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ESSAY: CLEANING OUR OWN HOUSE: "EXOTIC" AND FAMILIAL HUMAN RIGHTS VIOLATIONS

Hope Lewis and Isabelle R. Gunning***

Women's human rights activism in the United States tends to focus on women outside the U.S., or on women from other cultures who enter the U.S. as immigrants or asylum-seekers. Attention centers on condemning exotic violations that occur in foreign countries. This tendency is not new; the United States government has avoided internal application of international human rights standards—even those it helped elaborate—for decades.¹

The forms of violence against women that are associated with certain non-western traditional practices, such as dowry killings and physical attacks on women who violate dress codes, are the subject of outrage in the U.S. media and among activist organizations. Similarly, the human rights violation of female genital cutting (FGS, otherwise known as "female genital mutilation" or "FGM"),²

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¹ See HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 750-58 (1996) (discussing the delay in U.S. ratification of the International Covenant on Civil and Political Rights and subsequent U.S. reservations to that Covenant upon ratification). See also MARY DUDZIAK, DESEGREGATION AS A COLD WAR IMPERATIVE IN CRITICAL RACE THEORY: THE CUTTING EDGE 110 (Richard Delgado ed., 1995) (discussing the implications of Cold War brinkmanship for internal civil rights law in the United States); Dorothy Q. Thomas, *Advancing Rights Protection in the United States: An Internationalized Advocacy Strategy*, 9 HARV. HUM. RTS. J. 15 (1996).

² The term most commonly used in the west for these practices is "female genital mutilation" (FGM), while many English-speaking people in practicing regions prefer the term "female circumcision." Some people in practicing regions object to the term "mutilation" because it implies that parents intentionally harm and disfigure their children, while western activists object to the term "circumcision" because it can be mistakenly identified with most forms of male circumcision, which carry less severe side effects than most forms of FGC. Isabelle R. Gunning has used the term "female genital surgeries" in reference to these practices. See Isabelle R. Gunning, *Arrogant Perception, World-Traveling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1992). For a discussion of the controversy over terminology, see Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights*

from which some African women seek asylum, seem alien or exotic to many westerners. Yet the abuses those women, and other people of color, suffer in our own country also can amount to violations of human rights.

As Black feminists, and human rights advocates, we have suggested in previous scholarship that issues of race, gender, and location are crucial to critical analysis of the complex issues raised by the traditional practice of FGS.³ In this brief essay, we reflect, from a critical race feminist perspective, on the events surrounding a recent U.S. gender asylum case. The experiences of Fauziya Kassindja, a young asylee from Togo, illustrates the irony of American complacency about the status of the United States as a haven for the protection of human rights.

I. THE "OTHER" STORY

The customary or ritual practice of female genital cutting, refers to a

Discourse and the Cultural Divide, 8 HARV. HUM. RTS. J. 1, 4-8 (1995).

³ The English-language literature on FGS is large, and growing. For ethnographic, sociological, and medical perspectives on the practices, see, e.g., ASMA EL DAREER, *WOMAN, WHY DO YOU WEEP?: CIRCUMCISION AND ITS CONSEQUENCES* (1982); MINORITY RIGHTS GROUP INTERNATIONAL, *FEMALE GENITAL MUTILATION: PROPOSALS FOR CHANGE* (1992); HANNY K. LIGHTFOOT-KLEIN, *PRISONERS OF RITUAL: AN ODYSSEY INTO FEMALE GENITAL CIRCUMCISION IN AFRICA* (1989); RAQUYA H. D. ABDALLA, *SISTERS IN AFFLICTION--CIRCUMCISION AND INFIBULATION OF WOMEN IN AFRICA* (1982); Janice F. Boddy, *Womb as Oasis, The Symbolic Content of Pharaonic Circumcision in Rural Northern Sudan*, 9 AM. ETHNOLOGIST 682 (1982). For discussions of the international human rights implications of the practices see, e.g. Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, 26 NEW ENG. L. REV. 1509 (1992); Gunning, *supra* note 2; Isabelle R. Gunning, *Female Genital Surgeries*, in *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW: A REFERENCE GUIDE* (Kelly Askin & Dorean Koenig eds., forthcoming 1998) [hereinafter REFERENCE GUIDE] (manuscript on file with author); Lewis, *supra* note 2; Kay Boulware-Miller, *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, 8 HARV. WOMEN'S L.J. 155 (1985); Leslye Armede Obiora, *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision*, 47 CASE W. RES. L. REV. 275 (1997).

range of physical excisions performed on the female genitalia.⁴ Although the traditional practice of FGS is now concentrated in certain regions of the African continent, the surgeries have a centuries-old history and have been performed in countries throughout the world—including the United States and England.⁵ Despite culturally-specific justifications for its continued practice (including health,⁶ religion⁷ ethnic unity, and aesthetics,⁸) these surgeries generally function to

⁴ FGS encompasses a range of surgeries involving various degrees of invasiveness. There are generally three to four types of operations. The "sunna" type is the mildest and rarest form and is the closest to being a "circumcision." It involves the cutting, or burning away of the tip of the prepuce or hood of the clitoris. The "intermediate" involves the removal of the clitoris and some or all of the labia minor. This form of the surgery is sometimes also referred to as "excision." The intermediate form can involve not only the removal of the clitoris and labia minora, but also some slices of the labia majora. "Infibulation," or the pharonic form, is the most severe of the surgeries and involves the removal of the clitoris and all of the labia minora and labia majora. World Health Organization, *A Traditional Practice that Threatens Health-Female Circumcision*, 40 WHO CHRON. 31, 32 (1986). A range of short term and long term complications can beset the circumcised girl or woman. The existence and severity of any of these complications is generally related to the type of surgery performed, the hygienic conditions employed and the skill of the circumciser—as well as the degree to which the child or young woman struggles during the operation. Short-term complications include hemorrhaging, infections, tetanus, septicemia and shock, all of which can be life-threatening. In the severest cases, intercourse and childbirth can be both painful and difficult, either or both requiring some tearing or cutting of the scarred tissue. See generally NAHID TOUBIA, *FEMALE GENITAL MUTILATION: A CALL FOR GLOBAL ACTION* 13-19 (1993).

