
Wrestling with Contradictions: Human Rights and Traditional Practices Affecting Women

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In this article, the author examines the role of international human-rights norms as a means of criticizing traditional cultural practices and, in particular, the practice of female genital operations. This practice has received considerable attention and criticism from commentators outside practising cultures as well as from commentators within practising communities. In order to achieve an intelligent and informed debate, the author stresses the need for cross-cultural dialogue that recognizes cultural and historical differences. She suggests that the typical culture-based arguments advanced to defend, and the gender-based arguments put forth, to condemn female genital operations are, ultimately, lacking. She explores the ways in which gender *and* culture may influence the debate in order to demonstrate the complexity of the issue.

The author suggests that human-rights norms can play a critical role in the discussion and inform both internal and external criticisms of female genital operations. As the process has evolved, commentators have adopted the language of rights to articulate their criticism of the practice. While critics have largely relied upon health-based arguments, the author suggests that we should be aware of the social significance of the practice and women's experience of injustice. Recommendations arising from the debate must strike a balance between cultural sensitivity and international human-rights standards. Thus, commentators involved in the cross-cultural dialogue must be prepared to re-examine their criticism and strategies in view of changing cultural norms and conditions.

Dans cet article, l'auteure examine les normes du droit international de la personne en tant que moyen de critiquer les coutumes traditionnelles et, en particulier, les opérations génitales que subissent les femmes. Cette pratique a été l'objet de beaucoup d'attention et de critiques de la part de commentateurs étrangers à ces cultures ainsi que de commentateurs originaires de ces communautés. Afin de permettre au débat de se dérouler de manière intelligente et informée, l'auteure insiste sur le besoin d'un dialogue inter-culturel capable de reconnaître les différences historiques et culturelles. Selon elle, les arguments typiques fondés sur la culture et mis de l'avant pour défendre ces interventions ainsi que les arguments fondés sur la différence des sexes et qui dénoncent ces coutumes sont, en fin de compte, insuffisants. L'auteure se penche sur les façons dont la différence des sexes *et* la culture peuvent influencer le débat afin de démontrer la complexité du problème.

L'auteure suggère que les normes des droits de la personne peuvent jouer un rôle clé dans le débat et informer ceux, étrangers ou non, qui critiquent ces interventions. Alors que le processus évoluait, les commentateurs ont adopté le langage des droits de la personne pour articuler leurs critiques. Bien que celles-ci dépendent en grande partie d'arguments fondés sur le besoin d'hygiène, l'auteure souligne qu'il ne faudrait pas ignorer l'importance sociale de la coutume ni l'injustice que subissent les femmes. Les recommandations découlant du débat doivent maintenir l'équilibre entre la sensibilité culturelle et les normes du droit international de la personne. Les commentateurs engagés dans ce dialogue doivent être prêts à ré-examiner leurs critiques et leurs stratégies pour changer les normes et conditions culturelles.

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Introduction

This article considers whether international human-rights norms can provide a basis for legitimately criticizing traditional cultural practices and, if so, how such criticism might be appropriately structured.¹ Clearly, this question is premised on a range of assumptions. The first assumption is that international human-rights norms apply to the conduct of non-state actors, a question not yet fully resolved.² The second is that certain traditional cultural practices violate one or more international human-rights norms. Although contentions of this nature are frequently presented as self-evident, I suggest that we may profit from a closer analysis of these claims. At the very least, we should notice that they rest on *judgements* about the content of human-rights norms and whether particular cultural practices violate those norms. If we accept that such judgements will be based on values that are culturally and historically bound,³ then it should come as no surprise that interpretative disagree-

¹ I am conscious that this question is not neutral, since, as R. Panikkar suggests, "every question conditions its possible answers" (R. Panikkar, "Is the Notion of Human Rights a Western Concept?" (1982) 120 *Diogenes* 75 at 77). My primary concern is *whether* and, if so, *how*, commentators external to a particular cultural tradition should respond to "human-rights concerns" within that cultural tradition. To that extent, I do not pretend to be writing from anything other than a "Western" perspective.

² This question arises because traditional conceptions of human rights are based on liberal notions of the individual and the state and, accordingly, strive to protect the individual against excesses of state power. According to this view, violations that do not directly involve the state are excluded from consideration. N. Kim points out:

Human rights laws generally come into play only when the State is involved. "Private" acts, such as genital surgeries, are designated "cultural", and are exempt from most human rights laws. "Public" acts, however, are designated "political" and thus, suitable for international discussion or intervention. As a result of these designations, the public/private distinction has entered into the dialogue on human rights as a justification for state non-intervention into cultural practices that harm women. Because practices that affect women generally fall into the "private" category, they are protected as part of that society's "culture" (N. Kim, "Towards a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism" (1993) 25 *Colum. Hum. Rts. L. Rev.* 49 at 67).

Feminists have argued persuasively for a revision of the public/private distinction in international human-rights law to expand the ambit of state responsibility to include circumstances where the state is complicit in the actions of non-state actors, and where state laws designed to protect against human-rights violations are not applied in a manner that provides equal protection for women and men (see generally: A. Byrnes, "Women, Feminism and International Human Rights Law — Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation?" (1990) 12 *A. Y.B. Int'l L.* 205; R. Cook, "State Responsibility for Violations of Women's Human Rights" (1994) 7 *Harv. Hum. Rts. J.* 125 at 127; H. Charlesworth, "The Public/Private Distinction and the Right to Development in International Law" (1990) 12 *A. Y.B. Int'l L.* 190; K. Engle, "International Human Rights and Feminism: When Discourses Meet" (1992) 13 *Mich. J. Int'l L.* 517).

