have also made a commitment to the protection of children in a way that should thwart the continuance of female genital mutilation. The African Charter on the Rights and Welfare of the Child in part also acknowledges the unique components of an African child's traditional, cultural, and socio-economic circumstances that make safeguards that much more imperative.¹¹⁹ The Charter, however, proceeds to curb any misconception about African nations' stance on culture and tradition versus adopted human rights principles. Under Chapter 1, Article 1, "[a]ny custom, tradition, cultural or religious practice that is inconsistent with the rights, duties, and obligations. . . in the present Charter shall to the extent of such inconsistency be discouraged."¹²⁰

Article 21 of the Charter speaks specifically to the protection of children against harmful social cultural practices.¹²¹ Under this section of the Charter, states must implement measures to effectively eradicate those social and cultural practices that are "prejudicial to health or life of a child" and "discriminatory to the child on the grounds of sex."¹²² While the Charter almost exactly mirrors the CRC in purpose, language, and structure, this provision is omitted from the CRC and is, thus, undeniably unique to the cultural experience. Young Ethiopian girls' vulnerability to undergoing female genital mutilation as a cultural practice is poignant given their increased risk of health problems and discomfort. Furthermore, the fact that parents only subject their daughters to the practice harps upon the Charter's prohibition on discriminatory practices against a particular sex. While the Charter provides a progressive movement towards eradication of

¹¹⁸ *Id.*

¹¹⁹ *African Charter on the Rights and Welfare of the Child*, African Commission on Human and Peoples' Rights, <http://www.achpr.org/instruments/child/> (last visited Mar. 17, 2017). [<https://perma.cc/D7U9-3UG6>].

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

the practice, the reality is that Ethiopian girls and young women are still at high risk of enduring genital mutilation.

Although often with much reservation, Ethiopian parents bear the burden of consenting to exposing their daughters to the age-old practice. Parents often feel pressured by older family members and the greater community. They feel obliged to concur for fear that their daughters will be isolated, shunned, and incapable of marriage unless they comply with the practice.¹²³ Yet, this is at the expense of the child.

2. Western Trends

UNHCR's statistics from its 2011 report purport that 123 out of 165 Ethiopian girls and women ages 14-64, sought asylum in Germany for reasons likely related to female genital mutilation.¹²⁴ Italy held the second highest rate of applicants with 82 out of 110 female asylum seekers potentially upset in some regard by genital mutilation.¹²⁵ Sweden came in third place as one of the highest rates.¹²⁶ In Sweden, 52 out of 70 total female asylum seekers reflected the aforementioned criteria related to female genital mutilation.¹²⁷ Few or none of statistics show where in the United States Ethiopian asylees are seeking refuge.

E. It's a Man's World—Yemen

In a practice predominantly involving women, it is important to consider what role, if any, men play in the evolution of female genital mutilation.

1. Inside Yemen

“My continued work on this phenomenon over a six-year period revealed that female genital mutilation is deeply rooted in Yemen.”¹²⁸

¹²³ Indrias Getachew, *Battling an Ancient Tradition: Female Genital Mutilation in Ethiopia*, UNICEF (July 10, 2006), http://www.unicef.org/protection/ethiopia_34881.html. [<https://perma.cc/KQU3-SZCB>].

¹²⁴ *Too Much Pain*, *supra* note 71, at 24.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Amel Al-Ariqi, *Yemen: 24 Percent of Yemeni Women Experience Genital Mutilation*, Yemen Times (Feb. 27, 2007) [http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1171338119&ucat=1&\[http://perma.cc/6XLA-RW48\]](http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1171338119&ucat=1&[http://perma.cc/6XLA-RW48]).

Soheir Stolba, Ph.D. provides illustrative accounts of the practice in Yemen.¹²⁹ Stolba's studies show that 95% of the time, girls undergo the procedure at home with mothers being the primary decision-maker.¹³⁰

To date, Yemen has not outlawed female genital mutilation, but has implemented a ministerial decree prohibiting the procedure in government and health facilities.¹³¹ A recorded 24% of Yemeni women have undergone female genital mutilation in some form or fashion.¹³² Local women also trained in ear piercing, birthing, and female genital cutting often perform the procedures.¹³³ The reality is that in most cases, young women and girls undergo the practice at home with the primary consent of their mothers, as opposed to their fathers.¹³⁴ This calls into question what role, if any; men have in mobilizing and preserving the practice.