⁵ See Ben Barker-Benfield, *Sexual Surgery in Late Nineteenth Century America*, 5 INT'L J. HEALTH SERV. 279 (1975); ANN G. DALLY, *WOMEN UNDER THE KNIFE: A HISTORY OF SURGERY* 159-84 (1991) (discussing the practice of clitoridectomy and hysterectomy in England and the United States as a means of controlling the behavior of women). Cf. MAN-MADE MEDICINE: *WOMEN'S HEALTH, PUBLIC POLICY, AND REFORM* (Kary L. Moss ed., 1996) (discussing public policy implications of gender bias in health care).

⁶ While some traditional practitioners have argued that the continued practice is intended to promote the health of the woman and her future children, all practitioners of modern medical and surgical techniques agree that the practices often result in physical harm to both mother and child, with no corresponding health benefits. See generally World Health Org., *supra* note 4; Toubia, *supra* note 4, at 13-19.

⁷ Although it is often difficult to separate "religion" from "custom", Islam, the organized religion with which FGS has come to be associated, does not require the practice of FGC. See Lewis, *supra* note 2, at 21-22. Islamic scholars in Egypt and that country's

control female sexuality and to underscore socially constructed binary gender differences.⁹ The practice of FGS affects millions of women worldwide. Although it continues as a widespread traditional practice, it is now recognized to be a violation of the fundamental human rights of women by the United Nations,¹⁰ by many governments,¹¹ and by non-governmental organizations in

highest court recently reiterated this position. See, e.g., *No More Excuse for Mutilation*, NEWSDAY, Jan. 4, 1998, at B3, and *Freedom From Mutilation*, N.Y. TIMES, Dec. 30, 1997, at A1. However, as noted earlier, FGS has been practiced among peoples of Islamic, Christian, Judaic, and traditional African religions over hundreds of years. TOUBIA, *supra* note 4, at 31-32.

⁸ See, e.g., Gunning, *supra* note 2, at 215-24; Lewis, *supra* note 2, at 21-25; Obiora, *supra* note 3, at 293 (discussing justifications for the traditional practice of FGS); see also Obiora *supra* note 3, at 295-97 (discussing the implications of medicalization, allowing FGS to be performed in hygienic medical settings with the use of anesthesia).

⁹ Sexual sensation and pleasure can be reduced or eliminated by the surgeries. Some studies support the intuitive presumption that genital surgeries, especially the most severe forms which involve the entire removal of the clitoris, would rob a woman of all sexual sensation or pleasure. However, other studies suggest that equating the circumcision with automatic frigidity is incorrect. See LIGHTFOOT-KLEIN, *supra* note 3, at 80-102 (discussing studies of sexual sensitivity of circumcised women).

¹⁰ Among the international instruments that address FGS directly, or indirectly, are the following: Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. 46, at 193, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 (*entered into force* Sept. 3, 1981); U.N. Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. GAOR, 48th Sess., Supp. No. 49, at 217, U.N. Doc. A/RES/48/104 (1994). See also *Female Circumcision*, CEDAW Comm., Gen. Recommendation No. 14, U.N. Doc. A/45/38, reprinted in 1 Int'l. Hum. Rts. Rep. 21 (1994); *Violence Against Women* CEDAW Comm., Gen. Recommendation No. 19, U.N. Doc. A/47/38, reprinted in 1 Int'l. Hum. Rts. Rep. 25 (1994); *Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children*, Sub-Comm. on Prevention of Discrimination and Protection of Minorities, Comm. on Hum. Rts., U.N. ESCOR, 46th Sess., U.N. Doc. E/CN.4/Sub.2/1994/10/Add.1 (1994); *Report of the Fourth World Conference on Women, Beijing*, U.N. Doc. A/CONF. 177/20m, para. 124 (1995); Report of Special Rapporteur on Violence Against Women. Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms: Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Comm. on Hum. Rts. resol. 1995/85, Comm. on Hum. Rts., U.N. ESCOR, 52 Sess., at 29, U.N. Doc. E/CN.4/1996/53 (1996); Gunning, *supra* note 2;

the west and in practicing regions.¹²

Lewis, *supra* note 2, at 15-17.

¹¹ FGS has been criminalized under the domestic laws of several countries. Among them are Egypt, Kenya, Burkina Faso, the Sudan (outlawing severe forms), Norway, the United Kingdom, France (under interpretations of existing criminal laws), and recently, the United States. See Toubia, *supra* note 4, at 44-45. See, e.g., 18 U.S.C.A. §116 (West Supp. 1997). See also *Information Regarding Female Genital Mutilation*, 8 U.S.C.A. §1374, Omnibus Consolidated Rescissions and Appropriations Act of 1996: PL 104-134, April 26, 1996 110 Stat 1321, § 520 (requiring compilation of data, and outreach on FGS by Dept. of Health and Human Services). Eight states within the United States; California, Tennessee, North Dakota, Texas, Minnesota, Delaware, Illinois, and Wisconsin have enacted statutes prohibiting the practice of FGS. See *generally* REFERENCE GUIDE, *supra* note 3, at n.126, 127. See ND S.B. 2454, 54th Legis. Assembly. (North Dakota 1995); 1995 Tenn. Pub. Acts 857 (S.B. 2394, 99th Gen. Assembly, 2nd Reg. Sess.); TX H.G.B. 22442, 74th Reg. Sess. (Texas, 1995); WI A.B. 9226, 92nd Legis. Sess. (Wisconsin, 1995); IL H.B. 2572, 89th Gen. Assembly, Reg. Sess. (Illinois, 1995-96). California and Rhode Island both incorporate FGS as a form of felony mayhem. See 1996 Cal. Legis. Serv. 790 (West)(A.B. 2125, Reg. Sess.) and RI H.B. 7769, Legis. Sess. (Rhode Island, 1996). Colorado defines FGS as a form of child abuse. CO S.B. 31, 60th Gen. Assembly, 2nd Reg. Sess. (Colorado, 1996).