³ Panikkar suggests: "[T]here are no trans-cultural values, for the simple reason that a value exists as such only in a given cultural context" (Panikkar, *supra* note 1 at 87). Consequently, Geertz cautions that we should be wary of judging cultural practices to be distasteful (too quickly) on the basis that we

ment exists between, and perhaps within, different groups regarding these matters. The question for this article is how this dissent might be harnessed in a positive way in order to expand cross-cultural understandings of human rights and, if necessary, to legitimate criticisms of cultural practices within a human-rights framework. It is suggested that cross-cultural dialogue may be one way of achieving this purpose.⁴

I have chosen the practice of female genital operations⁵ to situate this discussion for three reasons. First, extant cross-cultural dialogue on this issue can illuminate the benefits and limitations of that dialogue as a strategy. Secondly, these traditional practices implicate both gender and culture, thus, bringing together feminist and relativist critiques of human-rights theory. Finally, these theoretical perspectives may be challenged and enriched by the insights gleaned from cross-cultural dialogue.

Part I will examine the meaning of culture and explore the relationship between culture and cross-cultural dialogue. Part II will consider and critique the various ways in which "culture" has been used to both defend and condemn female genital operations. It also suggests that while each set of arguments offers important insights, neither fully captures nor explains the complexity and significance of these operations for women in practising communities.

Part III will reconsider the dichotomy between cultural integrity and gender oppression by applying the principles of cross-cultural dialogue to the concrete issue of female genital operations. This approach endeavours to sensitize us to the contingent nature of moral judgements and the patterns of dominance that may influence the structure, content and possibility of dialogue. Importantly, this approach

can only partially or contingently understand them, grounded as we are in our own beliefs (see C. Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983) at 234).

⁴ See text accompanying notes 6-23, below.

⁵ The custom of excising, to varying degrees, the external genitalia of women has been called circumcision, excision, infibulation, pharoanic circumcision, genital surgeries, ritual surgeries, genital mutilation, *sunna* and genital excision. Many writers have expressed concern over which term should be used to describe the practice. The sources of difficulty seem to fall into two categories: either the term is not inclusive enough to cover all forms of the practice (*sunna*, excision, pharoanic circumcision) and infibulation refer to particular types of the custom) or certain terms mis-describe the custom (this has been alleged in relation to the term "female circumcision", which, it is argued, falsely equates the custom with male circumcision, and "female genital mutilation", which, it is argued, is explicitly pejorative and entails a judgement of the custom). Isabelle Gunning has used the term "female genital surgeries" in an effort to use a more or less neutral term (I. Gunning, "Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries" (1992) 23 Colum. Hum. Rts. L. Rev. 189). I will use the term "female genital operations" on the basis that "operation" seems less likely to connote hospital surroundings and medical supervision than "surgery". For a discussion of the difficulties associated with naming, see H. Lewis, "Between Irua and 'Female Genital Mutilation': Feminist Human Rights Discourse and the Cultural Divide" (1995) 8 Harv. Hum. Rts. J. 1 at 4-8.

addresses the need for creating an opportunity for women from practising communities to articulate their experiences on their own terms. Together, these factors may facilitate a deeper understanding of how culture and gender shape the experiences, concerns and priorities of women in these practising cultures.

Part IV examines the role that international human-rights norms and processes play in nurturing and invigorating cross-cultural dialogue, both in terms of animating internal interpretative debates and in facilitating and structuring external criticism. It also considers how the knowledge acquired through cross-cultural dialogue about female genital operations has been used as a basis for informing the work of international and regional human-rights bodies.

I. The Meaning of Culture and Cross-Cultural Dialogue

Although an exhaustive definition of "culture" is difficult to articulate,⁶ A.A. An-Na'im offers the following analysis:

Culture ... is the source of the individual and communal world view: it provides both the individual and the community with the values and interests to be pursued in life, as well as the legitimate means for pursuing them. It stipulates the norms and values that contribute to people's perception of their self-interest and the goals and methods of individual and collective struggles for power within a society and between societies.⁷

It has been suggested that "cultures are dynamic and changing, both internally and in response to external forces and influences."⁸ It has also been suggested that this dynamism is an inherent part of the way cultures or traditions are determined.⁹ According to this view, traditions define themselves and are defined through two kinds of debate or dialogue: first, "internal, interpretative debates through which the meaning and rationale"¹⁰ of the tradition is expressed; and secondly, debates with those critics external to the tradition.¹¹ In this sense, the very existence of "traditions" is contingent on some measure of cross-cultural dialogue.

⁶ Kim states that "despite the multitude of definitions for the concept, anthropologists seem to agree that culture is undefinable yet identifiable, constantly in flux yet traditional by nature" (Kim, *supra* note 2 at 86).

⁷ A.A. An-Na'im, ed., "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment" in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992) 19 at 23 [hereinafter "Toward a Cross-Cultural Approach"].

⁸ A.A. An-Na'im, "Conclusion" in An-Na'im, ed., *ibid.*, 427 at 432.

⁹ See A. McIntyre, *Whose Justice? Which Rationality?* (New York: Oxford University Press, 1988) at 12.

¹⁰ *Ibid.*

¹¹ See *ibid.* Both types of debate hold the potential for change, although, as An-Na'im points out, such change "must be justified through culturally approved mechanisms and adapted to preexisting norms and institutions" ("Toward a Cross-Cultural Approach", *supra* note 7 at 27).

