

# *Global Jurist*

## Frontiers

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*Volume 8, Issue 3*

2008

*Article 8*

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**Recommended Citation**

Abdulmumini A. Oba (2008) "Female Circumcision as Female Genital Mutilation: Human Rights or Cultural Imperialism?," *Global Jurist*: Vol. 8: Iss. 3 (Frontiers), Article 8.  
Available at: <http://www.bepress.com/gj/vol8/iss3/art8>

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# Female Circumcision as Female Genital Mutilation: Human Rights or Cultural Imperialism?\*

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## Abstract

Many have discussed female circumcision from the perspective of cultural relativism. This paper places the discourse in the context of Western cultural imperialism. The definition of female genital mutilation (FGM) by the World Health Organization (WHO) is questioned as being partial and amounting to cultural profiling. The paper interrogates the case against female circumcision and reviews anti-female circumcision treaties and legislations at international and domestic levels across the world.

A case of cultural imperialism against the West is argued by questioning the non-inclusion by WHO of some western practices such as 'female genital surgeries' or 'female genital cuttings' in its definition of FGM. Other female bodily mutilations such as breast augmentation should be indicted too. Again, the failed Seattle compromise emphatically illustrates the cultural imperialism inherent in the campaign against female circumcision. The campaign against female circumcision is diverting focus from third world's pressing social and economical travails which arise from the exploitation and manipulation of its economy by the West. Criminalization of female circumcision is counter-productive - the fight against FGM must be based on credible facts and enlightenment.

**KEYWORDS:** female circumcision, female genital mutilation, female genital surgeries, cultural imperialism

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## I. INTRODUCTION

The charge of cultural imperialism in relation to human rights generally and women rights in particular is often made against the West.<sup>1</sup> There are three major reasons for this. First, the West is quick to condemn practices in other cultures that it considers unacceptable. This condemnation is sometimes without any real justification. Secondly, the West is guilty of double standard in relation to some of its own practices and practices in other cultures. Practices in other cultures which are similar or comparable to accepted practices in the West and which ought to be treated similarly are often treated differently. The western practices are considered as “civilized” while the non-western practices are condemned as “primitive” or “savage”. Thirdly, whenever the West attempts to eradicate a non-western practice it considers undesirable or wrong, its actions too often come in form of external impositions rather than encouragement of internal critique within the local culture.<sup>2</sup>

There has been a lot of negative publicity and campaign against female circumcision in the West where the practice has been labeled as “female genital mutilation”. Female circumcision has both cultural and religious significance. Culturally, it is a “problem” of non-western peoples from the Middle East, Asia, and Africa and in terms of religion; it is an “Islamic” problem.<sup>3</sup>

The female circumcision discourse in the West fits into the paradigm of accusations of cultural imperialism against the West. Although, some place the differences between the West and non-western peoples on female circumcision in

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<sup>1</sup> See Rachelle Cassman, *Fighting to Make the Cut: Female Genital Cutting Studied within the Context of Cultural Relativism* 6 (1) NORTHWESTERN JOURNAL OF INTERNATIONAL HUMAN RIGHTS 128 at 141 (2007) citing Beth Ann Gillia, *Female Genital Mutilation: A Form of Persecution*, 27 NEW MEXICO LAW REVIEW 579, at 585 (1997).

<sup>2</sup> Michael J. Perry, *Are Human Rights Universal? The Relativist Challenge and Related Matters* 19 HUMAN RIGHTS QUARTERLY 466 at 487 - 497 (1997) and Cassman, *supra* note 1, 140 – 141. See further discussions *infra*.

<sup>3</sup> The World Health Organization (WHO) says, “Most of the girls and women who have undergone genital mutilation live in 28 African countries, although some live in Asia and the Middle East. They are also increasingly found in Europe, Australia, Canada and the USA, primarily among immigrants from these countries”: WORLD HEALTH ORGANIZATION (WHO), FEMALE GENITAL MUTILATION FACT SHEET NO. 241, JUNE 2000 at [http://www.who.int/topics/female\\_genital\\_mutilation/en/](http://www.who.int/topics/female_genital_mutilation/en/). To these the Amnesty International adds the “Muslim populations in Indonesia, Sri Lanka, and Malaysia [and] ... in India, a small Muslim sect, the Daudi Bohra”: AMNESTY INTERNATIONAL, FEMALE GENITAL MUTILATION – A HUMAN RIGHTS INFORMATION PACK at <http://www.amnesty.org/ailib/intcam/femgen/fgm1.htm>.

the context of cultural relativism,<sup>4</sup> we consider that cultural imperialism is the appropriate context. The cultural relativism argument is self-defeating for female circumcision. Beyond doubt, culture alone cannot be a valid justification for human wrongs and cultural relativism cannot sanctify human rights violation.<sup>5</sup>

This paper examines why the female circumcision discourse in the West fits into the paradigm of cultural imperialism. The paper neither canvasses for the abolition of nor justifies the practice of female circumcision. It only interrogates the Female Genital Mutilation (FGM) discourse in the West by examining the manner western critics and their non-western allies have justified their condemnation of female circumcision. It also juxtaposes this with the attitude in the West to similar western practices.

Part I of this paper looks at the World Health Organization's definition and classification of FGM. The part questions the legitimacy and accuracy of these classifications. Part II analyzes the case against Female circumcision. Part III reviews the international human rights documents and domestic legislation across the world against FGM. Part IV makes a case of cultural imperialism against the West by contrasting its uncompromising and total condemnation of the non-western practice of female circumcision with the female genital surgeries legally permitted in the West. The paper concludes with Part V.

## **II. INTERROGATING THE DEFINITIONS AND CLASSIFICATIONS OF FEMALE GENITAL MUTILATION**

The World Health Organisation (WHO) lumped together all forms of female circumcision under the category of "female genital mutilation" and takes both terms as synonyms. According to the organization:

"Female genital mutilation" (FGM), often referred to as 'female circumcision', comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons.<sup>6</sup>

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<sup>4</sup> Eva Brems, *Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse*, 19 HUMAN RIGHTS QUARTERLY 136 at 148 (1997).

<sup>5</sup> Perry, *supra* note 2.

<sup>6</sup> WHO: "Female Genital Mutilation" Fact Sheet No. 241, *supra* note 3.

The organization enumerated the categories of the different types of ‘female genital mutilation’ as follows:

- Type I - excision of the prepuce, with or without excision of part or all of the clitoris;
- Type II - excision of the clitoris with partial or total excision of the labia minora;
- Type III - excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);
- Type IV - pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue; scraping of tissue surrounding the vaginal orifice (*angurya* cuts) or cutting of the vagina (*gishiri* cuts); and introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it; and any other procedure that falls under the definition given above.<sup>7</sup>

The WHO says that the most common type of FGM is excision of the clitoris and the labia minora, accounting for up to 80% of all cases and that the most extreme form is infibulation, which constitutes about 15% of all procedures.<sup>8</sup> The above classification covers a wide spectrum of practices that are now referred to erroneously as “female genital mutilation”. However, the differences between these practices can be very wide. The least under Type I is “excision of the prepuce” which involves the removal of the tip of the clitoris. Type III which is also referred to as infibulation is a very extreme practice which cannot be described as female circumcision in the sense that it goes beyond circumcision in concept and form. This is meant to preserve virginity and it is a practice restricted to parts of Sudan and Somalia. It is said that infibulation originated by an Egyptian Pharaoh who upon being warned that he will be destroyed by a boy born within a certain time ordered that all the baby boys born during that time be killed.<sup>9</sup> Infibulation was to ensure that no woman delivers secretly because she would invariably scream from the pain caused by infibulation.<sup>10</sup> For this reason, infibulation is often referred to as *khitan fraoniyya* (the “Pharaonic circumcision”).

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Badmus Lanre Yusuf, *Female Circumcision: The Islamic Perspective*, 1 (8) AT-TABIB (The Annual Magazine of the Association of Muslim Health Students, College of Medicine, University of Ilorin) 30 (2005).

<sup>10</sup> *Id.*

There are therefore two immediate criticisms of the WHO classification. Firstly, the classifications in Types I and IV are unduly wide. The “excision of the prepuce without excision of part or all of the clitoris”, “excision of the prepuce with part or all of the clitoris;” and the “excision of the prepuce with all of the clitoris” grouped together under Type I are clearly three different procedures that should have different classification. Again, what do all the procedures listed as Type IV have in common? The lumping of them together was deliberate. Extreme forms are classified together with mild types so that every Type becomes *ipso facto* condemnable. The second criticism relates to the classification of all the four types as mutilation. How can the least excision in Type I be classified together with infibulation in Type III and branded as “genital mutilation”? The classification as a whole and into specific types is therefore inaccurate and misleading. In spite of its glaring inaccuracy, the classification has become the typology of the intellectual, medical and human rights discourses on female circumcision and FGM.

More appropriately, one should speak of partial clitoridectomy, complete clitoridectomy, excision, and infibulation. In Nigeria, the customary form of female circumcision practiced in most communities is partial clitoridectomy, that is, the removal of the tip of the clitoris which is among the least form of Type I.<sup>11</sup> This is also the maximum type permitted in Islam.<sup>12</sup> Within this context, it is difficult to agree with WHO that excision (removal of the clitoris and the labia minora), and infibulation constitute respectively 80% and 15% (total 95%) of all cases of female circumcision.

### **III. EVALUATING THE CASE AGAINST FEMALE CIRCUMCISION**

The arguments against female circumcision advanced by human rights proponents are examined hereunder.

#### **A. *Male Domination***

Radical feminists argue that female circumcision is an expression of male domination of the female by men who want to keep their women sexually

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<sup>11</sup> Joy Ezeilo, “Feminism and Human Rights at a Crossroads in Africa? Reconciling Universalism and Cultural Relativism” (unpublished paper on file with the author and kindly made available to this writer) p. 16, Nowa Omoigui, MD, MPH, FACC, *Protest Against Bill H22 Outlawing “FGM” In Nigeria*, 1 JENDA: A JOURNAL OF CULTURE AND AFRICAN WOMEN STUDIES Vol. (2001) at <http://www.jenda.journal.com/vol.1/toc1.1.htm>.

<sup>12</sup> See *infra*.

controlled while using them to satisfy their (men's) own sexual desires.<sup>13</sup> These feminists who are based mostly in the western world, have no idea of what the non-western woman is or feels, proffer such views.<sup>14</sup> Such views are based on the stereotyping of gender relations based on western models. Female circumcisions are approved and done at the instance of parents and not husbands and this knocks the bottom off the argument of feminists. Of course, women in cultures that practice female circumcision are often the strongest proponents of the practice which is carried out mostly by women and not men.<sup>15</sup> Another version of the sex domination argument is that the "male factor" encourages female circumcision. This is because in some cultures, men prefer circumcised girls because these men believe that circumcised girls would avoid immorality and extra marital infidelity.<sup>16</sup>

## **B. Right to Culture and Religion**

Human rights values are often at war with each other. Female circumcision can arise out of religious and cultural factors. Those who practice it can argue that they have the right to practice their religion or culture. This raises two issues. First, if female circumcision is a religious practice, then there is a prima facie case of right to religion.<sup>17</sup> Human rights proponents retort quite rightly that harmful cultural or religious practices cannot be permitted under the guise of right to religion or right to culture.<sup>18</sup> However as we shall see hereunder, the case has not

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<sup>13</sup> L. Amede Obiora, *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision*, 47 CASE WESTERN RESERVE LAW REVIEW 275 at 301 (1997), and Elisabetta Grande, *Hegemonic Human Rights and African Resistance: Female Circumcision in a Broader Comparative Perspective*, 4 GLOBAL JURIST FRONTIERS Art. 3, 12 - 13 (2004) available at <http://www.bepress.com/gj/frontiers/vol4/iss2/art3> citing A. RAHMAN AND N. TOUBIA, *FEMALE GENITAL MUTILATION. A GUIDE TO LAWS AND POLICIES WORLDWIDE* Preface, xiv (2000),

<sup>14</sup> Ezeilo, "Feminism and Human Rights at a Crossroads in Africa? Reconciling Universalism and Cultural Relativism", *supra* note 11, at 17, Brems, *supra* note 4, at 148, and Riane Eisler, *Human Rights: Toward an Integrated Theory for Action*, 9 HUMAN RIGHTS QUARTERLY 287 at 295 and 296 (1987).

<sup>15</sup> Abdul Rafiu Abioye Ajiboye, *Female Circumcision: Medical Perspective*, 1 (8) AT-TABIB (The Annual Magazine of the Association of Muslim Health Students, College of Medicine, University of Ilorin) 5 at 6 (2005).

<sup>16</sup> This attitude is reported among the Yoruba peoples of southwestern Nigeria in R. O. SOETAN, *CULTURE, GENDER AND DEVELOPMENT* 23 - 24 (2001).