¹² There are many indigenous groups that work against FGS in Africa, including, Le Mouvement Femmes et Societe (Senegal), Union Nationale des Femmes du Mali, the Babiker Bedri Foundation for Women's Studies and Research (Sudan), Maendaleo Ya Wanawake (Kenya), and the National Council for Women (Ghana). For contact information about such groups see Toubia, *supra* note 4, at 49; ALICE WALKER & PRATIBHA PARMAR, *WARRIOR MARKS: FEMALE GENITAL MUTILATION AND THE SEXUAL BLINDING OF WOMEN* 369-370 (1993). The efforts of indigenous groups are coordinated by the Inter-African Commission on Traditional Practices. The World Health Organization, the Commission, and other UN human rights bodies have organized periodic conferences and studies on FGS and other harmful traditional practices. See, e.g., World Health Organization, (WHO), *Female Genital Mutilation: Report of a WHO Technical Working Group*, Geneva, 17-18 July 1995 (1996); see *Report of the Second United Nations Regional Seminar on Traditional Practices Affecting the Health of Women and Children*, Comm. on Hum. Rts., U.N. ESCOR, 46th Sess., at 15, U.N. Doc. E/CN.4/Sub.2/1994/10 (1994); see *Final Report of the Special Rapporteur, Mrs. Halima Embarek Warzazi*, Comm. on Hum. Rts., U.N. ESCOR, 443d Sess., at 17, U.N. Doc. E/CN.4/Sub.2/1991/6 (1991); World Health Organization/Eastern Mediterranean Regional Office, *Traditional Practices Affecting the Health of Women and Children: Female Circumcision, Childhood Marriage, Nutritional Taboos, etc.*, Technical Publication No. 2, Reprint of a Seminar, Khartoum, 10-15 February (1979). Women from practicing regions who live and work in the West also have organized anti-FGS

Fauziya Kassindja left Togo to avoid being forced to undergo FGS in 1995. Her membership in a particular ethnic group, the Tchamba Kunsuntu, put her and her sister at significant risk of undergoing the ritual over her own objections and those of family members, including her late father and her mother. Kassindja's father had the wealth and community standing to resist social pressures to have the ritual performed on his daughters. He was also able to provide for the education of both his daughters and his sons.¹³ However, after his death, the still unmarried 16 year old teenager, Fauziya, found her decision to refuse the surgeries challenged by her paternal aunt, who by custom, assumed responsibility for her.¹⁴ Through a combination of luck, courage, and help from her mother and sister, Ms. Kassindja was able to enter the United States and request asylum.¹⁵

Ms. Kassindja might well have expected that her plea for asylum would be met with respect and concern for her well-being. For years human rights and feminist groups in the United States had protested against FGS.¹⁶ Hillary Rodham

groups. Among them are Foundation for Women's Health, Research, and Development (FORWARD) (U.K.), Research Action and Information Network for Bodily Integrity of Women (RAINBO) (U.S.). FORWARD USA Equality Now, a U.S. based feminist human rights organization, organizes periodic letter writing campaigns and other anti-FGS efforts. Asma Abdel Halim, a Sudanese lawyer, now edits *Awaken!* an anti-FGS newsletter, published in three languages, supported by Equality Now.

¹³ The education of girls is often sacrificed in regions where educational resources are limited and where girls and young women are not expected to become wage-earners. See, e.g., UNITED NATIONS, *THE STATE OF THE WORLD'S WOMEN 1995: TRENDS AND STATISTICS* 89-91 (1995).

¹⁴ See, e.g., Celia Dugger, *A Refugee Escapes From Togo, Body Intact but Family Torn*, N.Y. TIMES, Sept. 11, 1996, at A1 (discussing circumstances of Kassindja's case and the implications for her family).

¹⁵ Ms. Kassindja's mother and sister gave her money to leave Togo before the ritual could be performed. Kassindja was able to work as a domestic in Europe, eventually purchasing false documents to enable her to reach the United States. She told customs officials about her escape from Togo and why she did not have valid documents immediately upon her arrival. See *id.*

¹⁶ Activism on FGS included campaigns organized by western feminists such as Fran Hosken and Alice Walker. African feminists, even those who are against the practices, sometimes objected to the tone of western feminist campaigns. See, e.g., Seble Dawit & Salem Mekuria, *The West Just Doesn't Get It*, N.Y. TIMES, Dec. 7, 1993 at A27; and Kagendo Murungi, *Get Away From My Genitals!: A Commentary on Warrior Marks*, 2 INTERSTICES 11 (1994); Obiora, *supra* note 3, at 312-18; Audrey Gadzekpo, *Ghananian*

Clinton, wife of the U.S. president, publicly condemned FGS at the UN Fourth World Conference on Women in Beijing, declaring that "it is a violation of human rights when young girls are brutalized by the painful and degrading practice of genital mutilation."¹⁷ Consequently, one would think that the recognition of gender-based asylum on these grounds would be a given in the United States.