The sense in which I use the term “cross-cultural dialogue” draws upon this inter-normative potential. In the human-rights arena, this means enhancing the cross-cultural legitimacy of human-rights norms through an appropriately framed cross-cultural dialogue, which both informs and is informed by internal re-interpretation of human-rights norms.¹² In other words, the inevitable processes of cultural change and the evolution of cultural norms may be facilitated by cross-cultural dialogue. This approach recognizes that external criticism occupies an important role in the process of cultural change.¹³ At the same time, it avoids the formulation and expression of judgement or criticism reached by “evaluating one cultural construct with the categories of another”.¹⁴ Rather,

[c]ross-cultural dialogue should be aimed at broadening and deepening international (or rather intercultural) consensus. This direction may include support for the proponents of enlightened perceptions and interpretations within a culture. This effort, however, must be sensitive to the internal nature of the struggle, endeavouring to emphasize internal values and norms rather than external ones.¹⁵

In this sense, cross-cultural dialogue necessitates a certain level of self-awareness and introspection. This is critical for several reasons. First, it facilitates an awareness that the “formulation of the problem is already culturally bound”.¹⁶ This awareness, in turn, encourages us to observe and criticize a particular human problem with the “tools of understanding” of the other culture,¹⁷ a process that requires an appreciation of the content and tenor of internal debates, in addition to the debate with outsiders.¹⁸ It may also contribute to our understanding of how relationships of dominance shape discourse within and between groups, both inside and outside the culture. It is critical to identify these hierarchies¹⁹ in order to determine

¹² See “Toward a Cross-Cultural Approach”, *ibid.*

¹³ An-Na'im states:

I would emphasize that, in this age of self-determination, sensitivity to cultural relativity is vital for the international protection and promotion of human rights. This point does not preclude cross-cultural moral judgment and action, but it prescribes the best ways of formulating and expressing judgment and of undertaking action (“Toward a Cross-Cultural Approach”, *ibid.* at 26).

¹⁴ Panikkar, *supra* note 1 at 88.

¹⁵ “Toward a Cross-Cultural Approach”, *supra* note 7 at 27.

¹⁶ Panikkar, *supra* note 1 at 88.

¹⁷ *Ibid.*

¹⁸ On this point, An-Na'im suggests: “[W]e should not only distinguish between criticism corresponding to standards internal to a culture and that corresponding to external ones, but also stress that the former is likely to be more effective than the latter” (“Toward a Cross-Cultural Approach”, *supra* note 7 at 26).

¹⁹ To do this we need to be aware of the fact that particular groups can be simultaneously the minority and dominant with respect to other groups. This issue has been raised in the female genital operations debate where, it has been suggested, Western feminists have misrepresented the concerns of women from practising cultures. Interestingly, whilst Western women might see themselves as a mi-

whether the claims and ideologies expressed by particular groups reflect true consensus rather than assertions of internal power.²⁰

Most importantly, cross-cultural dialogue is — as the term “dialogue” suggests — a two-way process. This means that we must be prepared to submit our own cultural systems and practices to similar scrutiny by those outside our cultural context.²¹ One hopes that by confronting the reality of cultural difference, rather than subsuming it under dubious claims to universality,²² human-rights norms might achieve greater cross-cultural legitimacy.²³ At the very least, this approach should promote a foundation of understanding from which justifiable comment and criticism can be made, as opposed to criticism that is perceived as ignorant and disrespectful and which consequently impedes dialogue.

II. Female Genital Operations and the Many Faces of Culture

This Part will critique the manner in which culture has been used by two groups: first, it will address those who argue that female genital operations are a cultural tradition that cannot be legitimately challenged; and secondly, it will respond to outsiders who argue that “culture” is merely invoked as a defence to mask a practice that is a manifestation of patriarchal oppression.

nority group in relation to a Western state, non-Western women may see Western women as dominant in relation to them (see generally A. Bunting, “Theorising Women’s Cultural Diversity in Feminist International Human Rights Strategies” (1993) 20 J. L. & Soc’y 6).

²⁰ For example, An-Na’im suggests:

In the normal course of events, powerful individuals and groups tend to monopolize the interpretation of cultural norms and manipulate them to their own advantage. Given the extreme importance of cultural legitimacy, it is vital for disadvantaged individuals and groups to challenge this monopoly and manipulation (“Toward a Cross-Cultural Approach”, *supra* note 7 at 27-28).

²¹ C. Harries makes this point in the following passage:

I suggest that the dialogue may be more productive if conceived as a clash of universals for which no space is perceived as safe or remote. The Western woman engaged in the debate must be aware of and acknowledge the threat to her own world view implicit in the critique offered by Third World women. Out of this clash of universals, a relatively shared system may or may not emerge. It may emerge only if both sides are willing to reexamine the presumptions upon which their world views are based. Because of the existing power differential, such reexamination is generally expected only of Third World women, who are ironically least able to afford it (C. Harries, “Daughters of our Peoples: International Feminism Meets Ugandan Law & Custom” (1994) 25 Colum. Hum. Rts. L. Rev. 493 at 532).

²² See Geertz, *supra* note 3 at 234.

²³ See “Toward a Cross-Cultural Approach”, *supra* note 7 at 27.

A. Culture as a Justification for Female Genital Operations

Although several forms of female genital operations have been documented, commentators generally identify three types, which are differentiated according to the quantity of tissue removed.²⁴ There are, however, obvious difficulties with generalizing about the nature, scope and reasons for the practices since they exist in a wide variety of geographic, cultural, religious and socio-economic contexts.²⁵ Many reasons overlap, and different communities may emphasize different explanations, or combinations of them, including the protection of women's chastity and honour,²⁶ religious obligation,²⁷ beliefs about female genitalia and fertility²⁸ and tradition.

²⁴ These three types are: *sunna*, intermediate (or excision) and infibulation. *Sunna* (meaning tradition) involves removal of the clitoral prepuce. Intermediate involves the removal of the entire clitoris and often part or all of the *labia minora* as well. Infibulation is the most invasive procedure. The clitoris is excised with a razor and the infibulation follows: the small lip is cut from top to bottom and the flesh scraped from the inside of the large lip. These steps are repeated on the other side of the vulva, leaving a miniscule opening for urine and menstrual blood. The adhesion of the large lips is ensured by a paste and an acacia thorn, which pierces through both lips. Three or four thorns are stuck down into the vulva and held in place with sewing threads or horsehair. Because this is not sufficient to ensure the coalescence of the large lips, the little girl's legs are immobilized by strips of material rolled up into a rope from her pelvis to her feet (see M.A.S. Mustafa, reproduced in Dr. A. David, *Infibulation en République de Djibouti* (Bordeaux: Amicale des Étudiants en Médecine de Bordeaux, 1978), reproduced in A. Walker & P. Parmar, *Warrior Marks — Female Genital Mutilation and the Sexual Blinding of Women* (New York: Harcourt Brace, 1993) at 308-309).