Scholars have determined that a man's role in the practice of genital mutilation generally varies across societal bounds. In many regards, to men, "[female genital mutilation] is women's business."¹³⁵ As a result, there are those who seek to better understand what contribution men have in the traditional practice. For example, social anthropologist Khalid Roy identifies five unequivocal male responses that are prevalent in Yemen and other states that practice female genital mutilation.¹³⁶ He compresses these responses into: 1) Mr. Apathetic, 2) Mr. Aggressive, 3) Mr. Anxious, 4) Mr. Misinformed, and 5) Mr. Apologist.¹³⁷

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ U.S. Dep. of State, Yemen: Report on Female Genital Mutilation (June 1, 2001), <https://2001-2009.state.gov/g/wi/rls/rep/crfgm/10112.htm> [<https://perma.cc/P9VZ-RJER>].

¹³² Al-Ariqi, *supra* note 128, para. 1.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Khalid Roy, *What Kind of Men Support FGM? An Illustrated Guide*, The Guardian, (Aug. 1, 2014), <https://www.theguardian.com/global-development-professionals-network/2014/aug/01/what-kind-of-men-support-fgm-an-illustrated-guide> [<https://perma.cc/PCS3-CU5K>].

¹³⁶ *Id.*

¹³⁷ *Id.*

According to Khalid Roy, men that express an indifferent opinion or response to female genital mutilation are apathetic.¹³⁸ Here, since older women tend to carry out the physicality of the gruesome procedure, “men can afford to be blasé[.]”¹³⁹ In Roy’s opinion, such physical, graphic visual understanding of what the practice physically entails would help men better conceptualize the ghastly procedure and diminish correlation to male circumcision.¹⁴⁰

Alternatively, Roy categorizes men who are adamant “when consummating [their] marriage to a woman who has undergone the cut” as aggressive.¹⁴¹ Yemen, like other countries prevalent with female genital mutilation, is a conservative society constructed around “statutory law, sharia, traditional tribal practices, and customary law[,]” which often leads to women being vulnerable to aggression, violence, and discrimination.¹⁴² Thus, the heinous cutting experience in along with domineering, vehement, and aggressive push from a man only exacerbates the issue.¹⁴³

Roy goes on to classify fathers and husbands who experience apprehension as a result of their daughters or wives enduring female genital mutilation as anxious.¹⁴⁴ Men in this category often inadvertently struggle with confusion as it relates to their masculinity, the pain their daughters or wives experience, and a loss of autonomy in the process.¹⁴⁵ Ultimately, men find themselves searching for ways to rationalize continuation of the practice, but become stressed when one of their own has to undergo the procedure.¹⁴⁶ Roy contends that such forced rationalization can only be curbed by increased open dialogue contesting social and cultural justifications for the practice’s continuance.¹⁴⁷

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Country Profiles: Yemen, Social Inst’n & Gender Index*, <http://www.genderindex.org/country/yemen> [https://perma.cc/BS5H-K6F5] (last visited on Feb. 27, 2017).

¹⁴³ Roy, *supra* note 135.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

According to Roy, some men's ignorance can simply render them misinformed.¹⁴⁸ He describes some men's reliance on religious indoctrination as a means to justify female genital mutilation and campaigns to end the practice as "[W]estern conspiracy to corrupt and liberate women."¹⁴⁹ In a nation where virtually all people practice Islam, Yemeni women serve as an example of those who endure cutting as result of some form of religious rationalization.¹⁵⁰ For example, the Quran, Bible or other religious doctrines make no mention of female circumcision, yet religious proponents find reasons for religious necessity.¹⁵¹ Roy emphasizes the need for assurance in religious communities that liberating women through ending genital mutilation does not somehow violate their religious obligations.¹⁵²

Finally, Roy labels men who minimize the practice as a local tradition are apologists.¹⁵³ This would include men outside of the country who fear being designated as neo-colonialism sympathizers, but who are, in Roy's opinion, really ambivalent to "the suffering of young girls and women[.]"¹⁵⁴ The reality is, men and other diverse entities do play a role in female genital mutilation.

2. Western Trends

UNHCR's 2011 statistics reported the United Kingdom had the highest rate of Yemeni female applicants, ages 14-64, applying for asylum for reasons related to female genital mutilation.¹⁵⁵ In 2011, 11 out of 30 girls and women filed for asylum under these grounds.¹⁵⁶ With the second highest rate of cutting victims, Sweden reported 10 out of 25 female applicants.¹⁵⁷ Lastly, Germany came in third with 4 out of 10 women overall founding an asylum claim on the basis of persecution related to female genital mutilation.¹⁵⁸ Few or no of

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Al-Ariqi, *supra* note 128, para. 2.