That was not to be the case. Instead, Ms. Kassindja was subjected to degradation and abuse--in the form of the customary brutalization of poor people of color in the immigration and prison systems of this country. Those systems treat many immigrants as criminals and treat suspected criminals as less than human.¹⁸

II. THE SAME OLD STORY

Feminists Sidetracked by Western Preoccupation with FGM, THE WORLD PAPER, Jan. 14, 1998, available in 1998 WL 8988636. See also generally Lewis, *supra* note 2 (discussing the "cultural divide" between western and African feminists on this issue). More recently, physicians, activists, and lawyers from practicing regions who live in the United States have received greater attention in media discussions of the practice. See also David L. Marcus, *Legislating Culture: Merits of Ban on Genital Mutilation Debated*, BOSTON GLOBE, Mar. 4, 1997, at A1 (profile of Seble Dawit); Celia W. Dugger, *Rite of Anguish; Genital Ritual is Unyielding in Africa*, N.Y. TIMES, Oct. 5, 1996, at A2 (quoting Nahid Toubia); Max Vanz, *Ethiopian Led Campaign to Ban Female Mutilations*, L.A. TIMES, Sept. 4, 1996, at A20 (profile of Miri Ramsey).

¹⁷ First Lady Hillary Rodham Clinton, *When Families Flourish, Communities and Nations Will Flourish*, Address to the U.N. Fourth World Conference on Women (Sept. 5, 1995). See Patrick E. Tyler, *Hillary Clinton, In China, Details Abuse of Women*, N.Y. TIMES, Sept. 6, 1995, at A1.

¹⁸ See Joseph P. Fried, *U.S. Takes Over the Louima Case: Fifth Suspect, a Sergeant, Is Indicted*, N.Y. TIMES, Feb. 27, 1998, at A1 (discussing prosecution's case against four police officers implicated in a brutal attack on Abner Louima); Rose Marie Arce, *City Settles Bumpurs Suit*, NEWSDAY, Mar. 28, 1991, at 4 (discussing police brutality against Eleanor Bumpurs); David M. Herszenhorn, *Family Describes a Readily Friendly Man*, N.Y. TIMES, Aug. 13, 1997, at B3 (discussing police brutality against Abner Louima). See generally Abraham L. Davis, *The Rodney King Incident: Isolated Occurrence or a Continuation of a Brutal Past?*, 10 HARV. BLACK LETTER J. 67 (1993). See also HUM. RTS. WATCH, ALL TOO FAMILIAR: SEXUAL ABUSE OF WOMEN IN U.S. STATE PRISONS (1996). See HUM. RTS. WATCH & AMER. CIV. LIBERTIES UNION, HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES 98-114, 115-48 (1993) (discussing U.S. prison conditions, police abuse, and the death penalty in the context of U.S. ratification of the International Covenant on Civil and Political Rights).

Ms. Kassindja, and other undocumented immigrants and asylum-seekers, were detained in maximum security facilities among the general population until a human rights report exposed the horrendous conditions of their detention.¹⁹ Ms. Kassindja reported being shackled, kept in unsanitary conditions, and placed in isolation as a punishment for washing herself at dawn before her morning prayers according to her religious tradition. She, along with other inmates and detainees, were tear-gassed and beaten during an insurrection at one of the facilities in which she was being held.²⁰

Kassindja remained in detention for 16 months until the pressure of a letter-writing campaign and legal appeals forced the Immigration and Naturalization Service to release her.²¹ Her initial application for asylum was denied by a Pennsylvania judge who disparaged her credibility. Like many judges before him, he apparently failed to recognize the importance of treating women who reject FGS as one would treat men who fight against negative practices that are explicitly "political." At the urging of feminist scholars and lawyers, courts are beginning to recognize that gender-based asylum claims are also based on "a well-founded fear of persecution" because of membership in one of the legally prescribed categories -- in this case, "membership in a particular social group."²²

¹⁹ See HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES, *supra* note 18, at 74-97 (discussing detention and refoulement of refugees, asylum seekers, and undocumented workers). See Harold Hongju Koh, *The "Haiti Paradigm" in United States Human Rights Policy*, 103 YALE L.J. 2391 (1994); Louis N. Schulze, *The United States' Detention of Refugees: Evidence of the Senate's Flawed Ratification of the International Covenant on Civil and Political Rights*, 23 NEW ENG. J. ON CRIM. & CV. CONFINEMENT 641 (1997).

²⁰ See Dugger, *supra* note 14. See also Ronald Smothers, *Asylum Seekers Testify on Abuse by Jail Guards*, N.Y. TIMES, Feb. 6, 1998, at A1 (discussing testimony of detainees at trial of prison guards for torturing and otherwise abusing detainees at a New Jersey facility).

²¹ The letter writing campaign was organized by Equality Now, a New York based feminist human rights organization. Ms. Kassindja was represented, originally, by Layli Miller Bashir, a student at the Washington College of Law, and later by Karen Musalo. See Layli Miller Bashir, *Female Genital Mutilation in the United States: An Examination of Criminal and Asylum Law*, 4 AM. U.J. GENDER & L. 415 (1996).