²⁵ According to Efua Dorkenoo and Scilla Elworthy,

[t]he countries where one or more forms of female genital mutilation are practised number more than 20 in Africa, from the Atlantic to the Red Sea, the Indian Ocean and the eastern Mediterranean [including but not limited to Sudan, Somalia, Egypt, Kenya, Nigeria, Ethiopia, Mali, Burkina Faso, Senegal, Guinea, Ivory Coast, Gambia, Sierra Leone and Djibouti]. Outside Africa, excision is also practised in Oman, South Yemen and in the United Arab Emirates ... Circumcision is practised by the Muslim populations of Indonesia and Malaysia and Bohra Muslims in India, Pakistan and East Africa (E. Dorkenoo & S. Elworthy, *Female Genital Mutilation: Proposals For Change* (London: Manchester Free Press, 1992) at 11).

In general, the material used in this paper is drawn from a multiplicity of African contexts.

²⁶ It has been suggested that one of the primary functions of infibulation is to ensure a bride's virginity, the corollary being that uncircumcised women are considered to be promiscuous. In some communities, the preservation of virginity is essential for determining a woman's social (and, therefore, economic) position and for preserving family honour (see A. Slack, "Female Circumcision: A Critical Appraisal" (1988) 10 Hum. Rts. Q. 437 at 446). R.H.D. Abdalla suggests that "Islam regards female sexuality as active and as a lustful instinct which ... must be controlled," particularly since family honour is contingent upon women's chastity (R.H.D. Abdalla, *Sisters in Affliction: Circumcision and Infibulation of Women in Africa* (London: Zed Press, 1982) at 35). R. Cerny Smith adds that many Islamic tribes believe that "if women's sexuality is not controlled, the family will be disgraced and the social structure of the tribe will disintegrate, causing social disorder" (R. Cerny Smith, "Female Circumcision: Bringing Women's Perspectives into the International Debate" (1992) 65 S. Cal. L. Rev. 2449 at 2471).

²⁷ There is a belief among certain Muslim communities that the practice is scripturally mandated by the *Qur'an* (see Slack, *ibid.*). However, according to Baba Lee, an Islamic scholar from Gambia:

According to Slack, "the most widely held justification for the continuation of the practice is the need to maintain tradition."²⁹ In some communities, genital operations constitute a rite of passage through which initiates are taught the lessons of "tribal unity and their specific position in maintaining tribal cohesion".³⁰ On this basis, it has been argued that the practice is of great importance to both the individuals and the continued survival of the group.³¹ It permits individuals to identify with their heritage and to enjoy recognition as full social members of the group.³² In a similar vein, female initiation rituals have been credited with establishing strong networks of lifelong friendship, support and reciprocal obligation between women initiated together.³³

Some commentators have argued that in many societies, essential aspects of human dignity are ensured through membership in the community, rather than through inherent rights that attach to the individual.³⁴ This approach forms the basis of the argument that international human-rights norms are based on a social organization derived from liberal philosophy, which does not accommodate unique African perspectives:

[W]ithin the organisation of African social life one can discern various organising principles. As a people, Africans emphasise groupness, sameness, and commonality. Rather than survival of the fittest and control over nature, the African worldview is tempered with the general guiding principle of the survival of the entire community and a sense of co-operation, interdependence, and collective responsibility.³⁵

"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 [*sic*] long before Islam came to this continent. It has nothing to do with Islam. It is not mentioned in the Holy Koran ... The majority, 93 percent, of people in Gambia are Muslims. And 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 Walker & Parmar, *supra* note 24 at 325).

²⁸ For example: (1) the clitoris represents the male sex organ and, if not excised, will grow to the size of a penis; (2) females are sterile until they have been excised; (3) genital excision enhances fertility; and (4) genital operations are necessary to cleanse and purify the women (see Slack, *ibid.* at 447).

²⁹ *Ibid.* at 448. According to A. Van der Kwaak, the concepts of "tradition" and "religious obligation" are clearly connected in some Muslim communities: "Somalis themselves generally answer the question why infibulation is practised: 'It is our tradition'. Somalia is an Islamic country and many people — including many Somalis — are under the impression that female circumcision is required by the *Quran*" (A. Van der Kwaak, "Female Circumcision and Gender Identity: A Questionable Alliance?" (1992) 35 Soc. Sci. & Med. 777 at 780).

³⁰ Cerny Smith, *supra* note 26 at 2470.

³¹ For a discussion of these arguments, see *ibid.* at 2466-70.

³² See *ibid.*

³³ See text accompanying note 87, below.

³⁴ See Kim, *supra* note 2 at 58.

³⁵ J. Cobbah, "African Values and the Human Rights Debate: An African Perspective" (1987) 9 Hum. Rts. Q. 309 at 320.

This perspective suggests that international human-rights standards, as presently articulated, are only one way (the Western way) of protecting human dignity.³⁶ It is argued that the communitarian ideal to which African cultures adhere emphasizes the fulfilment of one's role in the community as a means of attaining one's identity.³⁷ Accordingly, group considerations may have greater cultural legitimacy than individual rights. The *irua*³⁸ initiation ceremony of the Gikuyu tribe has been used to illustrate this point:

The main purpose of the *irua* ceremony is to persuade the initiates that they must give up their duty-free childhood individuality and become members of the community, where collective needs come first ... Once an initiate becomes an adult member of the tribe, any conflict between the individual's own and family needs and the community's needs should be reconciled for the general good of society.³⁹

This being so, it might be argued that outsiders' condemnations of the practices not only fail to appreciate their cultural and communal significance, but are tantamount to imposing external cultural values on practising cultures.