¹⁵¹ *See generally id.*

¹⁵² Roy, *supra* note 135.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Too Much Pain*, *supra* note 71, at 23.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 21.

¹⁵⁸ *Id.* at 24.

statistics show where in the United States Yemeni asylees are seeking refuge.

V. POLICY RECOMMENDATIONS FOR WESTERN STATES

A. Legal Improvements

As a safe haven, the West has a responsibility to protect the interests of asylees both in law and policy. Given typical circumstances, female genital mutilation largely tramples over a woman's informed consent rights. Therefore, as a preliminary matter, Western hosts should offer asylees educational tools that expose them to a general understanding of consent. Women should undeniably become privy to the concept of consent to understand they have been or could have been violated, as well as to prevent any future violations.

Next, the West must lead by example when it comes to supporting best practices used to combat genital mutilation. Legally binding after ratification, research shows the CRC has been the most successful U.N. human rights treaty given, with the exception of two nations, "every self-governed nation... has both signed and ratified the CRC."¹⁵⁹ Yet the United States' decision to not join CEDAW or the CRC is ironic and detrimental to the expansion of human rights. In general, the United States has only ratified four of the seven human rights conventions.¹⁶⁰ Its biggest concerns with ratification of human rights conventions relate to national sovereignty, federalism, reproductive, and family rights.¹⁶¹

Yet, early on, the CRC states that the family is the 'fundamental group of society' and that 'parents have common responsibilities for the upbringing and development of the child.' Articles 12 and 13 of the CRC focus on children's right to freedom of expression. However, Article 13 describes specific restrictions to this freedom, including restriction '[f]or the protection

¹⁵⁹ Lainie Rutkow & Joshua T. Lozman, *Suffer the Children?: A Call for the United States Ratification of the United Nations Convention on the Rights of the Child*, 19 Harv. Hum. Rts. J. 161, 162 (2006).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

*of . . . morals.’ The term ‘morals’ is not defined in the CRC, which allows each party to interpret the term.*¹⁶²

Ultimately, the United States’ role is particularly vital in the human rights movement given its powerful and influential role in the international arena. Thus, its signature and ratification of CEDAW and the CRC is critical to supporting cutting asylees in the West.

Finally, while many Western states grant asylum based on claims of exposure or reasonable fear of exposure to genital mutilation, it is difficult to make a successful claim. In the United States for example, derivative asylum only offers refugee status to spouses and children.¹⁶³ Under this system, parents or extended family members are unable to attain asylum unless they have themselves established refugee status on some other basis. This becomes problematic considering realistically speaking it does not consider the various family members that may flee to the West to protect their nieces, granddaughters, or cousins from cutting. Legal parameters should, thus, reflect and accommodate for legitimate asylee circumstances.

B. A Shift in Medical Accommodations

Western medical professionals need both medical and psychological training to best accommodate victims and potential victims of female genital mutilation. Global medical specialists acknowledge that victims face immense health hazards due to the ghastly “conditions under which. . . [circumcisions] are performed.”¹⁶⁴ While female circumcision has been outlawed in many nations, most women and girls undergo the practice in localized settings, often without anesthesia or sterilized medical utensils.¹⁶⁵

These procedures commonly take places under primitive surgical conditions, often in a family home, lacking basic sanitation, anesthesia or proper surgical

¹⁶² *Id.*

¹⁶³ Melanie A. Conroy, *Refugees Themselves: The Asylum Case for Parents of Children at Risk of Female Genital Mutilation*, 22 Harv. Hum. Rts. J. 109, 112 (2009).

¹⁶⁴ Nahid Toubia, *Female Circumcision as a Public Health Issue*, 331 New Eng. J. Med. 712, 712 (1994).

¹⁶⁵ Nahid Toubia, *Female Genital Mutilation and the Responsibility of Reproductive Health Officials*, 46 Int’l J. of Gynecology and Obstetrics 127 (1994).