²² See generally Pamela Goldberg, *Anywhere But Home: Asylum in the United States for Women Fleeing Intimate Violence*, 26 CORNELL INT'L L.J. 565 (1993); see generally Nancy Kelly, *Gender-Related Persecution: Assessing the Asylum Claims of Women*, 26 CORNELL INT'L L.J. 625 (1993); Sunny Kim, *Gender-Related Persecution: A Legal Analysis of Gender-Bias in Asylum Law*, 2 AM. U.J. GENDER & L. 107 (1994); Deborah

Fortunately, the highest tribunal in our immigration system, the Board of Immigration Appeals, overturned the judge's opinion in June of 1996. In a precedent-setting decision, the BIA recognized that the cutting off of a woman's genitalia against her will is an act of persecution.²³

III. CULTURAL INTERSECTIONS AND IMPLICATIONS FOR THE FUTURE

What lessons can be drawn from the Kassindja case and the events surrounding it? The first such lesson involves old questions about the propriety of cross-cultural interventions. The legal and political treatment of FGS is a classic source of controversy among feminists and other human rights activists in the West and in Africa. Debates continue over whether FGS should be treated as a culturally-specific practice that should be beyond the scrutiny of international human rights bodies, or whether FGS is a gender-based human rights violation. We, like many feminists in both Africa and the United States, take the latter position.

The Kassindja case, and situations like it, reveal that even "exotic", unfamiliar human rights violations are no longer permanently bounded by particular geographic locations. For example, women and girls now make up the majority of the world's refugees, asylum-seekers, and displaced persons. The countries in which they seek shelter, as well as the international community, must develop principled, gender-conscious standards to address their needs. Further, FGS, while predominantly practiced in certain African countries, also occurs among immigrant communities who live in Europe and the United States. Human rights, whether universal or relative, must now address the transnational nature of such violations.

Another lesson is that mere opposition to the practice does not lead to easy answers about the most effective means of ending FGS. The publicity surrounding Kassindja, and the nature of the practice she rejected, undoubtedly helped to rouse U.S. public opinion in her support. She is a well-spoken, courageous young woman who was obviously willing to take great risks to avoid the ritual. American observers saw her as a classic symbol of individual dissent. However, most females who undergo FGS are minors or even infants. Many

Anker, et al., *The BIA's New Asylum Jurisprudence and Its Relevance for Women's Claims*, 73 INTERPRETER RELEASES 1173 (1996).

²³ See *In re Fauziya Kasinga*, Interim Decision (BIA) 3278 or 1996 WL 379826 (B.I.A.).

parents in practicing regions support, or feel unable to reject, FGS. Eradication therefore cannot depend solely on the encouragement of individual rejection of the practice by girls over the age of consent.

A third lesson is the need to exercise care in the portrayal of people who participate in unfamiliar cultural practices. In the rush to save the "victims," western media and activists use racist imagery to demonize entire cultures. Further, we western feminists too often overshadow the voices and actions of Third World feminists who have long been active in the fight to eradicate FGS.²⁴ Western activists should adopt instead a "world-traveling" approach with respect to the analysis of such culturally challenging practices as FGS.²⁵ Such an approach requires that we make the attempt to understand the motivations of those who support the practice, that we see ourselves as others outside our own culture see us, and work to build respectful coalitions on common ground.

Examined through such an approach, FGS stands alongside such American practices as domestic violence, sterilization and contraceptive abuse,²⁶ unnecessary cosmetic surgeries, and the genital "mutilation" routinely performed on intersexed or hermaphroditic children.²⁷ It is but one form of patriarchal violence intended to enforce strict gender lines and behavior.²⁸

IV. ABROAD, AT HOME, AND BACK AGAIN

²⁴ For literature on FGS by African feminist scholars, *see, e.g.*, ABDALLA, *supra* note 3; EL DAREER, *supra* note 3; Obiora, *supra* note 3, NAWAL EL SAADAWI, *THE HIDDEN FACE OF EVE: WOMEN IN THE ARAB WORLD* (1980); AWA THIAM, *BLACK SISTERS, SPEAK OUT: FEMINISM AND OPPRESSION IN BLACK AFRICA* (1986); TOUBA, *supra* note 4.

²⁵ *See* Gunning, *supra* note 2, at 97.

²⁶ *See generally* Moss, *supra* note 5 (including articles on the intersection of women's health concerns with race, gender, immigration status, economic class, and disability).

²⁷ Some infants are born with genitalia or reproductive organs that are generally associated with the opposite sex. Parents often authorize the performance of "corrective" surgery in order to promote the physical and psychological identification of the child with a single sex. *See, e.g.*, Anne Fausto-Sterling, *The Five Sexes: Why Male and Female Are Not Enough*, *THE SCIENCES*, Mar.-Apr. 1993, at 20; Suzanne J. Kessler, *The Medical Construction of Gender: Case Management of Intersexed Infants* 16 *SIGNS: J. WOMEN CULTURE & SOC'Y*, 3 (1990); Natalie Angier, *Intersexual Healing: An Anomaly Finds A Group*, *N.Y. TIMES*, Feb. 4, 1996, at E14.

²⁸ Ann Dally notes that modern surgery in the west had its origins in the performance of hysterectomies, clitoridectomies, and other forms of surgery intended to control the behavior of women. *See* DALLY, *supra* note 5; *see also* Moss, *supra* note 5.

We have argued that grassroots indigenous organizations and community based immigrant organizations must take the lead in strategizing on how best to address FGS as a particular form of patriarchal control. Nevertheless, there are direct and indirect ways that informed westerners could contribute to the eradication of FGS.²⁹

Rather than function solely as voyeurs of exotic foreign practices such as FGS, American activists could stop to examine whether and how U.S. policies contribute to the violations we seek to end. For example, American activists could urge the United States government to facilitate the provision of material support for indigenous groups that work against FGS. Such grassroots organizations are often small and underfunded. Their leaders may be castigated as traitors to indigenous cultural tradition and as apologists for western imperialism.³⁰ Despite the controversial ways in which aid conditionality can operate, the U.S. could use its influence to promote respect for the human rights of women among national governments with which it has aid and trade relationships. Kassindja's ability to escape FGS in her native Togo was dependent on the economic independence of her father and on his personal rejection of the custom. It was money saved from her husband's inheritance that enabled Kassindja's mother to help smuggle Fauziya out of the country. While higher economic status alone does not eliminate the risk of undergoing FGS among girls from certain ethnic groups, access to basic health education, literacy, fair treatment in paid and unpaid labor, and family relations do make a difference. However, the mere provision of economic and other aid in a top-down way can be counterproductive. International economic and political support must encourage grassroots, contextual, and sustainable economic development which can support and nourish the fulfillment of human rights.