<sup>17</sup> See generally Jessica A. Platt, *Female Circumcision: Religious Practice V. Human Rights Violation*, 3 RUTGERS JOURNAL OF LAW AND RELIGION 5.

<sup>18</sup> Bahia Tahzib-Lie, *Applying a Gender Perspective in the Area of the Right to Freedom*

been made out that the mild forms of female circumcision particularly the “sunnatic” type common in Africa which is radically different from infibulation have any harmful effect.

Secondly, is female circumcision really a religious practice? Some have tried to dismiss the link between female circumcision and religion generally and Islam in particular.<sup>19</sup> They say that the female circumcision predated Islam and therefore is not part of Islam.<sup>20</sup> Of course, this is not correct in relation to Islam. The view totally ignores the most elementary aspects of *Usul al-Fiqh* (Islamic jurisprudence) generally and the methodology of deducing legal rules under Islamic law in particular. Many Islamic scholars find support for female circumcision in the Qur’an and other hadith.<sup>21</sup> A form of female circumcision which was widely practiced among the Arabs during the Prophet’s era no doubt has Islamic approval.<sup>22</sup> The hadith that is often relied upon by Islamic scholars who say that female circumcision is permitted in Islam goes thus:

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*of Religion or Belief*, BRIGHAM YOUNG UNIV. L. REV. 967 at 974 – 977 (2000), and Alexi Nicole Wood, *A Cultural Rite of Passage or a Form of Torture: Female Genital Mutilation from an International Law Perspective*, 12 HASTINGS WOMEN'S LAW JOURNAL 347 (2001).

<sup>19</sup> The World Medical Assembly too says, “None of the major religions makes an explicit reference to female circumcision and/or supports this practice”. *Statement on Condemnation of Female Genital Mutilation*, adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993 *available at* <http://www.cirp.org/pages/female/>.

<sup>20</sup> Baba Lee “an Islamic scholar” from Gambia puts the argument thus: “Some Islamic scholars are trying to make a link between Islam and female circumcision, which is wrong. It’s a tradition that had been practiced long before Islam came to this continent. It has nothing to do with Islam. It is not mentioned in the Holy Koran.... Some scholars say you cannot be a proper Muslim woman if you are not circumcised. This is not true, but it is something which is psychologically imposed on women by some scholars”, quoted in Kristin Louise Savell, *Wresting with Contradictions: Human Rights and Traditional Practices Affecting Women*, 41 MCGILL LAW JOURNAL 781, at 788 – 789 n. 27 (1996). See also WHO, “Female Genital Mutilation” Fact Sheet, *supra* note 3.

<sup>21</sup> See the overviews of these in Yusuf, *supra* note 9, at 30 – 31, Imad-ad-Dean Ahmad, “FGM: An Islamic Perspective” *available at* <http://www.minaret.org/fgm-pamphlet.htm> and Sami A. Aldeeb Abu-Sahlieh, *To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision* (translation by Frederick M. Hodges), 13 MEDICINE AND LAW 575 – 622 (1994).

<sup>22</sup> See the overview of Islamic authorities in Abu-Sahlieh, *supra* note 21.

A woman used to perform circumcision in Medina [*Madīna*]. The Prophet (peace be upon him) said to her: 'Do not cut severely as that is better for a woman and more desirable for a husband.'<sup>23</sup>

Some Muslim scholars and non-Muslim critics of female circumcision argue that the hadith is technically unsound (*da'if*) being weak in transmission.<sup>24</sup> Others have tried to infer an Islamic prohibition of the practice. For example, Ahmad declaring the practice as *makruh* (disapproved) argues that since female circumcision "has neither hygienic nor religious value there is no justification for Muslims to engage in this painful and potentially harmful practice".<sup>25</sup> This approach is not consistent with Islamic law. A *sunna taqriyyah* is a hadith that relates the Prophet's comment and attitude to practices brought to the notice of the Prophet.<sup>26</sup> In the hadith relating to female circumcision, the Prophet (SAW) did not forbid the practice but only indicated the limits. Islamic scholars have always been careful to point out this. For example, Al-Qayrawani in his *Risalah* used the word "*khifaad*" which means literally "reduction, lessening, decrease" to describe female circumcision.<sup>27</sup> A commentary on this says that what is removed is the "excess".<sup>28</sup> A Muslim medical doctor defined the *sunna* circumcision as being no more than "cutting-off the prepuce to the clitoris, which is about, in most cases, 1/3 of a centimeter (sometimes less)".<sup>29</sup> According to some Muslim

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<sup>23</sup> Ahmad, *supra* note 21 citing *Sunan Abu Dawūd*, Book 41, Hadith No. 5251. Abu-Sahlieh says: - The most often mentioned narration reports a debate between Mohammed and Um Habibah (or Um 'Atiyyah). This woman, known as an exciser of female slaves, was one of a group of women who had immigrated with Mohammed. Having seen her, Mohammed asked her if she kept practicing her profession. She answered affirmatively adding: "unless it is forbidden and you order me to stop doing it". Mohammed replied: "Yes, it is allowed. Come closer so I can teach you: if you cut, do not overdo it (*la tanhaki*), because it brings more radiance to the face (*ashraq*) and it is more pleasant (*ahza*) for the husband". According to others, he said: "Cut slightly and do not overdo it (*ashimmi wa-la tanhaki*), because it is more pleasant (*ahza*) for the woman and better (*ahab*, from other sources *abha*) for the husband": Abu-Sahlieh, *supra* note 21.

<sup>24</sup> Ahmad, *supra* note 21, Abu-Sahlieh, *supra* note 21 and Muslim Women's League, *Position paper on Female Genital Mutilation/Female Circumcision at* <http://www.mwlusa.org>.

<sup>25</sup> Ahmad, *supra* note 21.

<sup>26</sup> ABD AL-WAHAB KHALAF, *ILM USUL AL-FIQH* 36 - 37 (1996).

<sup>27</sup> SALIH ABD AL-SAMI'U ALAABI AL-AZHARI, AL-THAMAR AL-DAANI FI TAQRIB AL-MA'ANIY SHARH RISALAH IBN ABI ZAID AL-QAYRAWANI 310 (undated).

<sup>28</sup> *Id.*

<sup>29</sup> Abdulrasaq Amuda, *Genital Mutilation or Female Circumcision?* 1 (8) AT-TABIB (The Annual Magazine of the Association of Muslim Health Students, College of

scholars, *Khifaad* is particularly desirable when the clitoris protrudes beyond the labia. This is because of the stimulation that occurs every time the clothes rub against the clitoris. This constant and unwanted sexual stimulation can create serious psychological and behavioral problems for the girl or woman.<sup>30</sup>

All extreme types of circumcision that goes beyond the removal of the prepuce or at most, part of the clitoris should be considered *haram* (unlawful) for Muslims. The practice of ‘sunna circumcision’ should at least be considered *mustahab* (recommended) or at least *mubah* (permitted).<sup>31</sup> This is why some Muslims insist that they should be allowed without any form of coercion – legal or otherwise - to choose whether or not to perform female circumcision.

Although, majority of Islamic scholars recognize female circumcision as permissible,<sup>32</sup> opponents of female circumcision have overblown the minority opinion of some “modern” Islamic scholars who have expressed opposition or reservations about the practice.<sup>33</sup> It is however clear that the scholars who oppose female circumcision are under the erroneous impression that *sunna* female circumcision has been proved to be harmful and that is the sole basis of their objection.<sup>34</sup> No doubt, there are many direct and unequivocal verses in the Qur’an and traditions in the Hadith that prohibit self-harm and self destruction.<sup>35</sup> What is at stake for many Muslims in the hadiths cited in support of female circumcision goes beyond mere verification of authenticity of hadith, it goes to the very root of the Prophet’s (SAW) prophethood: How can a true prophet approve mutilation? It is therefore understandable, the anxiety of those scholars who are desperate to distance the Prophet (SAW) from those hadiths! The problem is that these scholars did not take the precaution of verifying the health allegations against the “sunnatic” circumcision before acting upon the allegations. Their approach is contrary to the clear Qur’anic injunction that mandates verification of facts in

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Medicine, University of Ilorin) 62 (2005).

<sup>30</sup> Muhammad Ibrahim Salim, *Khitan al-Banat*, in AL-KHITAN, RA’Y AD-DIN WAL ‘ILM FI KHITAN AL-AWLAD WAL BANAT 81 – 82 (Abu-Bakr Abd al-Raziq, 1989) cited in Abu-Sahlieh, *supra* note 21.

<sup>31</sup> Scholars are generally agreed that female circumcision is according to a Prophetic hadith a “*makrumat*” which means a *mustahab*, see for example, AHMAD AL-NAFRAWI, AL-FAWAAKIH AL-DAWANI ALA RISALAH IBN ABI ZAID AL-QAYRAWANI Vol. 2, 306 (1995). It is at least a *mubah*: Al-Jannah Sisters Organization, *Is Female Circumcision Required?*, at <http://www.jannah.org/gebderequity/equityappendix.html> as retrieved on 27 July 2006

<sup>32</sup> Yusuf, *supra* note 9, at 30 – 31.

<sup>33</sup> See Abu-Sahlieh, *supra* note 21 for the review of some of these opinions.

<sup>34</sup> See *Id.* and Ahmad, *supra* note 21.

<sup>35</sup> “...And make not your own hands contribute to (your) destruction; ...”: Qur’an: 2:195.

such circumstances.<sup>36</sup>

If these scholars had known that there are no serious medical objections to the “sunnatic” circumcision, probably, they would not have voiced any objection to the practice.<sup>37</sup>

Another curious distortion associates infibulation with Islam. For example, Abu-Sahiel, a Christian Palestine medical doctor resident in Switzerland, after examining the views of Islamic scholars on female circumcision says:

What is described above as in compliance with *sunna* remains theoretical. In fact, it is rather clitoridectomy (performed in Egypt) or infibulation (performed in Sudan and Somalia).<sup>38</sup>

This approach is no more than a desperate attempt to discredit Islam by associating infibulation with the religion.

### C. *Right to Sexual and Corporeal Integrity*

Some have argued that female circumcision violates women’s rights to sexual fulfillment and corporeal integrity because of the tampering with the clitoris involved in the procedure.<sup>39</sup> It is said that circumcision leads to frigidity in women but this is not an established medical fact.<sup>40</sup> The truth is that our current very limited scientific knowledge of the dynamics of women’s sexual satisfaction does not justify the claim that female circumcision leads to frigidity. Amnesty International a most vigorous opponent of female circumcision says, “Clinical considerations and majority of studies on women’s enjoyment of sex suggest that

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<sup>36</sup> “... if a *fasiq* comes to you with any news ascertain the truth, lest you harm a people unwittingly, and you afterwards become full of repentance for what you have done”.<sup>36</sup> The word ‘*fasiq*’ is a comprehensive word. It has been variously translated in Qur’anic exegesis (*tafsir*) as “wicked”: Yusuf Ali, “unrighteous”: Sher Ali and “evil-liver”: Picthall. According to HANS WEHR, A DICTIONARY OF MODERN WRITTEN ARABIC (J. Milton Cowan, ed.) (1980), the meaning of the term *fasiq* includes “godless”, “sinful”, “sinner”, “fornicator”, “licentious”, and “iniquitous”; and technically under Islamic law “a person who not meeting the legal requirement of righteousness”.

<sup>37</sup> See the refutation of the alleged health risks of female circumcision in the next two sections below.

<sup>38</sup> Abu-Sahlieh, *supra* note 21.

<sup>39</sup> See the articulation of these arguments in K. Boulware-Miller, *Female Circumcision: Challenges to the Practice as a Human Rights Violation*, 8 *HARVARD WOMEN’S LAW JOURNAL* 155 at 162 – 163 (1985) and Doraine Lambelet Coleman, *The Seattle Compromise: Multicultural Sensitivity and Americanization* 47 *DUKE L. J.* 717 (1998) at 733 – 734, also available at <http://www.lawduke.edu/shell/cite/p1?47+Duke+L+J+717>.