*instruments. The same instruments are often used to cut the genitals of several girls consecutively without any use of antiseptic. The practice may cause physical, as well as psychological damage to a woman. Physical harm includes tetanus, rupture of the vaginal walls, formation of dermoid cysts on scar lines, septicemia, lengthy periods of obstructed labor, chronic uterine and vaginal infections, obstruction of menstrual blood flow and increased risks of injury, and death to both the infant and the mother during childbirth.*¹⁶⁶

Beyond sanitation concerns associated with female circumcision, there is also presumably an issue with the intrusive physical effects of practice. Type III—Infibulation, for example, aggressively obstructs a woman’s vaginal opening by only leaving enough space for urine to pass; the size of the opening has sometimes been described as “the kernel of corn.”¹⁶⁷ Infibulation, therefore, particularly raises long-term risks because of its cumbersome and dangerous “interference with a [woman’s] menstrual and urine flow.”¹⁶⁸ More concerning, is the risk Infibulation poses to women who have yet not been deinfibulated, and go on to endure childbirth.¹⁶⁹ Deinfibulation involves cutting a girl or woman yet again to allow for intercourse and childbirth.¹⁷⁰ Many women may seek to undergo deinfibulation immediately after marriage or prior to childbirth,¹⁷¹ but may also struggle to actually find competent doctors to perform the surgery. Deinfibulation, however, has the potential to cause unimaginable tearing of tissue.¹⁷² Furthermore, the practice’s prevalence amongst girls from infancy

¹⁶⁶ Toubia, *Female Circumcision as a Public Health Issue*, *supra* note 164, at 715.

¹⁶⁷ Karen Hughes, *The Criminalization of Female Genital Mutilation in the United States*, 4 J.L. & Pol’y 321, 322 (1995).

¹⁶⁸ *Id.* at 363.

¹⁶⁹ *Id.*

¹⁷⁰ See Daliah Setareh, *Women Escaping Genital Mutilation—Seeking Asylum in the United States*, 6 UCLA Women’s L.J. 123, 123 (1995).

¹⁷¹ *Female Genital Mutilation: Caring for Patients and Safeguarding Children*, British Medical Ass’n. (July 2011), at 11.

¹⁷² Toubia, *supra* note 164, at 713.

through adolescence all the way to women in their adulthood,¹⁷³ gives doctors a wide range of potential patients that may need corrective surgery. The potential unavailability of competent health professionals ready to properly execute deinfibulation as compared to the considerable number of women and girls needing to undergo the reconstructive procedure should raise great concern.

Ultimately, the aforementioned disparity would suggest that there is a vital need for Western medical personnel to get a better understanding of the physical complications a woman having endured genital mutilation faces. She will undoubtedly need specialized medical care well into various stages of her life. Such care will have to encompass practical reconstructive surgery needs, childbirth accommodations that protect mother and child, menstruation regularity assistance, urinary tract assistance, sex therapy, and possibly even menopausal-stage aid.

Ignorant to physical obstacles patients encounter, researchers have not conducted many studies to gauge the psychological implications of cutting.¹⁷⁴ Yet, it is well founded throughout the medical community that physical complications only exacerbate psychological trauma.¹⁷⁵ Therefore, lay opinions suggest that girls and women endure “fear, trauma, and after-effects of the operation.”¹⁷⁶ Some women experience intense anxiety, fear, and even depression related to concern of over her genitals, dysmenorrhea, and potential infertility.¹⁷⁷ Many other women experience an inability to experience sexual pleasure, which can be both a mental and physical inhibition.¹⁷⁸ Intertwined are a woman’s “denial and acceptance of social norms.”¹⁷⁹ Medical professionals certainly need to tackle the issues surrounding women’s internal and psychological struggles connected to such shock of undergoing physical cutting of their genitals. The shock and physical

¹⁷³ Wondimu Shanko Yirga, et al., *Female Genital Mutilation: Prevalence, Perceptions, and Effect on Women’s Health in Kersa District of Ethiopia*, 4 Int’l J. Women’s Health 45, 46 (2012).

¹⁷⁴ Toubia, *supra* note 164, at 714.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

trauma girls and women may endure or fear extends beyond the physical, instead reaching psychological heights.¹⁸⁰

C. Protection of Children's Rights

Most prevalent amongst young girls, female circumcision brings to light the intricate problems child victims and potential victims may face in the long run. Children, therefore, likely need specialized support upon arrival in the West. For example, children having undergone Type III Infibulation have to endure repeated surgical operations to accommodate various stages of their lives.¹⁸¹ This kind of repeated intrusion on a girl's sexual organs can imaginably cause physical, emotional, and psychological discomfort, in some regards leaving victims of sexual violence open and vulnerable to re-victimization.

Tension, however, presumably occurs when courts seek to determine at what point their protection of a child's health and welfare may infringe upon a parent's decision-making rights. So while courts sometimes defer to parental authority based on cultural or religious belief, states also owe children a duty of care when such deferential authority would put a child's life in danger.¹⁸² Child abuse laws can and have in some cases been construed to protect children from undergoing genital mutilation.¹⁸³ Consequently, a young girl having attained asylum in the West for fear of undergoing cutting in her home country is still owed protection from her parents, family, or others that could later endanger her life.