The overwhelming majority of [Gikuyu] believe that it is the secret aim of those who attack this centuries-old custom to disintegrate their social order and thereby hasten their Europeanisation. The abolition of *irua* will destroy the tribal symbol which identifies the age-groups, and prevent the Gikuyu from perpetuating that spirit of collectivism and national solidarity which they have been able to maintain since time immemorial.⁴⁰

Even those who do not support the practices in light of changing social and economic conditions caution against condemnation from outsiders:⁴¹

³⁶ Panikkar notes: "[S]elf-understanding, belongs equally to this human nature. Thus to single out one particular interpretation of it may be valid, but it is not universal and may not apply to the entirety of human nature" (Panikkar, *supra* note 1 at 89-90).

³⁷ See R. Howard, "Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons" (1984) 6 Hum. Rts. Q. 160 at 174.

³⁸ *Irua* is the Gikuyu name for the custom of circumcising male and female children (see J. Kenyatta, *Facing Mount Kenya: The Tribal Life of the Gikuyu* (London: Mercury Books, 1961) at 134). For female children this custom involves the removal of the tip of the clitoris (*ibid.* at 146).

³⁹ Cerny Smith, *supra* note 26 at 2467. Kenyatta explains:

It is important to note that the moral code of the tribe is bound up with this custom and that it symbolises the unification of the whole tribal organisation. ...

The *irua* marks the commencement of participation in various governing groups in the tribal administration ... (Kenyatta, *ibid.* at 134).

⁴⁰ Kenyatta, *ibid.* at 135.

⁴¹ In a statement issued in 1985, President Abdou Diouf of Senegal made it clear that genital operations were problematic in the context of the social and economic transformations that had taken place in African society. These transformations, he suggested, meant that genital operations were beginning to "have no place or appear to be relics of the past" (UN ESC, Commission on Human Rights, 42d Sess., *Report of the Working Group on Traditional Practices Affecting the Health of Women and Chil-*

Female mutilation is a subject that is taboo ... But let us not rush into the error of condemning [genital mutilations] as uncivilized and sanguinary practices. One must beware of describing what is merely an aspect of difference in culture as barbarous. In traditional Africa, sexual mutilations evolved out of a coherent system, with its own values, beliefs, cultural and ritual conduct. They were a necessary ordeal in life because they completed the process of incorporating the child in society.⁴²

B. Rejection of Culture as a Basis for Female Genital Operations

While evidence exists to support the view that female genital operations enjoy wide community acceptance in practising cultures,⁴³ the relativist position presented above has been questioned extensively. First, African culture has been influenced significantly by colonialism and modernization. According to Howard, this has fundamentally changed the nature of relationships both within communities and between individuals and the state.⁴⁴ Paradoxically, the process of modernization in the public sphere may have actually intensified the importance attached to those traditional practices that occupy the private sphere. A. Funder suggests: "In the face of rapid industrialization, global interdependence, and the modernization they bring, many countries cling to traditional practices as living symbols of the autonomy and continuity of their culture."⁴⁵ Moreover,

the most frequent arguments made in order to preserve culture mandate a strict separation between an increasingly global, high technology free marketplace, which is the public sphere of almost all countries, and a private sphere in which traditions and cultural practices may continue.⁴⁶

Indeed, Dorkenoo and Elworthy suggest that female genital operations continue to occur notwithstanding that

today in many of these societies the ceremonial has fallen away; both excision and infibulation are performed at a much younger age that cannot be construed as having anything to do with entry into adulthood or marriage, and the child's role in society does not change at all after the mutilation.⁴⁷

Some feminist human-rights scholars advocate a cautious acceptance of the claim that female genital operations are a legitimate expression of cultural values. It

dren, UN Doc. E/CN.4/1986/42 (February 1986) (Mimeo., Limited) Annex 1 at 1 [hereinafter *Report of the Working Group*]. See also L.P. Sanderson, *Female Genital Mutilation — Excision and Infibulation: A Bibliography* (London: Anti-Slavery Society for the Protection of Human Rights, 1986) at 71.

⁴² *Ibid.*

⁴³ See text accompanying notes 68-69, below.

⁴⁴ See Howard, *supra* note 37 at 179.

⁴⁵ A. Funder, "De Minimis Non Curat Lex: The Clitoris, Culture and the Law" (1993) 3 *Transnat'l L. & Contemp. Probs.* 417 at 427.

⁴⁶ *Ibid.*

⁴⁷ Dorkenoo & Elworthy, *supra* note 25 at 14.

has been argued that such claims are generally favourable to the powerful members within groups and, consequently, tend to mask the role of gender in shaping the interests, ideologies and practices of the group.⁴⁸ Put simply, these claims may be expressions of internal power, used as a subterfuge for reinforcing oppressive gender roles. In an impassioned articulation of this position, F.P. Hosken states:

This report makes it clear that these operations are more than sexual assault, more than physical torture and abuse. They represent a deliberate means to enslave women and a systematic attempt by men to subjugate women absolutely and life-long to physically control women's bodies, reproduction and sexuality.⁴⁹

On these bases, it has been argued that the continuation of female genital operations is as concerned with providing the means for a male-dominated power élite to control women's sexuality as it is with preserving cultural identity and cohesion. This argument rests on the assertion that female genital operations engender subordination by ensuring "female virginity before marriage, female fidelity throughout marriage, and ... heterosexuality".⁵⁰ In this way, it has been argued that female genital operations serve the purpose of

forcing women to submit to males and accept their socially prescribed gender roles. Through traumatic experiences of painful operations, childbirth and intercourse, women learn to submit to the males of their families and accept their secondary positions.⁵¹

The patriarchal social organization and attendant social norms of some practising communities may lend support to these analyses. Dorkenoo, for instance, observes that matrilineal African societies do not practise female genital operations, unlike many of their patrilineal counterparts.⁵² In a 1975 study of ethnically diverse infibulation-practising communities in North-Eastern Africa, Hayes concluded that despite differences in economic and political organization, the traditional organizing principles of each group were patrilineal, patrilocal and patriarchal.⁵³ Van der Kwaak observes that genital operations can also assume economic significance, particularly in communities where the bride-price is only paid to the father of a *gabar gudban* ("closed woman").⁵⁴ Referring to Hayes's work, Van der Kwaak surmises:

⁴⁸ See Cerny Smith, *supra* note 26 at 2480.