<sup>40</sup> Grande, *supra* note 13.

genital mutilation does impair a women's enjoyment".<sup>41</sup> Many studies have proved that circumcision does not impair the libido and that circumcised women do experience orgasm.<sup>42</sup>

In informal discussions with some of this author's female colleagues who had undergone circumcision, virtually all of them admitted to achieving orgasm and thus see nothing wrong with female circumcision. This may be the reason why the movement to have female circumcision banned does not enjoy the popular support of women in many non-western countries.<sup>43</sup> The removal of the clitoris does not necessarily make it impossible for a woman to achieve orgasm. As the Amnesty International puts it:

The mechanisms involved in sexual enjoyment and orgasm are still not fully understood, but it is thought that compensatory processes, some of them psychological, may mitigate some of the effects of the removal of the clitoris and other sensitive parts of the genitals.<sup>44</sup>

This "compensatory process" by which "other sensitive parts of the body, such as the labia minora, the breasts, and the lips, are found to take over this erotic function in clitoridectomized females" has been proved in many studies.<sup>45</sup> Thus, circumcision *per se* does not close the door to achieving orgasm. Many studies have shown that even among majority of infibulated women, orgasm is still attained<sup>46</sup>

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<sup>41</sup> Amnesty International, *Female Genital Mutilation – A Human Rights Information Pack*, *supra* note 3.

<sup>42</sup> Grande, *supra* note 13, citing M. KARIM AND R. AMMAR, FEMALE CIRCUMCISION AND SEXUAL DESIRE (1965), U. Megafu, *Female Ritual Circumcision in Africa: An Investigation of the Presumed Benefits Among Ibos of Nigeria*, *EAST AFRICAN MED. JOUR.* 793 – 800 (1983), HANNY LIGHTFOOT-KLEIN, PRISONERS OF RITUAL. AN ODYSSEY INTO FEMALE GENITAL CIRCUMCISION IN AFRICA 41 (1989), Carla Obermeyer, *Female Genital Surgeries: The Known, The Unknown, and the Unknowable*, 13(1) *MEDICAL ANTHROPOLOGY QUARTERLY* 79 -106 and R. B. EDGERTON, MAU MAU: AN AFRICAN CRUCIBLE 40 (1989).

<sup>43</sup> 'Findings' such as Mary Ogechi Esere, *A Cross-Ethnic Study of the Attitude of Married Women towards Female Genital Mutilation*, 1 *GENDER DISCOURSE* 1 - 12 (2003) that 'shows' that 98.4% of women sampled in Ilorin opposed female circumcision cannot be realistic.

<sup>44</sup> *Id.*

<sup>45</sup> See for example Grande, *supra* note 13, at 13 citing Megafu, *supra* note 42, and Lightfoot-Klein, *supra* note 42, at 90.

<sup>46</sup> In one study, 90% of the infibulated women interviewed reported experiencing orgasm: LIGHTFOOT-KLEIN, *supra* note 42, at 41. See similar results in a recent studies which

There are numerous reasons why a woman may not enjoy sex.<sup>47</sup> Large numbers of women in the West suffer from sexual dysfunction such as low sexual drive, arousal problem, pain during intercourse and absence of orgasm – even though they are not circumcised.<sup>48</sup> Sexual satisfaction for a woman involves more than the clitoris; rather it is a result of interplay of the various stages of desire (libido), arousal and orgasm.<sup>49</sup>

Many studies have also shown that circumcision does not necessarily reduce promiscuity.<sup>50</sup> Ironically, some opposed to female circumcision have even argued that the practice increases promiscuity and could even be a cause for prostitution because a circumcised woman being frigid or near frigid will require multiple sex encounters with many men before she can be sexually satisfied.<sup>51</sup>

The massive campaign against female circumcision could have adverse psychological effects on women who had undergone circumcision. They may feel mutilated and incapable of achieving sexual satisfaction. This may likely affect educated women who had never had sexual intercourse prior to the campaign. This psychological problem can give rise to sexual dysfunction which will in turn be blamed wrongly on the circumcision! This is not the only possible psychological damage. Ironically, the western sexual discourse and its fixation on the clitoris can create serious problems even for girls who are not circumcised. Many of them would discover to their disappointment that the over-glorification of the clitoris as a massive power house for orgasm is not borne out by facts in

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affirmed that, “[I]n infibulated women, some erectile structures fundamental for orgasm have not been excised”: L. Catania, O. Abdulcadir, V. Puppo, J. B. Verde, and J. Abdulcadir, *Pleasure and Orgasm In Women With Female Genital Mutilation/Cutting (FGM/C)* 4 (6) JOURNAL OF SEXUAL MEDICINE 1666 – 1678 (2007).

<sup>47</sup> See the statistics in John Leland, Claudia Kaeb and Nadine Joseph, “The Science of Women and Sex: It’s Really not Just a Headache Honey” *NEWSWEEK* June 5, 2000, at pp. 44 – 50.

<sup>48</sup> *Id.*, pp. 48 – 49.

<sup>49</sup> *Id.*

<sup>50</sup> Esere, *supra* note 43, at 10 citing B. E. Owumi, *A Socio-Cultural analysis of Female Circumcision among the Urhobos of Delta* 2 YOUR TASK HEALTH MAGAZINE 8 – 11, N. Obianyo, *Harmful Traditional Practices that Affect the Wellbeing of Women* 1 (1) NEW IMPACT 16 –19, O. AJERE, PREDISPOSING FACTORS AND ATTITUDES TOWARDS SEX WORK BY COMMERCIAL SEX WORKERS IN NIGERIA (unpublished M. Ed Project, University of Ilorin, 1998) cited in Esere, *supra* note 43, at 10, B. I. Nnodum, *Female Genital Mutilation and Its Effect: Implications for Counselling* 8 (1) NIGERIAN JOURNAL OF GUIDANCE AND COUNSELLING 112 – 132 (2002) and Amuda, *supra* note 29, at 62.

<sup>51</sup> Esere, *supra* note 43, at 10.

their sexual lives and experience. This can create for them a lot of dissatisfaction and problems.<sup>52</sup>

#### ***D. Right to Health***

The strongest ‘case’ against female circumcision is from the medical perspective. The allegation that female circumcision is harmful has been the most potent weapon against the practice. Medical and human rights literature often carry long lists of frightening “possible” complications that can arise out of FGM female. The WHO enumerated the “Health consequences of FGM” in its “fact sheet” thus:

Immediate complications include severe pain, shock, haemorrhage, urine retention, ulceration of the genital region and injury to adjacent tissue. Haemorrhage and infection can cause death.

More recently, concern has arisen about possible transmission of the human immunodeficiency virus (HIV) due to the use of one instrument in multiple operations, but this has not been the subject of detailed research.

Long-term consequences include cysts and abscesses, keloid scar formation, damage to the urethra resulting in urinary incontinence, dyspareunia (painful sexual intercourse) and sexual dysfunction and difficulties with childbirth.

Psychosexual and psychological health: Genital mutilation may leave a lasting mark on the life and mind of the woman who has undergone it. In the longer term, women may suffer feelings of incompleteness, anxiety and depression.<sup>53</sup>

This and other similar lists are misleading and unrealistic as they contain every imaginable “complication”. It is not surprising that some scientists have criticized these lists as not meeting the minimum scientific standards and as being highly exaggerated, unrealistic and misleading.<sup>54</sup> It is significant that opponents of the

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<sup>52</sup> Anon, *In Defense of Female Circumcision* available at <http://www.rjgeib.com/thoughts/circumcision/response.html> (retrieved on 5 May 2007).

<sup>53</sup> *Id.*

<sup>54</sup> Obermeyer, *supra* note 42 and R. A. Shweder *What About ‘Female Genital Mutilation’? And Why Understanding Culture Matters in the First Place*, 129 DAEDALUS 4, par. 44 (2000) both quoted in Grande, *supra* note 13, at 6 n. 16.

more widely practiced and almost universally accepted male circumcision have similar intimidating lists of “complications” that could arise from male circumcision.<sup>55</sup>

However, the most misleading aspect of the campaign against FGM is that lists of purported harmful effects do not differentiate between the various types of female circumcision and female genital mutilation but usually lump them together. By this generalization, the harmful effects of infibulation are transferred to all the various forms of circumcision. This less than scientific approach is found even at the highest quarters. For example, the WHO admits that “[t]he immediate and long-term health consequences of female genital mutilation vary according to the type and severity of the procedure performed” but its “Fact Sheet” (quoted above), lumped the “complications” together without differentiating between types of female circumcision and female genital mutilation.<sup>56</sup> The World Medical Assembly too admitted that the health consequences depend “on the extent of the circumcision”. The worst the Assembly could say about the *sunna* type of female circumcision is that “[e]ven with the least drastic version, an incision in the clitoris, complications and functional consequences cannot be ruled out”.<sup>57</sup> The Assembly did not specify such complications and consequences but merely listed the complications associated with the severe forms of FGM. Other commentators are more extreme, they simply discuss the “disastrous consequences of any kind of female circumcision”.<sup>58</sup> This style of calling a dog a bad name in order to hang it is adopted in virtually all the literature opposed to all forms of female circumcision.<sup>59</sup> The actual position is that of all the known types of female circumcision, the *sunna* circumcision when properly done has the least possible complications, which are no more than the complications associated with any other minor surgery.<sup>60</sup>

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<sup>55</sup> See examples in Grande, *supra* note 13, at 5 – 6, n. 14.

<sup>56</sup> WHO, “Female Genital Mutilation” Fact Sheet, *supra* note 3.

<sup>57</sup> Statement on Condemnation of Female Genital Mutilation, Adopted by the 45th World Medical Assembly, *supra* note 19.

<sup>58</sup> Abu-Sahlieh, *supra* note 21. Ajiboye says: “Some of the medical complications are common to all types of FGM but occur more in Type 3 and Type 4”: Ajiboye, *supra* note 15, at 6. Such approach does a lot of damage to the *sunna* circumcision.

<sup>59</sup> The general trend is that while many scholars accept that the medical consequences of female circumcision vary according to the different types, they however simply limited their discussion of the “health consequences of female genital mutilation” to the consequences of infibulation alone, see for example, Savell, *supra* note 20, at 805 - 806.

<sup>60</sup> “Note that these health risks vary according to the type of female circumcision performed. The mild forms of the practice, including the symbolic pricking of the clitoris and the *sunna* create few if any health consequences to women in Africa.”: Platt, *supra* note 17 at 7 note 27. See also similar views: “[of all the types], the [sunnatic circumcision] is associated with the least possible complications, (like many other minor surgery)..”:

Contrary to the assertion that female circumcision is harmful, some medical opinions in the West see benefits in female circumcision. Wheeler, citing journals articles in medical journals published in the West, discusses extensively relatively recent researches that point to improved sexual satisfaction as a benefit of surgical removal of the prepuce.<sup>61</sup> Until recently, medical doctors in the West arguing along the same lines as Islamic jurists who argue in favour of *khifaad* routinely performed surgery in the case of *ambiguous genitalia* where the clitoris was abnormally or excessively large.<sup>62</sup> This has now been condemned. It is easy to argue against these 'old' medical opinions but then such arguments also cast a shadow of doubt on the validity of the so-called new positions.

Opponents of female circumcision often press the health argument too far.

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Editorial Comment, *At-Tabib* (The Annual Magazine of the Association of Muslim Health Students, College of Medicine, University of Ilorin) Vol. 1 No. 8 April 2005, p. 63, and "...studies have shown that Type I is the least harmful and give little or no complication during pregnancy...the sunnatic external genitalia female circumcision is quite safe when appropriately handled.": Abdulgafar Jimoh, *The Sunnatic Female Circumcision: Medical Implications*, 3 AL-MASLAHA 44 at 45 (2004 – 2006).

<sup>61</sup> K. N. Wheeler, *Female Circumcision: A Factual Bibliography with Annotation*, at <http://www.circlist.com/femalecirc/anatfemale.html> as retrieved on 11 August 2006 citing four studies where a striking percentage of those who had the procedure done experience "enhanced sexual enjoyment": C. F. McDonald, *Circumcision of the Female*, 18 (3) GENERAL PRACTITIONER 98 - 99 (1958) which claims to have circumcised "perhaps 40 patients," including some adult women and that among the adult women who underwent the procedure, "Very thankful patients were the reward. For the first time in their lives, sex ambition became normally satisfied" [id, 98]; W. G. Rathmann, *Female Circumcision, Indications and a New Technique*, 20 (3) GENERAL PRACTITIONER 115 - 120 (1959) where of the 112 replies a questionnaire had these results: "Of the 72 women who reported having never experienced an orgasm prior to the surgery, 9 [12.4%] reported continued failure to achieve orgasm; 64 [87.6%] reported successful achievement of orgasm after the surgery. Of the 39 who reported achieving orgasm only with difficulty prior to the surgery, 5 [12.5%] reported no improvement; 34 [87.5%] reported improvement after the surgery"; Leo Wollman, *Hooded Clitoris: Preliminary Report*, 20 (1) THE JOURNAL OF THE AMERICAN SOCIETY OF PSYCHOSOMATIC DENTISTRY AND MEDICINE 3 - 4 (1973) and Leo Wollman, *Female Circumcision* 20 (4) THE JOURNAL OF THE AMERICAN SOCIETY OF PSYCHOSOMATIC DENTISTRY AND MEDICINE 130 - 131 (1973) which says that of one hundred consecutive patients referred to him by psychoanalysts and clinical psychologists "sixty eight benefited by surgical female circumcision: of the remaining thirty-two, twenty-eight showed no need for this procedure; four refused to be treated by this technique"; and Takey Crist, *Female Circumcision*, 11 (8) MEDICAL ASPECTS OF HUMAN SEXUALITY 77 (1977) which concludes that "Patients who have undergone this procedure have generally commented that they have enhanced sexual response.").