Similar to general education on consent, there is a vital importance to providing young girls and young women with information about sexual violence. Female genital mutilation in many ways is a violent act against a young woman. By unwillingly mutilating young women in such a gruesome way, in most cases against their will, a perpetrator robs these women of any potential sexual freedom. No longer will the young women be able to, in most cases, freely explore their bodies or experience pleasure to its highest potential. Young girls and women exposed to genital mutilation should obtain general knowledge about

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Catherine L. Annas, *Irreversible Error: The Power and Prejudice of Female Genital Mutilation*, 12 J. Contemp. Health and Pol'y 325, 336 (1996).

¹⁸³ *Id.*

what acts constitute violence against women as a means to arm themselves retrospectively and prospectively in the Western world.

D. Social Change

Westerners should avoid one-dimensional thinking when it comes to understanding female circumcision. While swiftly condemning the tradition (female circumcision), the West's credibility is called into question when Western culture permits such practices as cosmetic surgery, tattooing, and body piercing.¹⁸⁴ Female circumcision can in some ways be linked to sexuality or misogynistic representations of women, often constructed or enhanced by men. However, procedures like breast augmentations are widely controversial in the West¹⁸⁵ are still permissible and highly prevalent. Like female genital mutilation, breast augmentation has no real health benefit and instead brings about various health risks such as blood clotting, pain, infection, implant ruptures, and difficulty in detecting cancer.¹⁸⁶ Other procedures such as tattooing and piercing have been described as individualistic.¹⁸⁷

Practices such as cosmetic surgery, tattooing, and piercing are highly idealized and accepted as tradition in the West. And while the West may contend that they at least require consent from the individual,¹⁸⁸ it cannot negate that some cultures have comparable aversion towards them. Therefore, Westerners should be prepared to reconcile traditionally accepted Western practices with traditions like cutting. Furthermore, rationalization must be construed to acknowledge and respect the cultural homage cutting seeks to preserve just as tattooing or cosmetic enhancement does.

Imbedded in the social context, is the discussion of cultural prejudice particularly as it relates to feminism. Scholar Eugenie Ann Gifford goes into great detail about the often-missed opportunity to incorporate women from different race, ethnic, or cultural backgrounds into the fold against genital mutilation.¹⁸⁹ Gifford exposes feminist

¹⁸⁴ *Id.* at 342.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Nikolas L. Proehl, *Investigating Moral Boundaries through Tattooing*, 4 J. Undergrad. Research at Minn. St. U. Mankato 1, 8 (2004).

¹⁸⁸ Annas, *supra* note 185 at 342.

¹⁸⁹ Eugenie Ann Gifford, "The Courage to Blaspheme": *Confronting Barriers to Resisting Female Genital Mutilation*, 4 UCLA Women's L.J. 329, note 1 (1994).

scholars “failing to adequately consider issues of concern to women of color. . .in effect pretending that there is one prototypical ‘woman,’ and she is white, middle, and American.”¹⁹⁰ This may have huge ramifications on the movement against mutilation if Western women fail to diversely conceptualize female genital mutilation.

Moreover, the inability to think beyond one’s Western cultural bounds produces “‘cultural imperialism’ of presuming that the moral dictates of their own, dominant society are the ‘right’ ones, and cultural practices which depart from these dictates are ‘wrong’ and should be eradicated.”¹⁹¹ Gifford also importantly notes that any implication that “all women suffer the same oppression simply because we are women is to lose sight of the many varied tools of patriarchy.”¹⁹² Therefore, social feminist movements and attempts to change male perspectives should diversify their understanding and views to best support mutilation victims.

VI. CONCLUSION

Even in the height of female liberation, Fauziya’s story and the practice of female genital mutilation persists throughout the continental globe. The reality is that many of these women and girls are seeking refuge in Western nations. Yet, Western hosts are ill prepared to handle their demands. The West fundamentally needs to become well equipped to accommodate the unique and delicate needs of these particular asylees. The most fruitful approach to accomplishing this is to first recognize the poignant pragmatic concerns related to female asylum seekers from countries charged with female genital mutilation. In doing so, Western countries will more authentically provide long-term refuge in the ultimate best interest of the asylee.

¹⁹⁰ *Id.* at 331.

¹⁹¹ *Id.* at 332.

¹⁹² *Id.*