African feminists have argued that top-down eradication campaigns will only result in backlash if they are conducted in isolation from the promotion of related rights to gender equality, health care, education, economic access, and political participation.³¹ In a comment on the early western anti-"FGM"

²⁹ African-American feminists, for example, could contribute to the analysis of how race and gender intersect in the eradication campaign. See Lewis, *supra* note 2, at 50-55.

³⁰ For example, post-colonial elites sometimes use the perpetuation of harmful traditional practices as a means of shoring up support against foreign or modernist political influences. See Makau wa Mutua, *Why Redraw the Map of Africa?: A Moral and Legal Inquiry*, 16 MICH.J. INT'L. L. 1113 (1995).

³¹ See, e.g., Gadzekpo, *supra* note 16.

campaign, an African feminist organization criticized activists for "failing to see the forest for the trees".³² Similarly, Leslye Amede Obiora, an Ibo scholar, has questioned the vehemence with which western critics condemn FGS without corresponding outrage about the spread of poverty-related disease in certain parts of Africa.³³

Further, American activists should examine how the United States plays a role in perpetuating conditions under which FGS, and other human rights violations, can continue to flourish. For example, while FGS occurs in practicing regions among all economic and educational classes, poverty and inequality in the education and training of girls and women also play an important role. Both inflexible traditional social structures and the modernist pressures that destabilize them, can be detrimental to the human rights of women.³⁴ In addition to advocating for indigenous anti-FGS laws and programs warning about the dangers of the practices, American activists should also examine the impact of transnational influences such as militarization and structural adjustment on the status of women and girls.³⁵

V. CLEANING OUR OWN HOUSE

Perhaps the most important, but least discussed, lesson to be drawn

³² Association of African Women for Research and Development (AAWORD), *A Statement on Genital Mutilation*, in *THIRD WORLD, SECOND SEX: WOMEN'S STRUGGLES AND NATIONAL LIBERATION: THIRD WORLD WOMEN SPEAK OUT*, 218-19 (Miranda Davies ed., 1983).

³³ See Obiora, *supra* note 3.

³⁴ See Joe Oloka-Onyango & Sylvia Tamale, "The Personal is Political": *Why Women's Rights Are Indeed Human Rights: An African Perspective on International Feminism*, 17 *Hum. Rts. Q.* 691-731 (1995) (discussing the relevance of structural adjustment programs to the violation of women's economic human rights in Africa).

³⁵ See *MORTGAGING WOMEN'S LIVES: FEMINIST CRITIQUES OF STRUCTURAL ADJUSTMENT* (Pamela Sparr, ed., 1994); Bharati Sadasivam, *The Impact of Structural Adjustment on Women: A Governance and Human Rights Agenda*, 19 *HUM. RTS. Q.* 690 (1997). See also Patricia J. Williams, *Disorder in the House: The New World Order and the Socio-economic Status of Women*, in *THEORIZING BLACK FEMINISM: THE VISIONARY PRAGMATISM OF BLACK WOMEN* (Stanlie James & Abena Busia, eds., 1993). Cf. Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 *HARV. HUM. RTS. J.* 159 (1993) (discussing the human rights implications of World Bank policies).

from the Kassindja case is the need to clean up our own human rights house. The threat of western paternalism (or maternalism) has been a clear theme throughout the international debate over FGS. It is not surprising, therefore, that the response among western human rights scholars and activists has centered around how best to sensitively support the protection of women's human rights despite cultural barriers. We suggest, however, that critical approaches to international human rights must involve self-awareness, consciousness of the roles of race, gender, and other identities, and a willingness to act both at home and abroad, as well as cross-cultural sensitivity.

A. Gender-Based Asylum

Cleaning house means following our own immigration laws by giving asylum to refugees who face persecution based on gender. The first step is to continue and expand the legacy of the Kassindja case. It stands for the proposition that no woman or man should be forced to conform to strict societal norms of gender or culture at the risk of their health or well-being. The U.S. should fully and completely recognize gender based persecution as grounds for asylum. Recognizing the validity of pleas for asylum based on fear of FGS and other gender based violations ought to be one of the least controversial aspects of a highly complex human rights issue. The lawyers active in this area have recommended carefully drawn guidelines for analyzing gender based claims, many of which have been adopted by the INS in non binding form.³⁶ Immigration judges and officers in the future must follow this precedent and the guidelines and be far more open to the status of women as refugees than they

³⁶ U.S. Guidelines were based on Canadian guidelines, on gender-based asylum and recommended by lawyers at the Women Refugees Project associated with Harvard Law School. See Patricia A. Seith, Note, *Escaping Domestic Violence: Asylum as a Means of Protection for Battered Women*, 97 COLUM. L. REV. 1804, 1830 (1997). See Memorandum from Phyllis Coven, Office of International Affairs, U.S. Department of Justice, *Considerations For Asylum Officers Adjudicating Claims From Women*, to All INS Asylum Officers and HQASM Coordinators, (May 26, 1995) reprinted in 72 Interpreter Releases 2, App. 1 at 781 (1995); Immigration and Refugee Board, *Guidelines Issued By the Chairperson Pursuant to Section 65(3) of the Immigration Act*, (Ottawa, Canada, Immigration and Refugee Board, March 1993) (Canadian guidelines). See also U.N. High Commissioner for Refugees, *General Conclusion No. 73 Refugee Protection and Sexual Violence* (1993), reprinted in *WOMEN'S HUMAN RIGHTS: THE BASIC DOCUMENTS* (Center for the Study of Human Rights, Columbia University ed., 1996).

have in the past. This commitment is particularly crucial in the midst of the anti-immigrant fervor that has captivated this country. In a country that serves as the home to many human rights organizations and whose government often focuses on human rights in its political and foreign policy rhetoric, it would be the height of hypocrisy and cynicism not to grant asylum to those who fear the same practices that we condemn as human rights violations.