<sup>62</sup> *Id.*

Some of them have argued as if HIV comes from female circumcision.<sup>63</sup> For example, Brady says that if there is “evidence linking FGM with the transmission of HIV, this may then become the best weapon in the arsenal for the eradication of this practice”.<sup>64</sup> This argument is premised on the use of the same cutting instruments on many girls during puberty rites in some African communities. It has also been argued that circumcision leads to drug abuse: As Masry puts it:

Very few healthy males can fully succeed in bringing a circumcised woman to orgasm. She has lost her capacity for pleasure. The man will soon have to admit that he alone cannot do it. There is only one solution: hashish.<sup>65</sup>

This is strange when drug-abuse as a means of stimulating sexual desire is a major problem in the West! It is also an intellectual fraud to link female circumcision (other than infibulation) to maternal and child mortality.<sup>66</sup> Another similar “scientific” conclusion is that circumcised women “are much more likely to become sterile”.<sup>67</sup> According to the research, this is due to possible damage to the reproductive organs by infections traced to female circumcision. Although, there is clearly no scientific basis for saying that female circumcision causes sterility, some have identified the value of the sterility argument as an ideological weapon against female circumcision.<sup>68</sup>

One very serious negative health-related consequences of the categorization of female circumcision as FGM is that circumcised women have become objects of curio in western hospitals. Unnecessary caesarian operations are often preformed in the West on circumcised women by doctors who would not

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<sup>63</sup> D. B. Hrdy, *Cultural Practices Contributing to the Transmission of Human Immunodeficiency Virus in Africa*, 9 REV INFECT DIS 1109 - 1119 (1987), M. Brady, *Female Genital Mutilation: Complications and Risk of HIV Transmission*, 13 AIDS PATIENT CARE STDS 709 – 716 (1999) and Ezeilo, “Feminism and Human Rights at a Crossroads in Africa? Reconciling Universalism and Cultural Relativism”, *supra* note 11, at 16.

<sup>64</sup> Brady, *supra* note 63.

<sup>65</sup> Quoted in Abu-Sahlieh, *supra* note 21.

<sup>66</sup> Omoigui, *supra* note 11, at 2.

<sup>67</sup> “Editorials Reflecting the Views of the United States Government: Female Circumcision” VOA News item on 21 August 2005 at <http://www.voanews.com/uspolicy/2005-09-01-voal.cfm> retrieved on 6 October 2005 citing an article in the British medical journal LANCET.

<sup>68</sup> According to Layla Shaaban an analyst with the U.S. Agency for International Development: “The argument, the possible link with infertility, could become a new strong argument, an additional argument, as an additional harmful effect of this practice”, quoted *Id.*

care to make any distinction between the categories of female circumcision.<sup>69</sup> This is due to their fears of the health risks generally associated with infibulation.<sup>70</sup> It may also equally be a continuation of the propaganda against female circumcision. Another dreadful consequence for circumcised women is that their genitalia become objects of curiosity and unwarranted attention in western hospitals:

For women who have had genital surgeries, going to the hospital for gynecological treatment entails becoming a veritable spectacle. Everything almost comes to a standstill, in order that the doctors in training, or the experts on hand observe firsthand, this atrocity. For such women, seeking medical care becomes associated with indignity. They are thus unlikely to go to the hospital willingly, except under the most dire of circumstances. When such women are interviewed, and they express their support for the practice, are they laboring under false consciousness? Are they foolish, or worse? It is impossible to make any rational determination without stepping back from the environment created by the furor over "FGM". What is clear is that such women must be protected, and their dignity ensured.<sup>71</sup>

These women experience afresh the indignities and humiliations suffered by Saartjie Baartman the young Khoisan woman who in the 19<sup>th</sup> Century became a medical curiosity in Europe and was exhibited like an animal to a paying public for her steatopygia-enlarged buttocks and her unusually elongated labia.<sup>72</sup> The analogy between these two experiences spanning centuries is clear.<sup>73</sup> There is a

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<sup>69</sup> Ajiboye, *supra* note 15, at 6.

<sup>70</sup> *Id.*

<sup>71</sup> Mojubaolu Olufunke Okome, "African Women and Female Circumcision - Some Reflections" available at <http://www.africaresource.com> accessed on 14 April, 2007.

<sup>72</sup> "Welcome Home, Baartman" *Punch* Saturday, April 27, 2002, p. 47 (story was culled from *TIME*). See also Sander L. Gilman, *Black Bodies, White Bodies: Toward an Iconography of Female Sexuality, in LATE NINETEENTH-CENTURY ART, MEDICINE, AND LITERATURE* "RACE, "WRITING, AND DIFFERENCE 223 – 261 (H. L. Gates Jr. ed., 1986).

<sup>73</sup> Olakunle George, *Alice Walker's Africa: Globalization and the Province of Fiction, COMPARATIVE LITERATURE* (2001) available at <http://www.uoregon.edu/~clj/georgeabstract.htm> accessed 20 October 2007), and Oyeronke Oyewumi, *Alice in Motherland: Reading Alice Walker on Africa and Screening the Colour 'Black'*, 1 *JENDA: A JOURNAL OF CULTURE AND AFRICAN WOMEN STUDIES* 2 at 4 – 5 (2001).

clear need to protect circumcised women from this sort of intrusion and medico-voyeurism.<sup>74</sup>

### 1. Criticism of the Method

The crude procedure under unhygienic conditions and the absence of analgesic wherein female circumcisions are allegedly performed are emphasized by critics of female circumcision. Mountis writing in the context of infibulation summarized these allegations succinctly with all the usual self-righteous indignation:

These operations are often performed by untrained nurse mid-wives. None of these mid-wives have received formal medical training, nor do they use sanitary equipment or follow sanitary procedures. They do not sterilize the equipment, and they often use the same instruments to perform several operations in succession, which leads to disease, infertility, or even death. The suffering of girls and women does not end when the operation is completed. These societies are often very technically primitive and lack both medical personnel and proper medicine to apply to the wounds. Many of these women or girls may suffer extensive hemorrhaging and become infected, infertile, or die. If they survive, when pregnant, their babies may die in the womb or be born with some neurological deficiency, especially in the case of infibulated women. Childbirth is often difficult as the fetal head may be obstructed and this, combined with strong contractions, may cause perianal tears. If contractions are weak, the result can be fetal death. These women may also suffer psychological difficulties due to the trauma and pain experienced during the operation. The operations are performed without even a local anesthetic. In some cultures, women are not even told that they will undergo an operation. They are simply snatched from their beds in the middle of the night.<sup>75</sup>

The catalogue of crude tools said to be used in carrying out the procedure can be very frightening. Amnesty International listed them as including “blunt penknife”,

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<sup>74</sup> In America, the group, RAINBO has taken this up and do accompany such women to hospitals: Okome, *supra* note 71, at 1.

<sup>75</sup> Elene G. Mountis, *Cultural Relativity and Universalism: Reevaluating Gender Rights in a Multicultural Context*, 15 DICKINSON JOURNAL OF INTERNATIONAL LAW 113 at 121 – 123 (1996).

“broken glass, a tin lid, scissors, a razor blade or some other cutting instrument”<sup>76</sup> and in the case of infibulation, the use of “thorns and stitches” to hold together the two sides of the labia majora together.<sup>77</sup> Of course, infibulation is not practiced anywhere outside the middle Nile region and there is no report of the use of the listed instruments in most African communities.<sup>78</sup> The crude instruments listed are the rare exceptions rather than the rule. The Amnesty International also says that “antiseptic powder may be applied, or, more unusually, pastes – containing herbs, milk, eggs, ashes or dung”.<sup>79</sup> This again, is a list calculated to discredit. Certainly, medical knowledge is not the exclusive preserve of the West. Many overlook or are oblivious of the fact that many African communities in the pre-colonial era had fairly competent surgeons and other medical experts.<sup>80</sup> As a United States based Nigerian medical doctor rightly cautioned, some communities use analgesics, which types, and their medicinal properties are still unknown to the West.<sup>81</sup>

Opponents of female circumcision also question the competence of the persons performing the operation. For example, the Amnesty International published a testimony of a female circumcision performed by “half-drunk” women.<sup>82</sup> It is well documented that in African communities, locally trained

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<sup>76</sup> Amnesty International, *Female Genital Mutilation – A Human Rights Information Pack*, *supra* note 3. The OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, HARMFUL TRADITIONAL PRACTICES AFFECTING THE HEALTH OF WOMEN AND CHILDREN Fact Sheet No. 23, lists kitchen knife and sharp fingernail among other tools.

<sup>77</sup> *Id.*

<sup>78</sup> Certainly not in community in Nigeria with its cultural diversity consisting of over 250 ethnic groups.

<sup>79</sup> *Id.*

<sup>80</sup> TASLIM OLAWALE ELIAS, THE NATURE OF AFRICAN CUSTOMARY LAW 236 - 237 (1956). Dr Underwood’s comment on the skill of traditional Yoruba medical practitioners is instructive: “If aboriginal medicine is primitive and naïve, some of its feats of surgery win the unstinted admiration of more orthodox surgeons. Its practitioners are masters at the art of trephining, one skull on view showing no fewer than eight different trephine holes in various stages of healing. The holes were made for recurring headaches. Perhaps the most impressive exhibit, for the skill attending its use is a foot-long, wood-handled, curved knife which its donor, a British doctor, has actually observed employed in the performance of a Caesarean operation. The woman in labour was made to drunk on banana wine and was tied to the bed. Two hours after the operation she breast-fed her baby, and was herself up and about on the eleventh day.” quoted *Id.*, 237 n. 5 (1956). Elias says that this comment refers to the Yorubas of Nigeria, *Id.*

<sup>81</sup> Omoigui, *supra* note 11, at 5.

<sup>82</sup> Amnesty International, *Female Genital Mutilation – A Human Rights Information Pack*, *supra* note 3.

experts carried out circumcision. For example among the Yoruba, circumcision is a highly technical procedure carried out only by those who have acquired the skill. The practitioners who could be male or female were usually members of families that have specialized in carrying out surgical procedures particularly those concerning circumcision and facial marks.<sup>83</sup> These families have acquired the skill and experience that come from literally centuries of doing these things.<sup>84</sup>

If modern doctors perform the operation, the criticism of lack of expertise would be eliminated. However, the medical world in the West would not countenance the “medicalisation” of female circumcision. Its practitioners would not allow medical doctors to perform the operation.<sup>85</sup> The procedure does not form part of the medical curriculum.<sup>86</sup> Doctors are now liable to severe penalties if they carry out female circumcision.<sup>87</sup> Some have even asserted without advancing any reason, that the “negative effects” of female circumcision “are only slightly mitigated when the procedure is performed in a health facility by health professional”.<sup>88</sup> The non-medicalisation of female circumcision has many negative effects. It drives female circumcision underground to the world of quacks and the fear of criminal sanctions prevent parents from bringing their

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<sup>83</sup> N. A. FADIPE, *THE SOCIOLOGY OF THE YORUBA* 79 n. 2 (1970). Hence, the modern disclaimer of the allegation that these practitioners are incompetence: “Circumcision is done by trained experts among the Yoruba – for the good of females and males. Female circumcision is not female genital mutilation in the Yoruba culture. It is meant to properly acculturate the females so that they behave like proper human beings. It was a common practice among the Oyo, Osun, Ibadan sub-groups of the Yoruba race in the olden days. Nowadays, the practice is dying out in those areas of the Yoruba ethnic group”: OLUGBOYEGA ALABA, *UNDERSTANDING SEXUALITY IN THE YORUBA CULTURE* 9 (2004) available at <http://www.arsrc.org/en/resources/reports/alaba.pdf>.

<sup>84</sup> Fadipe, *supra* note 83.

<sup>85</sup> In 1989, the *Regional Committee of the WHO for Africa* passed a resolution urging participating governments “to forbid medicalization of female circumcision and to discourage health professionals from performing such surgery.”: Resolution of the Regional Committee for Africa, 39th session, AFR/RC39/R9, 1989-SEP-13. See also the Statement on Condemnation of Female Genital Mutilation, adopted by the 45th World Medical Assembly, *supra* note 19, Omoigui, *supra* note 11, at 5 and Savell, *supra* note 20, at 809.