⁴⁹ F.P. Hosken, ed., "A Personal View" in *The Hosken Report: Genital and Sexual Mutilation of Females* (Lexington, Mass.: Women's International Network News, 1979) at 1.

⁵⁰ Cerny Smith, *supra* note 26 at 2482 [references omitted].

⁵¹ *Ibid.* at 2482-83.

⁵² See E. Dorkenoo, *Cutting the Rose—Female Genital Mutilation: the Practice and Its Prevention* (London: Minority Rights Group, 1994) at 44.

⁵³ See R.O. Hayes, "Female Genital Mutilation, Fertility Control, Women's Roles, and the Patrilineage in Modern Sudan: A Functional Analysis" (1975) 2 *Am. Ethnol.* 617 at 633.

⁵⁴ See Van der Kwaak, *supra* note 29 at 781-82.

[T]he practice is so resistant because of its important role for the continuity of the patrilinear kinship structure, articulated in a system of proclamations and prohibitions inserted in marriage practices, modesty code, family honour, women's social roles etc.⁵⁵

In these and similar circumstances, it is argued that women internalize the norms of their cultural milieu and, in turn, accept the practice because the ramifications of breaking with tradition can be severe.⁵⁶ Uncircumcised women may bring disgrace on their families, are considered unmarriageable and promiscuous and risk ostracism from their group.⁵⁷ Former Kenyan President Jomo Kenyatta, for example, insisted that female genital operations were crucial to the viability of Kenyan society and stated that "no proper Gikuyu would dream of marrying a girl who has not been circumcised, and *vice versa*".⁵⁸

C. *Rethinking the Gender/Culture Dichotomy*

The analyses that reject cultural explanations for female genital operations, while offering a useful critique of those arguments that favour preserving the custom, are weakened by the absence of substantial input from those women and men who may be engaged, and struggling for recognition, in the internal discourse on the subject. Without this input, outsiders are not only unable to support and influence the processes of internal discourse, but are incapable of accurately identifying and understanding the critical internal processes at work. This ostensibly allows outsiders to dictate the terms of the debate, an ultimately counter-productive situation, which can provoke allegations of imposing extra-cultural values and norms:⁵⁹

Western efforts to eliminate the practice, on the part of missionaries or colonial administrators, have simply served to confirm in people's minds that colonial destruction of traditional customs weakens their societies and exposes them to the ill-effects of Western influence.⁶⁰

⁵⁵ *Ibid.* at 784.

⁵⁶ For example, Dorkenoo and Elworthy note:

If she is found not to be a virgin, the husband-to-be has the right to reject her and refuse to go along with the marriage. A row ensues and a refund of the dowry has to be made. The disgraced family is stigmatized, and the girl may have to leave home to find a husband outside of her community (Dorkenoo & Elworthy, *supra* note 25 at 14).

⁵⁷ See Cerny Smith, *supra* note 26 at 2485.

⁵⁸ Kenyatta, *supra* note 38 at 132.

⁵⁹ See A.A. An-Na'im, "State Responsibility Under International Human Rights Law to Change Religious and Customary Laws" in R.J. Cook, ed., *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994) 167 at 179 [hereinafter "State Responsibility"].

⁶⁰ Dorkenoo & Elworthy, *supra* note 25 at 15. Dorkenoo also documents male reactions to outsider criticism: "My wife, mother, and grandmother have had it done, and they are not complaining. When these foreigners talk about female circumcision, I asked them what do they know? I tell them to go and ask my grandmother" (Dorkenoo, *supra* note 52 at 53).

This result is also reflected in the accusations of essentialism and cultural imperialism which have been levelled at Western feminist commentators:⁶¹

Whatever the good intentions of Western feminists in expressing solidarity or "helping their sisters of color", Western articulations of concern over the contemporary practice of genital surgery in Third World nations are often perceived as only thinly disguised expressions of racial and cultural superiority and imperialism.⁶²

Western responses to this kind of criticism, however, have not always been positive:

I have chosen to name these practices for what they are: barbaric rituals/atrocities. Critics from Western countries are constantly being intimidated by accusations of "racism", to the point of misnaming, non-naming, and not seeing these sado-rituals. The accusations of "racism" may come from ignorance, but they serve only the interests of males, not of women.⁶³

In the same way that the relativist view can be criticized for glossing over the importance of gender, some feminist analyses can be criticized for failing to adequately appreciate the importance of culture in defining women's experiences and priorities. Accordingly, these analyses are deficient in three important ways. First, they fail to convincingly explain why some women vehemently defend and perpetuate the practice.⁶⁴ Secondly, by defining the issue exclusively along gender lines, these theories seem to overlook the potentially critical connections between adherence to tradition, colonialism and nationalism. Thirdly, they seem to presume that it is possible (or desirable) to universalize the female experience, thus, obviating the need for considering the specific perceptions, experiences and agendas of women in practising cultures. This tends to deny those women the opportunity to articulate their experiences and priorities. Moreover, it denies that women are "agents of knowledge" and ignores the force of the internal debates and struggles in which these women may be engaged.⁶⁵

III. Centring African Women Through Cross-Cultural Dialogue

The purpose of this section is to extend the insights offered by relativist and feminist commentators by applying the principles of cross-cultural dialogue. I will

⁶¹ This is a criticism to which feminism is particularly sensitive, given its professed commitment to liberating all women.

⁶² Gunning, *supra* note 5 at 212.

⁶³ M. Daly, *Gyn/Ecology: The Metaethics of Radical Feminism* (Boston: Beacon Press, 1978) at 154.