Arguments against recognizing and following international law as incorporated into our own asylum laws typically invoke the "floodgates will open" refrain. Unfortunately FGS is largely practiced on infants or minor girls, so claims by adult women are likely to be few and far between. But recognizing such claims, and treating claimants with human dignity in this country, is the least that we can do.

B. Domestic Legislation and Policy

Another legacy of the publicity surrounding the Kassindja case and the global feminist campaign against FGS, was the passage of legislation criminalizing FGS in domestic legislation, including in the United States. Such anti-FGS legislation has been a double-edged sword in domestic contexts.³⁷ In March of 1997, federal criminal legislation went into effect that provides for fines and up to 5 years imprisonment for the practice of FGS on underage girls in the United States.³⁸ This federal legislation has been preceded and followed by statutes specifically criminalizing the practice under state law. Feminist activists and lawyers, including those who work among immigrant communities from practicing regions, are divided as to the usefulness of such statutes. On one hand, criminal legislation sends a clear message that the practice is not acceptable in the United States and will be considered an unlawful violation of the bodily

³⁷ Legislation outlawing FGS exists in such practicing regions as the Sudan, Egypt, Ghana, and Kenya. However, the imposition of some such legislation in the context of colonial abuses, led to cultural and political backlash. See JOMO KENYATTA, *FACING MT. KENYA: THE TRIBAL LIFE OF THE GIKUYU* (1953) (defending FGC as one aspect of irua practices--a set of coming of age rituals for both male and female Gikuyu). *But see* Judith Achieng, *Rights-Kenya: Ending The Nightmare Passage to Womanhood*, INTERPRESS SERV., Jan. 4, 1998 (discussing the development of an alternative ritual to mark the adult status of young girls among an ethnic group that lives on Mount Kenya).

³⁸ See Information Regarding Female Genital Mutilation, *supra* note 11; REFERENCE GUIDE, *supra* note 3, at 22.

integrity of girls under U.S. law.³⁹ Mimi Ramsey, an activist who works among immigrant communities in the United States, has suggested that the legitimacy and state resources behind such legislation will be helpful in influencing parents who object to the practice to resist community pressure.⁴⁰ On the other hand, FGS, as a ritual practice rooted in generations of tradition, is not to be easily treated in the same manner as forms of intentional child abuse. Criminalization also raises difficult problems of interpretation: Will only those who actually perform the procedures be prosecuted? Or will parents who grant permission also be subject to sanctions?

The new legislation also requires that the Immigration and Naturalization Service and the Department of Health and Human Services make efforts to inform immigrants from practicing regions about the law and the dangers of FGS. How effective will such efforts be? How are they conducted? Will women and men from immigrant groups be given the resources to conduct appropriate educational and public health efforts?⁴¹

³⁹ See Patricia A. Schroeder, *Female Genital Mutilation--A Form of Child Abuse*, 331 NEW ENG. J. MED. 739 (1994) (advocating enactment of federal anti-FGS legislation in the United States).

⁴⁰ See Ellen Goodman, *Fighting a Female Tragedy*, BOSTON GLOBE, Mar. 27, 1997, at A29 (discussing reactions of anti-FGS scholars and activists, including Mimi Ramsey, to criminalization of FGS in the United States). For a discussion of the legal implications of U.S. criminalization, see generally, Karen Hughes, *The Criminalization of Female Genital Mutilation in the United States*, 4 J.L. & POL'Y 321 (1995).

⁴¹ Isabelle R. Gunning has challenged the commitment of the U.S. government to provide adequate and appropriate resources to fulfill the educational and public health aspects of the federal legislation. See Gunning, *supra* note 2, at 230. See generally AWAKEN!, Dec. 1997, at 12 (discussing a national conference on Ethiopian-American Community Development held in Washington in September of 1997, in which results and recommendations from community outreach meetings in various states sponsored by the U.S. Department of Health and Human Services were presented). See also, AWAKEN! Sept. 1997, at 14-15 (discussing a conference titled, "Women's Health: Perspective on the Cultural Practice of Female Circumcision" held in Boston on June 24, 1997 sponsored by Boston University School of Public Health and the U.S. Department of Health and Human Services." See generally Saud Yusuf, *Community Based Organizations and Female Circumcision*, AWAKEN!, Dec. 1997, at 15 (the author discusses the results of his survey of community-based organizations which serve African immigrants; he discusses the needs of women who have undergone circumcision and the types of services available for them).

Despite the potential detrimental effects of the legislation, there are positive signs of collaborative efforts at organizing among western and immigrant communities. For example, Asma Abdel Halim, a Sudanese lawyer who lives and works in the United States, now edits *Awaken!*, a newsletter on FGS aimed at human rights activists and members of practicing communities. The newsletter includes legislative and organizing updates on FGS-related activities throughout the world, and is published in English, Arabic, and French. It also includes a column that focuses on the perspectives of men in practicing communities.