<sup>86</sup> Omoigui, *supra* note 11, at 5.

<sup>87</sup> *Infra*.

<sup>88</sup> Bernadette Passade Cisse, *International Law Sources Applicable to Female Genital Mutilation: A Guide to Adjudicators of Refugee Claims Based on a Fear of Female Genital Mutilation*, 35 *COLUMBIA JOURNAL OF TRANSNATIONAL LAW* 429 at 433 (1997).

damaged children to hospital when things go wrong with the circumcision.<sup>89</sup> The attitude of the opponents of female circumcision is not formulated by health concerns but an unreasoning blind opposition based on political and other extraneous factors. The argument regarding the unhygienic methods of carrying out female circumcision is merely incidental to their opposition. Otherwise, the female circumcision impasse could be resolved easily with Medical doctors performing the mild forms of circumcision within the controlled and sanitary atmosphere of clinical settings.<sup>90</sup>

## 2. Crisis of Terminology

The West has turned the use of language in the human rights discourse as a major weapon in the cross-cultural human rights dialogue. This has given rise to a crisis as to the appropriate terminologies for female circumcision.<sup>91</sup>

Initially, there was talk only of ‘female circumcision’, then ‘female genital mutilation’ and sometimes, ‘female genital surgery’. These were used interchangeably. The last term is not popular in the West because it “tends to trivialize the horrors of female procedures” and appears “to imply that the practice is some-how medical in nature”.<sup>92</sup> The singularly misleading and alarmist term “female sexual castration” was suggested but it never caught on.<sup>93</sup> This is not surprising. Even the most extreme forms of female circumcision and FGM cannot be described as castration. Most western opponents of female circumcision prefer

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<sup>89</sup> Grande, *supra* note 13, at 7.

<sup>90</sup> Platt, *supra* note 17 at 4, and 25 – 27. See also Karen Engle, *Female Subjects of Public International Law: Human Rights and the Other Exotic Female*, 26 NEW ENGLAND LAW REVIEW 1509 at 1515 (1992).

<sup>91</sup> See an overview of this crisis in Coleman, *supra* note 39, at 725 n. 17 citing the discussions in Isabelle R. Gunning, *Arrogant Perception, World-Traveling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUMBIA HUMAN RIGHTS LAW REVIEW 189 at 193 - 194 n.15 (1992), Hope Lewis, *Between Irua and “Female Genital Mutilation”*: *Feminist Human Rights Discourse and the Cultural Divide*, 8 HARVARD HUMAN RIGHTS JOURNAL 1-2 n.4 (1995) and Barrett A. Breitung, *Comment, Interpretation and Eradication: National and International Responses to Female Circumcision*, 10 EMORY INTERNATIONAL LAW REVIEW 657 at 662 n.17. (1996)

<sup>92</sup> Cassman, *supra* 1, at n. 1 (2007) (citing Dena S. Davis, *Male and Female Genital Alteration: A Collision Course with the Law?*, 11 HEALTH MATRIX 487, 489-490, 2001), and Coleman, *supra* note 39, at 725 n. 17 respectively.

<sup>93</sup> Mohammed Badawi, “Epidemiology of Female Sexual Castration” in Cairo, Egypt paper presented at the 1st International Symposium on Circumcision, Anaheim, California, March 1 –2 1989 available at <http://www.nocircu.org/symposia/first/badawi.html>.

the term FGM which some justify on the dubious analogy that in its “mildest form, clitoridectomy . . . is anatomically equivalent to amputation of the penis”.<sup>94</sup>

Many have pointed out and rightly too, that not all types of female circumcision fall within the categories of female genital mutilation properly so-called.<sup>95</sup> The wide gulf between the *sunna* female circumcision and the Pharaohic genital mutilation is so wide that it has been described as “inaccurate”<sup>96</sup>, “intellectually lazy and misleading”<sup>97</sup> and “intolerant”<sup>98</sup> to lump all the different practices in the WHO list under the single and derogatory terminology of Female Genital Mutilation. It is apparent that “not all categories of female circumcision amount to mutilation in a real sense”.<sup>99</sup> Even some opposed to all types of female circumcision find the term “mutilation” objectionable.<sup>100</sup> It is offensive because it is “disrespectful of African women who have been circumcised” and to all persons whose culture allows female circumcision.<sup>101</sup> Ezeilo, a law teacher and women rights activist in Nigeria who described herself as “an African feminist scholar and a local activist” thinks too that the term is offensive. She pointed to the inappropriateness of such “obscene” and “explicit” words within her own (Igbo) cultural milieu.<sup>102</sup> In any case, as Okome rightly pointed out, “it is not the intent of those who practice the various forms of genital surgeries to wreak violence on their girls and women”.<sup>103</sup>

The objections to the term “female genital mutilation” has led to the use of the alternative term “female genital cutting” which is considered

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<sup>94</sup> Nahid Toubia, *Female Circumcision as a Public Health Issue*, 331 NEW ENGLAND JOURNAL OF MEDICINE 712, 718 (1994) quoted in Coleman, *supra* note 39, at 725 n. 17.

<sup>95</sup> Ezeilo, “Feminism and Human Rights at a Crossroads in Africa? Reconciling Universalism and Cultural Relativism”, *supra* note 11, at 16 and Natalie J. Friedenthal, *It’s Not All Mutilation: Distinguishing Between Female Genital Mutilation and Female Circumcision*, 19 N.Y. INT’L L. REV. 111, 137 – 140 (2006).

<sup>96</sup> Platt, *supra* note 17 at 7.

<sup>97</sup> Abdulgafar Jimoh, *supra* note 60, at 45

<sup>98</sup> Boulware-Miller, *supra* note 39, at 164.

<sup>99</sup> “Feminism and Human Rights at a Crossroads in Africa? Reconciling Universalism and Cultural Relativism”, *supra* note 11, at 16 and Boulware-Miller, *supra* note 39, at 170.

<sup>100</sup> L. Amede Obiora, “Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision”, *supra* note 13, at 289 – 290.

<sup>101</sup> Boulware-Miller, *supra* note 39, at 170 quoted in Savell, *supra* note 20, at 810 and Kristen Bowman, *Comment: Bridging the Gap in the Hopes of Ending Female Genital Cutting*, 3 SANTA CLARA LAW REVIEW 135 (2005).

<sup>102</sup> Ezeilo, “Feminism and Human Rights at a Crossroads in Africa? Reconciling Universalism and Cultural Relativism”, *supra* note 11, at 16.

<sup>103</sup> Okome, *supra* note 71, at 1.

“straightforward” term devoid of moral judgment.<sup>104</sup> For some, the term FGM is not negotiable. This is so even in the academic context where respect for other views is the norm.<sup>105</sup> The terminology “female genital mutilation” is still very much in use and defended by African-based scholars<sup>106</sup> and Non-Governmental Organizations (NGOs). Given their uncritical acceptance of anything that emanates from the West, most think as GAMCOTRAP does, that the terminology was “scientifically arrived at by the WHO and other related bodies working on the issues”.<sup>107</sup>

#### **IV. ANTI-FEMALE CIRCUMCISION LEGISLATION AT INTERNATIONAL AND DOMESTIC LEVELS**

International human rights laws have been invoked against Female circumcision and FGM. Although the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>108</sup> did not expressly mention FGM, article 2 (f) of the Convention obligated State Parties to:

... take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

In addition, article 5 (a) requires State Parties to:

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<sup>104</sup> Cassman, *supra* note 1, and Bowman, *supra* note 101.

<sup>105</sup> For example, the Canadian Medical Association Journal insists that “in view of the serious harms associated with these practices and the disempowerment of the majority of the girls and young women who are affected, we defer to the WHO’s recommendation and have adopted ‘female genital mutilation’ as the preferred term in our style guide”: Todkill (Senior Deputy Editor, CMAJ) responding to a correspondence on the appropriate term for the practices: Anne Marie Todkill, *Letters: Female Genital Mutilation*, 173 CANADIAN MEDICAL ASSOCIATION JOURNAL 1487 (2005) at <http://www.cmaj.ca/cgi/content/full/173/12/1487-b> assessed on 22 October 2007.

<sup>106</sup> See for example, Muhammed Tawfiq Ladan, *Women’s Rights and Access to Justice under the Sharia in Northern Nigeria*, in SHARIA AND WOMEN’S HUMAN RIGHTS IN NIGERIA: STRATEGIES FOR ACTION 37 at 68 – 69 (Joy Ezeilo and Abiola Akiyode Afolabi eds., 2003).

<sup>107</sup> GAMCOTRAP, “She, She, She, The Debate on Female Genital Mutilation” *The Point Newspaper*, Friday 17th February 2006, at <http://www.thepoint.gm/shesheshe22.htm> accessed on 26 August 2006.

<sup>108</sup> Adopted 18 December 1979, entered into force 3 September 1981, G. A. Res. 34/180, 34 UN GAOR, Supp. (No. 46), UN Doc. A/36/46, at 193 (1979) reprinted in 19 ILM 33 (1980).

... take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Some have argued that the prohibition of FGM can be inferred from these two articles.<sup>109</sup> This argument has been vindicated by the Declaration on the Elimination of Violence against Women<sup>110</sup> enacted to “strengthen and complement”<sup>111</sup> CEDAW which includes FGM among its lists of violence against women.<sup>112</sup>

There is also an African regional treaty prohibition of FGM. Under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,<sup>113</sup> States Parties are obligated to campaign against all forms of female genital mutilation in order to eradicate the practice.<sup>114</sup> In addition, the State Parties are to criminalise the practice of all forms of female genital mutilation, medicalisation and para-medicalisation of female genital mutilation.<sup>115</sup>

Pursuant to the developments on the international human rights scene, many countries have taken legislative action against female circumcision and FGM.<sup>116</sup> Carrying out female circumcision is an offence punishable in Queensland with a maximum of 14 years imprisonment;<sup>117</sup> in Italy, with

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<sup>109</sup> Valerie Oosterveld, *Refugee Status for Female Circumcision Fugitives: Building a Canadian Precedent*, 51 UNIVERSITY OF TORONTO FACULTY OF LAW REVIEW 277 at 286 (1993).

<sup>110</sup> G. A. Res. 48/104, UN Doc. A/48/29, adopted on 20 December, 1993, reprinted in 33 *International Legal Materials* 1049 (1994).

<sup>111</sup> *Ibid*, preamble.

<sup>112</sup> Art. 2 (a), Declaration on the Elimination of Violence against Women, *op cit*.

<sup>113</sup> Adopted on 11 July 2003 at Maputo, Mozambique, came into force on 25 November 2005: [http://www.choike.org/nuevo\\_eng/informes/2024.html](http://www.choike.org/nuevo_eng/informes/2024.html) (accessed on 12 Apr 2006). Full text of the Protocol is available at [http://www.achpr.org/english/\\_info/women\\_en.html](http://www.achpr.org/english/_info/women_en.html) accessed on 19 Apr 2006. See review of the Protocol in Kaniye S. A. Ebeku, *A New Hope for African Women: Overview of Africa's Protocol on Women's Rights*, 13 NORDIC JOURNAL OF AFRICAN STUDIES 264 (2004).

<sup>114</sup> *Id.*, article 5 (a).

<sup>115</sup> *Id.*, article 5 (b).

<sup>116</sup> A. Rahman and N. Toubia, *supra* note 13, at 80 ff.

<sup>117</sup> See sections 323A and 323B, Criminal Code (Queensland) as amended on 2000 discussed in Zara Spencer, *The Criminalisation of Female Genital Mutilation in Queensland* 9 (3) MURDOCH UNIVERSITY ELECTRONIC JOURNAL OF LAW para. 38 (2002).

imprisonment ranging from 6 to 12 years,<sup>118</sup> and in the United States, it is a felony punishable by fines and/or imprisonment for up to 5 years.<sup>119</sup> Civil liabilities are also imposed in some countries as in France where a court in 2001 awarded substantial damages against an ex-husband who had circumcised his wife.<sup>120</sup>

In Africa, at least fourteen countries including Egypt, Ghana, Kenya, Sudan and Tanzania have officially banned female circumcision.<sup>121</sup> In Nigeria, the Child Rights Act<sup>122</sup> which was enacted in 2003 was directed towards consolidating all federal laws relating to children and towards giving legal effect to the country's international human rights obligations in respect of the rights of children. This fairly long legislation omitted any reference to female circumcision and FGM because majority of the legislators could not be persuaded to prohibit the practice.<sup>123</sup> However, some states have legislated against "female circumcision" and "genital mutilation".<sup>124</sup> Similar legislations are pending in other states as at the time of writing.<sup>125</sup> The disconcerting aspect of these state laws is the definition of "female circumcision" and "female genital mutilation". The Edo State law and other state laws in the country define "circumcision", as "the act of cutting off of the clitoris of a female" while "mutilation" is defined as "any cutting, incision, damage, removal, of any or all of the female sex organs".<sup>126</sup>

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<sup>118</sup> Article 583, Italian Criminal Code amended in 2004: Grande, *supra* note 13, at 4 n. 11.