⁶⁴ See text accompanying notes 68-69, 83-89, below.

⁶⁵ See generally Gunning, *supra* note 5 at 226.

proceed by adopting the following methodological approach:⁶⁶ first, respecting differences between the cultural and historical contexts of those participating in the dialogue; secondly, recognizing the patterns of domination that exist (or have existed) between the cultures of respective participants, in addition to identifying the patterns of dominance that shape discussions within cultures; and, finally, engaging women from practising cultures in the dialogue in an effort to discern an accurate picture of the struggles, priorities, concerns and hopes of those who may have been less prominent in the discussion. This approach is particularly important for outsiders who have concerns about the custom and who wish to assist women within practising cultures because, as An-Na'im points out:

[T]heir claiming to know what is the valid view of the culture of that society will not accomplish this effectively. Such a claim would not help the groups the outsiders wish to support because it portrays them as agents of an alien culture, thereby frustrating their efforts to attain legitimacy for their view of the values and norms of their society.⁶⁷

A. *Understanding Cultural and Historical Contexts*

The idea that cultural and historical contexts are specific and extremely influential in structuring dialogue challenges us to be somewhat introspective. At the very least, participants in the dialogue need to consider how the social meanings attached to concepts like "individual", "group" and "harmful practices" are constructed within particular cultural and historical contexts. This, for instance, may require an appreciation of the different perspectives that liberal and communitarian philosophies bring to bear on particular issues like female genital operations. For example, many Westerners have responded to the practices with a sense of "moral outrage", perceiving the custom as a brutal violation of an individual's rights by the group. This, however, is not necessarily the response of women and men within practising communities. In 1983, Asma El Dareer interviewed over 4,500 adults in Sudan to gauge their responses to female genital operations. Dareer found that 82.6 percent of women and 87.7 percent of men interviewed approved of female genital operations regardless of type (that is, *sunna*, intermediate or pharaonic).⁶⁸ More recent studies indicate that approval rates among Sudanese women have declined, although they remain significant. A 1989-1990 Demographic and Health Survey found that seventy-nine percent of the respondents supported continuation of the practice, although strong opposition was recorded among urban women and women with secondary level education.⁶⁹

⁶⁶ This is an adaptation of the methodology proposed by Gunning, *ibid.* at 205-27, and is substantially based on the works of An-Na'im (see especially: An-Na'im, ed., *supra* note 7; "State Responsibility", *supra* note 59) and Pannikar, *supra* note 1.

⁶⁷ "Toward a Cross-Cultural Approach", *supra* note 7 at 20.

⁶⁸ See A. Dareer, "Attitudes of Sudanese People to the Practice of Female Circumcision" (1983) 12 *Int'l J. Epidemiology* 138 at 143.

⁶⁹ See "Female Genital Mutilation in Kenya and Sudan" (1995) 67 *African Population Newsletter* 6 at 6-7.

By contrast, "moral outrage" does not always accompany Western perceptions of "self-imposed" health problems facing women, such as self-starvation practices. As Gunning points out, however, the idea of women starving themselves for cosmetic purposes in societies where food is often scarce might be considered "morally outrageous".⁷⁰ The relevant point is that because culture is a primary source of normative systems, it inevitably influences the processes of moral reasoning⁷¹ and perception.⁷²

Female genital operations and self-starvation have been the subject of comparison because in each case women participate in practices that may be harmful to them in response to broader social pressures (for instance, to emulate socially constructed ideals of beauty or womanhood).⁷³ It might be argued that such a comparison is invalid because the community actually mandates the relevant practice in the former case, but it does not in the latter. In other words, female genital operations are accorded community acceptance and are mandatory in many circumstances (a group-imposed practice), whereas self-starvation is generally acknowledged as a "problem" and is considered to result from aberrant individual behaviour (a self-imposed practice). Could it be, however, that the participatory role of the community is simply less direct, and therefore less visible, in the latter case? Does the Western cultural emphasis on "individual freedom" (and therefore individual responsibility) obscure the role of the community in contributing to the problematic behaviour? Even if Westerners see self-starvation as a problem which requires redress, there may be less general support for the idea that factors that may contribute to the practice (such as, patterns of systemic discrimination which dis-empower women, together with advertising images which stereotype women's roles and bodies) should be radically revised or curtailed.

Clearly, a particular social practice might not be accorded the same priority when viewed from different cultural standpoints. It is possible that many women within practising cultures see genital operations as part of a continuum of issues affecting women (including restricted access to land ownership, restricted travel, domestic violence, child marriages and short birth spacing)⁷⁴ in the same way that many Western women may perceive self-starvation as part of a continuum of issues

⁷⁰ Gunning, *supra* note 5 at 212.

⁷¹ See "State Responsibility", *supra* note 59 at 171.

⁷² This point is echoed by Van der Kwaak who reflects that:

A Dutch friend with whom I discussed this paper said that what struck her about the practice of infibulation was the fact that it was so unnatural. But a friend of mine in Somalia thought that it was Western women who were unnatural: unpleasant to see and touch. First, they had hair on their arms and legs; second, they did not cover their hair ... and thirdly, she showed great disbelief concerning the fact that Western women still had their ugly genitalia and pubic hair (Van der Kwaak, *supra* note 29 at 781).

⁷³ See Gunning, *supra* note 5 at 212.

⁷⁴ See Walker & Parmar, *supra* note 24 at 297, 338.

affecting women in Western cultures.⁷⁵ This is not to say that either cultural practice is beyond scrutiny but, rather, to suggest that recognizing local contexts may deepen understanding about the way in which culture can influence our respective perceptions and priorities.

B. *Hierarchical Relationships and Dialogue*

As already suggested, it is probable that the contours of the debate about female genital operations have been influenced by power relations among and between a number of groups. Accordingly, any comprehensive analysis of the issues must identify and assess the impact of the relevant power imbalances on the nature of claims being made (or silenced) by these groups. Although the following list of relationships that may influence dialogue is not intended to be exhaustive, it summarises those described elsewhere in this article.