C. Human Rights Observance in the United States

A more attenuated, but ultimately essential aspect of the human rights struggle against FGS is the promotion of respect for international human rights within the United States. The U.S. finally ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992 and the Convention on the Elimination of All Forms of Racial Discrimination in 1994. As of the time of this writing, it had not yet ratified the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), but CEDAW has substantial administration and congressional support.⁴² The ratification of these major international human rights instruments represent an important step forward in cleaning our own human rights house. Each of these instruments requires that the U.S. government make comprehensive periodic reports on its compliance with human rights standards. More significantly, non-governmental organizations can use those official reporting requirements as opportunities to prepare shadow reports that are critical of the official position. They can also use popular education techniques to build human rights awareness in the U.S.

Still, important barriers remain. For example, while the UN and respected human rights organizations have recognized the indivisibility of economic, social, cultural, civil, and political rights, the U.S. still fails to recognize economic, social, and cultural rights. President Jimmy Carter had signed both the ICCPR and the International Covenant on Economic Social and Cultural Rights (ICESCR) in preparation for ratification, but the ICESCR remains unratified. The U.S. seems even to have regressed on this front with the dismantling of social

⁴² See, e.g., Loretta Ross, *Stop Talking and Finish Women's Treaty*, USA TODAY, Sept. 27, 1996 (editorial by U.S. based human rights activist on need to ratify CEDAW); Mallika Dutt, *With Liberty and Justice For All: Women's Human Rights in the United States* (Center for Women's Global Leadership, 1994).

welfare entitlements,⁴³ anti-affirmative action backlash,⁴⁴ and the failure to address the need for comprehensive health care. Anti-immigrant legislation and policies have threatened the status of even documented immigrants and political asylum seekers.⁴⁵ Domestic violence, police brutality, warehousing of young men and women of color in U.S. prisons, and the implementation of the death penalty continue.⁴⁶

⁴³ See Hope Lewis, *Women (Under)Development: The Relevance of the Right to Development to Poor Women of Color in the United States*, 18 LAW & POL'Y 281 (1996). Lewis notes the following:

Women of color who are poor in the United States struggle with the effects of underdevelopment while surrounded by the resources of the most economically developed nation on earth. . . . These women experience violations of their social and economic human rights that are strikingly similar to those affecting poor women of color in the rest of the 'Global South'. Also, they face limited access to affordable health care, encounter discrimination in education, employment, and access to a living wage, lack access to credit, cannot obtain affordable housing, and do not receive equal protection from public and private violence. *Id.* at 281-82.

⁴⁴ See Jordan Paust, *Race Based Affirmative Action and International Law*, 18 MICH. J. INT'L LAW 659 (1997).

⁴⁵ See Ann Paxton Wagley, *Newly Ratified International Human Rights Treaties and the Fight Against Proposition 187*, 17 CHICANA-LATINO L. REV. 88 (1995); See generally Meiklejohn Civil Liberties Institute, HUMAN RIGHTS PROTECTION: A GUIDE TO UNITED NATIONS TREATIES AND THEIR APPLICATION IN THE UNITED STATES (1995).

⁴⁶ Gender and race-based human rights violations in the United States are not limited to women of color.

Imagine a country in which more than half of the young male citizens are under the supervision of the criminal justice system, either awaiting trial, in prison, or on probation. Imagine a country in which two thirds of the men can anticipate being arrested before they reach the age thirty. Imagine a country in which there are more young men in prison than in college.

Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677, 690-91 (1995) (describing the oppression of Black males in the United States). The incarceration rate among young Black men in the United States rivals that of South Africa.

If this country is to match rhetoric with action, it must clean its own house. It must acknowledge the ways that U.S. culture subordinates women and men at home, especially if they are poor and of color. That means recognizing that increasingly incarceration has been invoked to solve a range of complex socio-economic problems, ranging from illegal immigration to drug abuse. The result is the dehumanization of prisoners and overcrowded facilities.

What do these conditions have to do with the eradication of FGS? They illustrate the practical hypocrisies that underlie the universalist/relativist debate over FGS. We cannot legitimately continue a principled debate over the cross-cultural application of human rights unless we are willing to apply international human rights scrutiny to domestic conditions. We cannot legitimately challenge foreign governments that cynically manipulate ethnic tensions to maintain political power, if our own government cynically manipulates racial and ethnic tensions to gain political points.

The United States' influence in human rights matters is undermined when other nations point to the dirty linen we refuse to wash. U.S. rhetoric on the human rights of women, for example, stands in stark contrast to our failure to ratify CEDAW. That instrument calls for measures designed to address social and cultural patterns that operate to the detriment of women, including female asylum-seekers. South Africa, once a human rights pariah, has ratified that important document and confronted its own shameful history of prisoner abuse by declaring the death penalty unconstitutional; we have done neither.

The excitement and interest generated by the exoticism of the circumstances underlying the Kassindja case stand in contrast to our unwillingness to address international human rights issues for which we seem to share more direct responsibility. But, as discussed above, we are connected in surprising ways to even "exotic" violations in far-off countries. We cannot easily escape our human rights responsibilities or distance ourselves from the effects of U.S. law and policy.

Addressing internal and transnational violations of human rights is crucial in the process of building truly participatory coalitions in the human rights movement. The fact that Kassindja and refugees from Haiti, Cuba, and China, as well as native-born people of color suffer at the hands of an abusive U.S. system was rarely discussed in the furor surrounding the case. We must ask ourselves whether the human dignity of people of color, women, sexual minorities, and people with disabilities is respected at home as well as abroad. Beginning to clean our own house requires that we respect human rights, not only when they involve "exotic others," but also because all governments should treat each person with human dignity.