<sup>119</sup> *Id.* See a detailed review of the legislation criminalizing female circumcision in CENTER FOR REPRODUCTIVE RIGHTS, LEGISLATION ON FEMALE GENITAL MUTILATION IN THE UNITED STATES (2004) at [http://www.reproductiverights.org/pub\\_pb\\_fgmlawsusa.pdf](http://www.reproductiverights.org/pub_pb_fgmlawsusa.pdf).

<sup>120</sup> Michelle Milholland, "Woman circumcised by ex-husband awarded \$35,000." *The Advocate*, Baton Rouge, 10 April 2001, 1B-2B at <http://www.cirp.org/news/theadvocate/04-10-01>.

<sup>121</sup> Ebeku, *supra* note 113, at 271.

<sup>122</sup> No. 26 of 2003. See a summary of the provisions of Act in Tawfiq Ladan, *The Nigerian Child Rights Act, 2003: An Overview of the Rationale, Structure and Contents*, 2 (2) NIGERIAN BAR JOURNAL 219, 232 – 233 (2004).

<sup>123</sup> Ladan, *supra* note 118, at 230 n. 19. See the same article in 3 (1) IBADAN LAW JOURNAL 66 at 73 n. 21 (2004).

<sup>124</sup> Cross River State, Edo State, Akwa Ibom State and Ondo State: DANISH IMMIGRATION SERVICE, REPORT ON HUMAN RIGHTS ISSUES IN NIGERIA JOINT BRITISH-DANISH FACT-FINDING MISSION TO ABUJA AND LAGOS, NIGERIA 19 OCTOBER TO 2 NOVEMBER 2004 REPORT NO. 1/2005 (2005) 26 available at <http://www.udlst.dk> accessed on 21 Apr 2008.

<sup>125</sup> For example, such a bill is pending before the Kwara State House of Assembly.

<sup>126</sup> Section 2, Female Circumcision and Genital Mutilation (Prohibition) Law, 1999 (Edo State). See also Cross Rivers State's Girl-Child Marriages and Female Circumcision (Prohibition) Bill, No. 2 of 2000 and Bayelsa State's Female Circumcision (Prohibition)

Persons who can be guilty of an offence under these Nigerian laws include not only those who perform, aid and abet the performance of female circumcision or female genital mutilation, but also “any person who offers herself” for circumcision or genital mutilation.<sup>127</sup> As regards punishments for a conviction under the law, the Edo law stipulates a fine of one thousand naira or imprisonment for not less than six months or both.<sup>128</sup> The Bayelsa State bill proposes a term of five years imprisonment or a fine of ten thousand naira or both.<sup>129</sup> The Cross Rivers State bill proposes a fine of not less than Ten thousand Naira or imprisonment not exceeding one year for a first offender and a fine not exceeding Twenty thousand naira or imprisonment not exceeding three years for each subsequent offence.<sup>130</sup>

The negative atmosphere created against female circumcision by WHO has become so pervasive that even where there is no domestic legislation against female circumcision, many doctors run away from anything concerning female circumcision for fear of losing their practising licenses.<sup>131</sup>

Many have pointed out that even if female circumcision is as harmful as its opponents claim, criminalization of female circumcision is not really the answer as it merely caused the practice to be performed secretly underground.<sup>132</sup> This is because those practicing it do not accept that it is harmful. There are other adverse effects of criminalization of female circumcision. For example, the

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Bill, 2000.

<sup>127</sup> Section 4 (Edo State), clause 4 (CRS) and clause 4 (Bayelsa State). It is not clear whether the “person who offers herself for the operation will be liable under the Bayelsa Bill.

<sup>128</sup> Section 4, Female Circumcision and Genital Mutilation (Prohibition) Law, 1999.

<sup>129</sup> Clause 4, the Female Circumcision (Prohibition) Bill, *supra* note 122.

<sup>130</sup> Clause 4, the Girl-Child Marriages and Female Circumcision (Prohibition) Bill, *supra* note 122.

<sup>131</sup> Hassan Abdulazeez Ayodeji, *The Circumcision Issue - As I See It*, 1 (8) AT-TABIB (The Annual Magazine of the Association of Muslim Health Students, College of Medicine, University of Ilorin) 62 (2005).

<sup>132</sup> L. Amede Obiora, *Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision*, *supra* note 13, at 288, Platt, *supra* note 17 at 24 - 25, Carol M. Messito, *Regulating Rites: Legal Responses to Female Genital Mutilation in the West*, 16 THE BUFFALO JOURNAL OF PUBLIC INTEREST LAW 33 (1997), HELEN STACY, *EQUALITY AND DIFFERENCE: REGIONAL COURTS AND WOMEN’S HUMAN RIGHTS* 12 – 13 (2004) (The paper also available in the Stanford Public Law and Legal Theory Working Paper Series at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=546202](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=546202)>), Cynthia Fernandez-Romano, *The Banning of Female Circumcision: Cultural Imperialism or a Triumph for Women’s Rights?*, 13 TEMPLE INTERNATIONAL AND COMPARATIVE LAW JOURNAL 137, at 159 (1999) and Okome, *supra* note 71, at 1.

negative effects conviction has on the mother where she is an immigrant.<sup>133</sup> Rather, dialogue, discussion, and the devising of contextualized solutions have been suggested as the proper methods.<sup>134</sup>

Given the deep-rooted cultural practice and the social approval of female circumcision in some areas, most legislations criminalizing female circumcision may perhaps belong to what has been described as “empty gestures calculated to gain approval from the Western community”.<sup>135</sup> But, why a government should criminalize female circumcision merely to win “western approval” tells a lot about the interplay involved between human rights and cultural imperialism.

## **V. FEMALE CIRCUMCISION, CULTURAL IMPERIALISM AND DOUBLE STANDARDS**

Some have pointed out that the campaign against female circumcision is expressive of the cultural imperialism of the West. This position has often been argued from the anthropological perspective,<sup>136</sup> and from the perspective of western feminist discourse on the African woman.<sup>137</sup> The charge of cultural imperialism against the West in the matter of female circumcision is evident in many respects. Some of these are examined hereunder.

### **A. *The Scuttled Seattle Compromise***

The “Seattle Compromise” arose in the Harbourview Medical Center, Seattle,

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<sup>133</sup> Holly Maguigan, *Will Prosecutions for "Female Genital Mutilation" Stop the Practice in the U.S.?*, 8 TEMPLE POLITICAL AND CIVIL RIGHTS LAW REVIEW 391 (1999).

<sup>134</sup> Okome, *supra* note 71, at 1.

<sup>135</sup> Mountis, *supra* note 75, at 126.

<sup>136</sup> Grande, *supra* note 13, at 9 – 11, and 16 - 20. See also Shweder “What About ‘Female Genital Mutilation’? And Why Understanding Culture Matters in the First Place”, *supra* note 54, at par. 22, and R. A. SHWEDER, M. MINOW, AND H. R. MARKUS, ENGAGING CULTURAL DIFFERENCES: THE MULTICULTURAL CHALLENGE IN LIBERAL DEMOCRACIES (2002) cited in Grande, *supra* note 13, at 1.

<sup>137</sup> For this perspective see: Obiora, “Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision”, *supra* note 13, L. Amede Obiora, *The Little Foxes that Spoil the Vine: Re-Visiting the Feminist Critique of Female Circumcision*, 9 CANADIAN JOURNAL OF WOMEN AND LAW 46 (1996), L. Amede Obiora, *The Anti-Female Circumcision Campaign Deficit*, in OBIOMA NNAEMEKA (ED.), FEMALE CIRCUMCISION AND THE POLITICS OF KNOWLEDGE. AFRICAN WOMEN IN IMPERIALIST DISCOURSES (2005), and Obiora Nnaemeka, *If Female Circumcision Did Not Exist, Western Feminist Would Invent It*, in S. PERRY AND C. SCHENCK (EDS.), EYE TO EYE, WOMEN PRACTICING DEVELOPMENT ACROSS CULTURES 179 (2001).

Washington. This center is located in an area which has a large number of Somali immigrants who demand that infibulations be performed on their baby girls. The hospital would not permit infibulations and the immigrants threatened that they would rather pay the large sums of money required to transport their girls back to Somali where infibulations would be done rather than leave their girls without infibulation. In this circumstance in 1996, in order to prevent the threatened infibulations, the Hospital's authorities proposed what they perceived as "a largely symbolic compromise".<sup>138</sup> This involved

... a small cut to the prepuce, the hood above the clitoris, with no tissue excised, and this would be conducted under local anesthetic for children old enough to understand the procedure and give consent in combination with informed consent of the parents.

The hospital was of the view that this mere bloodletting would not violate the anti-FGM laws in the United States.

The suggested compromise however provoked a barrage of vehement criticisms that the hospital authorities had to shelve it. The Attorney General swiftly declared that the compromise violated American anti-FGM laws even though those laws talk of removal of tissue.<sup>139</sup> Coleman identified the three main arguments advanced by the objectors to the compromise.<sup>140</sup> The first is that performing this procedure would have sanctioned medically-unnecessary physical injury to children. The second is that "even talking about cutting female genitals legitimizes a barbaric practice, one that disempowers women and serves to keep them out of the American mainstream". The third is that the compromise interfered with the process of "Americanization".

It is really significant that the basis of the rejection of the compromise was its being "non-American". "Americanization" has been defined as

... the process of integration by which immigrants become part of our communities . . . [including] the civic incorporation of immigrants, that is, the cultivation of a shared commitment to the American values of liberty, democracy, and equal opportunity.<sup>141</sup>

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<sup>138</sup> The details herein are indebted to Coleman, *supra* note 39, at 717 – 783.

<sup>139</sup> *Id.*, p. 750.

<sup>140</sup> *Id.*, pp. 767 - 781.

<sup>141</sup> UNITED STATES COMMISSION ON IMMIGRATION REFORM, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY, A REPORT TO CONGRESS, EXECUTIVE SUMMARY 5, 6 (1997) cited in Coleman, *supra* note 39, at 774

This creates the impression that unless one conforms to America's vision of the world, America will never be pleased with one. Solzhenitsyn summed up the western attitude:

The mistake of the West...is that everyone measures other civilizations by the degree to which they approximate Western civilization. If they do not approximate it, they are hopeless, dumb, reactionary and don't have to be taken into account. This viewpoint is dangerous.<sup>142</sup>

To Muslims, western attitude merely confirms the Qur'anic verse: "Never will the Jews and Christians be satisfied with thee unless thou follow their creed".<sup>143</sup>

A compromise similar to Seattle was also proposed and rejected in Italy where the practice remains a criminal offence. Significantly, it has been adopted in Somalia where *sunna* circumcision and pricking are performed under sanitary and medical conditions in order to protect the girls from infibulation done in unhygienic conditions.<sup>144</sup>

### ***B. Legalised Female Genital Mutilations in the West***

In spite of the vehement western opposition to female circumcision and 'female genital mutilation', medical doctors in the West routinely carry out other various forms of female genital "cuttings". The western woman is the alpha and omega regarding her vagina. She can "redesign" or "restructure" her vagina for no other reason than to "enhance sexual gratification" and to "aesthetically modify" her labia.<sup>145</sup> *Woman's Own* listed the available procedures as Designer Laser Vaginoplasty (DLV), Laser reduction labioplasty, Laser perineoplasty, Augmentation labioplasty, Vulvar lipoplasty, Laser Vaginal Rejuvenation (LVR)

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<sup>142</sup> Solzhenitsyn's response in an interview in Paul Gray, *Russia's Prophet in Exile*, TIME, July 22, 1989, 54 at 58.

<sup>143</sup> Qur'an 2:120.

<sup>144</sup> Cassman, *supra* note 1, at 147 (note 199) citing Cynthia Fernandez-Romano, *supra* note 132, at 159.

<sup>145</sup> Debra Ollivier, "Designer Vaginas" at USA Today.com "Female Genital Surgery Goes Public", Nov 14, 2000 reproduced in *Media articles on Designer Vaginas, "Designer Vaginas: Genital Landscaping, Labia Remodelling and Vestal Vagina: Female Genital Mutilation Or Female Genital Cosmetic Surgery?", 1 (1) JENDA: A JOURNAL OF CULTURE AND AFRICAN WOMEN STUDIES 1 at 19 (2001) at <http://www.jenda.journal.com/vol.1/toc1.1.htm>.*

and Hymenoplasty (reconstruction of the hymen).<sup>146</sup> In the last procedure, lost virginity is also “restored”. This potentially deceitful operation is done mainly for “Middle-Eastern women” and for the “growing population of American women seeking the ‘virgin experience’ to share with their husbands”.<sup>147</sup> Many in non-western cultures would consider these as examples of perverted uses of science in the western world. The surprising thing is that these operations are perfectly legal and are performed by medical doctors in hospitals at the mere request of the women. The procedures variously and collectively referred to as “cosmetic genitoplasty”, or “female genital ‘cosmetic’ surgery” often entails serious surgical risks<sup>148</sup> and are not free from grievous side effects.<sup>149</sup> For these reasons, some in the medical world have condemned the practices as FGM.<sup>150</sup> Others have justified the practices on the ground of the “psychological” advantages the practices offer

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<sup>146</sup> *Designer Laser Vaginoplasty*: an aesthetic surgical enhancement of the vulvar structures, such as the labia minora (inner lips), labia majora (outer lips), mons pubis, perineum, introitus and hymen; *Laser reduction labioplasty*: sculpting unequal labia minora - the most common request is from women whose inner lips protrude from the outer lips, *Laser perineoplasty*: Rejuvenates a relaxed or aging perineum (the part between the vaginal opening and the anus) so that the skin is a firm and taut bridge. It can also enhance sagging lips; *Augmentation labioplasty*: Fat that has been liposuctioned from the thigh, for example, is transplanted into the outer lips for a more plump labia majora; *Vulvar lipoplasty*: Removes fat from the pubic mound and upper parts of the labia majora through liposculpting; *Laser Vaginal Rejuvenation*: A one-hour procedure designed to tighten the vaginal muscles; and *Hymenoplasty*: This procedure can reinstate the hymen to its original all-intact status. (“Many women for whatever reason be it social, cultural, or religious, need to remain “pure” to “prove” their worth. Born-again virgin? Yes, it really is possible”), see “Designer Vaginas: Prettying Up What’s Down There” in *Woman’s Own* January 2004 edition available at <[www.womansown.com/jan04/Designer-Vaginas.htm](http://www.womansown.com/jan04/Designer-Vaginas.htm)>. See also the various articles reproduced in Media articles on Designer Vaginas, “Designer Vaginas: Genital Landscaping, Labia Remodelling and Vestal Vagina: Female Genital Mutilation or Female Genital Cosmetic Surgery?” 1 (1) *Jenda: A Journal of Culture and African Women Studies* Vol. 1, No. 1, 1 (2001) available at <http://www.jenda.journal.com/vol.1/toc1.1.htm>.

<sup>147</sup> Media articles on Designer Vaginas, *supra* note 146, 22.

<sup>148</sup> Lih Mei Liao and Sarah M. Creighton, *Requests for Cosmetic Genitoplasty: How Should Healthcare Providers Respond?*, 334 *BRITISH MEDICAL JOURNAL* 1090 – 1092 (2007) at <http://www.bmj.com/cgi/eletters/334/7603/1090#168546> assessed on 22 October 2007.

<sup>149</sup> Birgitta Essen and Sara Johnsdotter, *Female Genital Mutilation in the West: Traditional Circumcision versus Genital Cosmetic Surgery*, 83 *ACTA OBSTET GYNECOL SCAND* Vol., 611 – 613 (2004).

<sup>150</sup> Marge Berer, *Cosmetic Genitoplasty: This is Female Genital Mutilation; It Should be Stopped or Prosecuted*, 334 *BRITISH MEDICAL JOURNAL* 1335 (2007) at: <http://www.bmj.com/cgi/eletters/334/7603/1090#168893> assessed on 22 October 2007.

to women.<sup>151</sup> But then, female circumcision and even infibulation produces similar psychological benefits for women in societies where the practices are acceptable!<sup>152</sup>

Female Genital Mutilation in the West is not related or traceable to religion. Rather, it has a cultural basis. Over the years, the West has evolved an individual-centered narcissistic and hedonistic culture. The individual is allowed the fullest avenue for maximum “enjoyment” particularly in sexual matters with only very minimal interference of the law. There are virtually no bars to the quest for “sexual fulfillment”. Western women are being pressured to conform to and acquire the beauty models prescribed by fashion houses and the mass media.<sup>153</sup> The “Designer Vagina” is just another new fad in the catalogue of female bodily mutilations in the West.

There are other countless ways in which women in the West can legitimately fiddle with their genitals. In the early 1980s, thousands underwent genital piercing procedures whereby their genitals were pierced so that special metal rings and bars could be inserted.<sup>154</sup> The reasons were mainly for “decoration and sexual enhancement”.<sup>155</sup> Others had plastic surgery performed on their clitoris and vulvas to “change its appearance and sometimes to expose their clitoris to direct stimulation”.<sup>156</sup> Some women desiring larger clitoris use steroids creams and other forms of steroids to cause the same result.<sup>157</sup> It is interesting to note that the WHO did not deem it fit to include these non-therapeutic genital operations in its list of FGM. Logically, these procedures ought to come within the “scraping of tissue surrounding the vaginal orifice” or “cutting of the vagina” within the ambit of Type IV of the WHO classification of Female Genital Mutilation (quoted above) but these description were immediately limited by WHO to *angurya* cuts and *gishiri* cuts respectively. This is a clear case of definition-gerrymandering. So complete is this strategy that even some of those who defend female circumcision assume that Type VI “includes all other unclassified practices involving female genitalia”.<sup>158</sup> But does it? Making a

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<sup>151</sup> Jeffrey C. Y. Chan, *Cosmetic Surgery Could Improve Psychological Burdens*, 334 BRITISH MEDICAL JOURNAL 1335 (2007) at <http://www.bmj.com/cgi/eletters/334/7603/1090#168546> assessed on 22 October 2007.

<sup>152</sup> Grande, *supra* note 13, at 12 - 13.

<sup>153</sup> Virginia Braun, *In Search of (Better) Sexual Pleasure: Female ‘Cosmetic’ Surgery*, 8 SEXUALITIES 407 – 424 (2005).

<sup>154</sup> See “Enhancement of the Clitoris: Female Genital Piercing” at [http://www.the-clitoris.com/f\\_html/enhance.htm](http://www.the-clitoris.com/f_html/enhance.htm).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> “Female Circumcision” at <http://www.islam-online.net/iol-english/dowalia/techng->

discriminatory distinction between western practices and non-western practices in relation to non-therapeutic cuttings in the vagina is nothing but double standards.<sup>159</sup>

Some accepted medical practices often lead to genital mutilation. Omogui gives the example of episiotomy the practice of slashing of a woman's perineum to widen the passage for childbirth. He says that this procedure, which is often done when it is not necessary, leaves a scar and may alter forever, the functional characteristics of the vulva as a sexual organ.<sup>160</sup> He also argues that there are more serious risks involved in abortion – a practice condoned and defended by the West. He wonders why there are no qualms against abortion which involves “the barbaric crushing and scooping of body parts of an unborn fetus”.<sup>161</sup>

### C. *Breast Augmentation and Other Similar Surgeries*

In order to remain or become “beautiful”, women in the West have subjected themselves to all sorts of bodily indignities and mutilation. ‘Excess’ fats are sucked out of thighs and other parts of the body. Operations are preformed to “restructure” the nose, mouth, ears and the face. Breasts too are mutilated in “redesigning” whereby silicon, saline or other foreign materials are implanted into breasts to “improve” the fullness and appearance of the breasts even though these foreign things are known to cause adverse conditions which range from mild to grievous including excruciating pain, ascuaplular contracture, asymmetry of the breast, decreased nipple areolar sensation and displacement and rupture of implants.<sup>162</sup> Most need further operations to ‘correct’ something.<sup>163</sup> The complications can be so severe as to lead to breast amputation.<sup>164</sup> Experts say, “...careful surgical planning and technique can minimize but not always prevent

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2000-August-22/techn9.asp.

<sup>159</sup> Essen and Johnsdotter, *supra* note 149, and Berer, *supra* note 146.

<sup>160</sup> Omoigui, *supra* note 11, at 3.

<sup>161</sup> *Id.*

<sup>162</sup> E. S. Y. Chan, *Breasts Augmentation and Its Potential Complications*, 20 (1) HONG KONG PRACTITIONER 1 – 3 (1998) at [usunzi1.lib.hku/hkj/view/23/2302081.pdf](http://usunzi1.lib.hku/hkj/view/23/2302081.pdf), *The Unglamorous Side of Cosmetic Surgery*, at <http://www.personal.psu.edu/users/k/e/kea5003/research.htm> accessed on 18 May 2005, Lisa Collier Cool, *Breast Implant Horror - Leaky, Scarring, Black With Mold: Why Women Are Taking Them Out - The Shocking Health Claims Against Saline Implants*, at <http://www.info-implants.com/Quebec/Charest/hope2.html> accessed on 12 May 2005 and Sue Widemark, *Saline Breast Implants are Risky, Says New Study*, at <http://suewidemark.netfirms.com/breastimplants.htm> accessed on 23 May 2005.

<sup>163</sup> See “48 Reasons not to get a boob job” at <http://www.paulkienitz.net/no-implants.html>.

<sup>164</sup> *Id.*

such results”.<sup>165</sup> Yet, women in the West are at perfect liberty to demand for Breast Augmentation. Even minors are legally permitted same provided they have the consent of one of their parents.<sup>166</sup>

It is important to point out that all the bodily mutilations described above even though are much more risky than female circumcision are legal and perfectly accessible on demand in western countries. The various practices in the West when viewed from the perspectives of other cultures constitute mutilation of the female body in a manner emblematic of a hedonistic way of life. The way these practices are justified in the West is very telling on the way the West handles criticisms of its own practices.<sup>167</sup> The attitude is that “a particular social practice might not be accorded the same priority when viewed from different cultural standpoints”.<sup>168</sup> While the West views its own “genital cuttings” as “civilised”, it looks at the similar cuttings in other cultures as “savage” or “barbaric”.<sup>169</sup>

One thing that is emerging now is that the West is not prepared to make any concessions in matters of human rights to other cultures whether by way of adjusting its own practices in light of other cultures or by accepting that other cultures could do things differently from the western way. It becomes obvious then that the West is not interested in a cross-cultural human rights dialogue but in a monologue where it can talk down to other cultures.

#### **D. Sex Change**

There is a gender revolution going on in the West. Gender no longer means what it used to. A person is no longer simply male or female as a whole range of identities are now possible. A person could be “transgender”, “transsexual” or “intersex”.<sup>170</sup> Some think that their gender identity does not correspond to their biological sex; hence, they want sex change. Sex change procedures are now available on demand in the West. These involve what some would consider as genital mutilation since the modified genital ceases to perform its old sexual

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<sup>165</sup> See “What are the Breast Implants Complications” at [http://www.mentor4me.com/breast.aug/index.php?txt Mode=risks\\_08](http://www.mentor4me.com/breast.aug/index.php?txt Mode=risks_08) where the risks are said to include scarring, hemtoma/seroma, necrosis and changes in nipple and breast sensation.

<sup>166</sup> Grande, *supra* note 13, at 4 citing United States and Italy.

<sup>167</sup> See the analysis of this perspective in Grande, *supra* note 13 and Gillia, *supra* note 1, at 585.

<sup>168</sup> Savell, *supra* note 20, at 796 – 797.

<sup>169</sup> Grande, *supra* note 13, at 14.

<sup>170</sup> “Gender Identity” at

[http://www.answers.com/main/ntquery?method=4&dsid=2222&dekey=Gender+identity&gwp=8&curtab=2222\\_1&linktext=gender%20identity&linktext=gender%20identity](http://www.answers.com/main/ntquery?method=4&dsid=2222&dekey=Gender+identity&gwp=8&curtab=2222_1&linktext=gender%20identity&linktext=gender%20identity).

functions but does not acquire capabilities for the supposedly new role.<sup>171</sup> These sex change procedures which viewed from non-western cultures amount to genital mutilations<sup>172</sup> are excluded from the definition of FGM and from criminal sanctions in virtually every where in the West.<sup>173</sup>

### ***E. The Right to Informed Consent***

If women in the West have a choice in what they can do with or to their body including their vaginas, why should non-western women not have the same choice? Why should non-western women as adults not be allowed to make an informed choice as to whether or not they want to be circumcised? As we have seen above, the law in many countries denies this choice on pain of stiff punishment. Tahzib-Lie expressing the view prevalent among Western feminists argues that this choice should not be available in the case of female circumcision in view of the ‘health hazards’ they ascribed to female genital mutilation and their effects on “public health”:

Women making an informed choice to undergo FGM may nevertheless counter that the restriction is unnecessary to protect public health, since only the participant’s health is at stake...However, this line of reasoning is untenable. First, FGM can lead to complications during pregnancy and childbirth, thereby endangering the life and health of the unborn child. If the woman has a sexual partner, the psychosexual and psychological effects of FGM could give rise to conflict with the partner and therefore affect his health and well-being. In addition, a sexually active woman who has contracted a blood borne disease, such as hepatitis B or HIV/AIDS, as a result of undergoing FGM may transmit this disease to others and thereby put their health at risk... [These are] reasons to recognize FGM as a public health threat, and paternalistic health legislation against it has a legitimate ground for restricting a woman’s external freedom of religion or belief.<sup>174</sup>

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<sup>171</sup> See the comparison of Female circumcision to intersex surgery in Nancy Ehrenreich and Mark Barr, *Intersex Surgery, Female Genital Cutting, and the Selective Condemnation of Cultural Practices*, 40 HARVARD CIVIL RIGHTS –CIVIL LIBERTIES LAW REVIEW 71 (2005).

<sup>172</sup> Gillia, *supra* note 1.

<sup>173</sup> For example in Queensland: Spencer, *supra* note 117, para. 37.

<sup>174</sup> Tahzib-Lie, *supra* note 18, at 978 – 977. See also the arguments in favor of criminalization of female circumcision in Karen Hughes, *The Criminalization of Female Genital Mutilation in the United States*, 4 JOURNAL OF LAW AND POLICY 321

This view considers non-western women as being incapable of thinking for themselves and therefore need to be protected from themselves.<sup>175</sup>

### ***F. Western Feminism***

Many articulate African scholars have consistently opposed the western depiction of Africa and its peoples. To these intellectuals, the western depictions are in most cases far from the realities in the continent.<sup>176</sup> This is because they see Africa through their own cultural lens. Given their assumption of the superiority of their own culture, they see themselves as playing “the role of the enlightened Westerner in the African’s salvation”.<sup>177</sup> These themes are again being played out in the western feminist discourse of the African woman generally and in the female genital mutilation discourse in particular.<sup>178</sup> The western feminist is thus often disappointed when she encounters African women questioning her alien concern and sympathy.<sup>179</sup>

Perhaps the worst example of western feminism in this context is the African American writer Alice Walker.<sup>180</sup> Walker’s works center around infibulation which for her is the ‘standard’ female circumcision in Africa. By this less than factual approach, she ignores the crucial differences between infibulation and circumcision and thereby grossly misrepresented Africa. She is also too fictional in her analysis of the effects of infibulation and her presentation of this parody as a social and quasi-medical fact really harmed her credibility. There is no way female circumcision can be described as “sexual blinding of women” as she did. It is not surprising that she has been criticized vehemently by articulate and enlightened female African intellectuals.<sup>181</sup> Oyewumi aptly

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(1995).

<sup>175</sup> Wood, *supra* note 18.

<sup>176</sup> See generally V. Y. MUDIMBE, *THE INVENTION OF AFRICA* (1988).

<sup>177</sup> Nontsasa Nako, *Possessing the Voice of the Other: African Women and the ‘Crisis of Representation’ in Alice Walker’s Possessing the Secret of Joy*, 1 *JENDA: A JOURNAL OF CULTURE AND AFRICAN WOMEN STUDIES* 2 at 4 (2001).

<sup>178</sup> *Id.*. See also Okome, *supra* note 71, Oyewumi, *supra* note 73 and Cassman, *supra* note 1, 140 – 141.

<sup>179</sup> For example, see Mary Walker’s account of her experience with Muslim women in *pardah* (seclusion) in West Africa titled “A World Where Womanhood Reigns Supreme (The Seeds of My Own Re-evaluations)” available at [www.islamfortoday.com/mary\\_walker.htm](http://www.islamfortoday.com/mary_walker.htm).

<sup>180</sup> See her works, *ALICE WALKER, THE COLOR PURPLE* (1982), *ALICE WALKER, POSSESSING THE SECRET OF JOY* (1992), and *A. WALKER AND P. PARMAR, WARRIOR MARKS – FEMALE GENITAL MUTILATION AND THE SEXUAL BLINDING OF WOMEN* (1993).

<sup>181</sup> See generally Nako, *supra* note 177, Okome, *supra* note 71, and Oyewumi, *supra* note

condemned “Alice Walker’s assault on Africans in the guise of an evangelizing mission to eradicate female circumcision in ‘Africa’”.<sup>182</sup> While Alice Walker may help distort the popular understanding of the African women generally and female circumcision in particular in the West, she remains an obscure figure in Africa itself. As with many well-known western specialists on Africa, she remains largely unknown in Africa itself. Her impact in Africa is at best, marginal.

The western feminist concern has also had a diversionary effect on the problems of women in Africa. Oyewumi rightly pointed that Walker’s “incessant wailing over the blameless vulva” is distracting most of us from the work we need to do.<sup>183</sup> This is the consensus of articulate Africans.

### **G. Donor Driven Research**

Another important point often made against the West is that the West manipulates discussions about Africa by determining the topics for research and discussion. Since African researchers are virtually dependent on grants from foreign donors and the United Nations agencies (which are also controlled by the same foreign countries), their researches tend to be donor-driven. So also are NGOs whose focus and activities are largely determined by what foreign donors are willing to sponsor.<sup>184</sup> These donors tend to be over bearing and patronizing.<sup>185</sup> The researches sponsored by these donors generally do not aim at ascertaining objective data or encouraging local or home grown solutions to African problems but at disseminating the conclusions already formed by the funding agencies and the formulation of which African scholars had little or no input.<sup>186</sup> The focus of these “researches” and themes of the conferences, seminars, and workshops sponsored are skewed towards validating or propagating these conclusions. Thus, many researchers in Africa do not research matters that are of immediate and long time interests to their communities rather their research interests are dictated by what their foreign donors are willing to sponsor.<sup>187</sup> This is distracting focus from

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<sup>182</sup> Oyewumi, *supra* note 73 at 1.

<sup>183</sup> Nako, *supra* note 177, at 6.

<sup>184</sup> S. C. Dike, *Environmental NGO Challenges, Prospects, and Suggestions for Reform*, 6 PROPERTY AND CONTEMPORARY LAW JOURNAL 185 at 187-189 (2000/2001).

<sup>185</sup> Nkiru Nzegwu, *Questions of Agency: Development, Donors, and Women of the South*, 2 JENDA: A JOURNAL OF CULTURE AND AFRICAN WOMEN STUDIES 1 (2002).

<sup>186</sup> *Id.* and G. B. N. AYITTEY, INDIGENOUS AFRICAN INSTITUTIONS xxii – xxiii (1991).

<sup>187</sup> As Amali pointed out “Many research activities in developing nations are donor-driven. Research, therefore, tends to be tailored to the interests of the donors, which may not necessarily be of immediate interest or use to the nation”: E. Amali, *Developing*

the very serious problems facing the African woman:

External gender research priorities can also center around concerns with fertility regulation, female circumcision rather than to the global economic forces and liberalization policies that result in increasing malnutrition and poverty. Nor is enough attention being given to the dumping of guns, other lethal weapons, drugs, pornographic material and dirty technologies in Africa. Little interest is also shown in the illegal trafficking of young girls from Africa to Europe to be used as prostitutes and domestic servants under slave-like conditions. The destructive impact of debt, structural adjustment policies, unemployment, export-oriented industries, sex tourism and so forth often also overlooked.<sup>188</sup>

Gender studies in Africa are perhaps the most obvious victims of this research pattern<sup>189</sup> and female circumcision more particularly so. Many African scholars are falling over themselves in a rush to partake of the largesse that comes with denigrating African cultures generally and female circumcision in particular. The result is that there is a disconnection between the works of these scholars and reality and also between their theories and their practices in private life.<sup>190</sup> That the West too readily encouraged non-westerns and minorities who reneged on their own peoples does no good for global peaceful co-existence.

#### ***H. Visas and Asylum Incentives***

Many in the Third World will do anything to be able to obtain visas to western countries. Refugees and peoples fleeing from poverty, diseases, oppressive

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*Research Work Plan, Budget and Possible Sources of Finance, in H. A. SALIU, J. O. OYEBANJI AND A. JIMOH (EDS.), BASIC ISSUES IN RESEARCH METHODOLOGY 11 (2005).*

<sup>188</sup> Filomina Chioma Steady, "An Investigative Framework for Gender Research in Africa in the New Millennium" (Paper presented at the *African Gender Research in the New Millennium: Perspectives, Directions and Challenge*, organised by CODESRIA at Cairo, 8–10 April 2002) 6 available at <http://www.codesria.org/Links/Conference/gender/STEADY.pdf> assessed 20 April 2006.

<sup>189</sup> Lewis Desiree, *Gender and Women's Studies in South Africa: A Review Report* in FEMINIST REPORT available at [www.gwsafrica.org](http://www.gwsafrica.org) (2002) quoted in Signe Arnfeed, *African Gender Research: A View from the North* 1 CODESRIA BULLETIN 6 (2003).

<sup>190</sup> Abibatou Toure, Mamadou Cellou Barry and Pounthioun Diallo, *The Two Faces of African Feminism* 1 CODESRIA BULLETIN 2-3 (2003).

governments, and other threatened calamities or atrocities are in the high priority category for visas into these countries. Female circumcision has been advanced as one of the atrocities. It therefore makes sense for asylum seekers and applicants to demonize female circumcision and for others to use the bait of visas as propaganda against female circumcision.<sup>191</sup>

## V. CONCLUSION

The use of the term 'Female Genital Mutilation' is an insult to the cultures whose practices regarding female circumcision do not logically or medically amount to genital mutilation. Opponents of female circumcision must show clear-cut scientific proofs of the dangers which this type of circumcision (which is very different from infibulation) constitute to the life and health of women before legislation prohibiting these practices are passed.<sup>192</sup> The baseless catalogue of harmful effects of female circumcision conjured by opponents of female circumcision does no credit to intellectual honesty or scientific integrity.

The various risks associated with the traditional methods of carrying female circumcision would be eliminated if circumcision is carried out by properly-trained medical personnel. There is a case for medicalisation of female circumcision so that the procedure can be carried out by medical doctors in the proper environment.<sup>193</sup> The Seattle compromise offered an easy way out in the case of infibulation yet it was rejected. The reasons advanced for the rejection of the Seattle compromise paints the West as being more of an intolerant society than a society genuinely interested in ending harmful practices.

Criminalization of female circumcision exposes many women to penal sanctions. Many of these women are in the poor and vulnerable bracket. This would no doubt add to rather than alleviate the problems of these women. In Africa, where governmental presence is mostly felt in the rural areas through taxation and coercive legislation rather than through social services and economic

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<sup>191</sup> See the case for making flight from female circumcision as a ground for granting visas to the United States in Oosterveld, *supra* note 109, Gregory A. Kelson, *Granting Political Asylum to Potential Victims of Female Circumcision*, 3 MICHIGAN JOURNAL OF GENDER AND LAW 257 (1995), and Bernadette Passade Cisse, *supra* note 88, at 429 and Amy Stern, *Female Genital Mutilation: United States Asylum Laws are in Need of Reform*, 6 AMERICAN UNIVERSITY JOURNAL OF GENDER AND LAW 89, 103 (1997).

<sup>192</sup> Platt, *supra* note 17 at 26 - 27 and Steve U. Nwabuzor, *Opposition to Proposed Bill H22 on Female Genital Mutilation*, 1 (1) JENDA: A JOURNAL OF CULTURE AND AFRICAN WOMEN STUDIES 1 (2001) available at <http://www.jenda.journal.com/vol.1/toc1.1.htm>.

<sup>193</sup> Ayodeji, *supra* note 131, at 62.

infrastructures, the concern of foreigners on female circumcision would be hard to understand. Therefore, even if female circumcision is harmful as argued by its opponents, criminalization is not the answer.<sup>194</sup> Education and enlightenment would be the appropriate weapons; but here perhaps lies the central problem in the struggle against female circumcision. While infibulation is easily discredited, being manifestly harmful, female circumcision is not. No amount of propaganda would convince millions of circumcised women if it contradicts their own experience. More factual reasons must be found to dissuade women from the practice – the ‘sexual blinding’ or ‘sexual castration’ argument would sound hollow to these women who in spite of being circumcised live and enjoy what they consider to be a normal and satisfied sexual life.

The world has a duty to strive towards universal human rights. The deep silence on the various non-therapeutic female genital cuttings legally available on demand in the West points to an unacceptable double standard. This Orwellian approach to human rights (‘all animals are equal but some are more equal than others’) is nothing but sheer cultural imperialism, which creates doubts, aversion, and dissension in the minds of non-western peoples who are otherwise committed to human rights. It could discredit the idea of universality of human rights and destroy the very roots of human rights.

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<sup>194</sup> Stacy, *supra* note 132, at 12 – 13.