1. Men and Women Within Practising Cultures

The relationship between men and women within practising cultures requires careful consideration. The particular patterns of social and economic dependence which characterize the lives of many women in practising cultures may undermine their ability to challenge cultural assumptions.⁷⁶ This may be particularly evident where the price attached to power and status within the community is participating in the practice, a price which may, in these circumstances, be paid gladly.⁷⁷ This, however, may be complicated by more subtle and complex factors. The symbolic meanings attached to the practice — in particular its connection to personal and communal identity — may also animate women's willingness to participate. In an attempt to incorporate this idea into a broader gender-based analysis, Cerny Smith suggests that "the ritual may actually prevent the tribal group from addressing the fact that in reality its members are not actually achieving the ritual norms; instead, one group is being oppressed by another."⁷⁸

2. Women from Outside and Women from Within Practising Communities

It has also been suggested that the relationship between Western and non-Western women has been influential in determining the parameters of the discus-

⁷⁵ On this point, Gunning remarks:

[I]n dealing with my culture and my custom, it is easier for me to recognise the practice [breast implants] as "wrong" or "a problem" in the context of larger concerns and more complex agendas. Someone outside my culture can be oblivious to the context and its complexities and view this one practice as a single horror (Gunning, *supra* note 5 at 215).

⁷⁶ See text accompanying notes 52-58, above, and notes 90-94, below.

⁷⁷ See Van der Kwaak, *supra* note 29 at 783.

⁷⁸ Cerny Smith, *supra* note 26 at 2487.

sion.⁷⁹ Harries suggests that “when Third World and Western women meet in all but the most informal of contexts, power differentials implicitly affect that relationship and shape their interaction.”⁸⁰ Outside commentators have been criticized for assuming, constructing and interpreting the experiences of women within practising communities. Accordingly, outsiders have, in large measure, failed to fully comprehend both the complexity of meanings associated with the practices and the reactions of African women to Western criticisms of them.⁸¹

3. Relationships between Cultural Groupings

Finally, any analysis should also consider the relationship between imperial powers and practising communities and, in particular, the way this historical context influences the internal dynamics of practising cultures.⁸²

The difficulty here lies in determining the precise role that each of these hierarchies plays in influencing the dialogue and obfuscating the reasons for the continuation of the practice. It is suggested that these contradictory claims, and the distortions engendered by these power imbalances, may be clarified by creating a space for women within practising cultures to articulate their own experiences.

C. Struggling with Contradictions — Engaging Women from Practising Cultures

The paradox faced by outsiders essentially amounts to this: Why do women continue to participate in a practice that threatens their health and sometimes their lives? If the practice is so horrible, why do older women who have experienced its ill-effects often insist that their daughters and granddaughters follow the tradition? By listening to the experiences and voices of women living in practising communities, we may enrich our understanding of the multiple and overlapping ways in which different aspects of women’s identities intersect. This richer understanding may, in turn, illuminate these important questions.

1. Experiencing Female Genital Operations as Empowering

Walker and Parmar document the following responses from recently circumcised women:

“It’s a very happy day for us ... It has been done to our mothers, and our mothers did it to us, and we will do it to our children ... I don’t know anything about those children and those women who haven’t been circumcised. It’s our tradi-

⁷⁹ See Harries, *supra* note 21 at 530.

⁸⁰ *Ibid.*

⁸¹ See text accompanying notes 59-63 above, and notes 144-49, below.

⁸² See text accompanying notes 44-46, above, and notes 98-101, below.

tion; maybe its not *their* tradition — that's why they're not practicing [*sic*] it. But our tradition we will practice and we will see that it continues."⁸³

Accordingly, the practice may be experienced by women within practising cultures as a source of empowerment, in an individual as well as a communal sense: "[I]t can serve as a power that helps to bind the community together and provide a source of cultural identity that is often crucial in small rural communities."⁸⁴ This attachment to the custom is consistent with Van der Kwaak's conclusion that through infibulation, Somali women acquire dignity and power "by becoming a virgin, by becoming an 'object' for which bridewealth should be paid, by being a wife, by being opened by her husband and bearing his children"⁸⁵. Dorkenoo explains that "[i]n many communities women's access to land and to economic resources is through the male members of the family and husbands, which implies that they cannot directly inherit land or be in control of major resources."⁸⁶

Even internal activists seeking to eliminate the custom are quick to point out the positive aspects of female genital operations:

"We have to learn to understand that women in a male-dominated society still come together. Through rituals, they build sisterhood — sisterhood which lasts for a long time. And these rituals are mixed with the magical, so it could be said that they are part of the control of women, that the women can be seen as custodians of male power because they prepare young women to fit into particular roles in society which are acceptable to men. But the involvement of women in organizing these magical rituals is very complex ... Instead of just teaching how to be a good wife, they could be teaching women about their whole being. There is great potential in the powerful networks of women which exist in Africa. Because when girls are initiated together, they are sisters for life. Wherever you are in the world and you are in trouble, one of those sisters will come to your aid."⁸⁷

In some practising communities, it is believed that "an uncircumcised woman's thoughts would constantly turn to sex and that she would do anything necessary to satisfy her lust, a behaviour completely unacceptable for a woman ..."⁸⁸ Accordingly, this might explain why some women may feel empowered by the attenuation of their sexual desire: "This demonstrates the function of excision: it permits a woman to be mistress of her body. This is why I don't see it as a mutilation at all."⁸⁹

⁸³ Quoted in Walker & Parmar, *supra* note 24 at 313.

⁸⁴ Slack, *supra* note 26 at 449.

⁸⁵ Van der Kwaak, *supra* note 29 at 783.

⁸⁶ Dorkenoo, *supra* note 52 at 47.

⁸⁷ Interview with E. Dorkenoo, quoted in Walker & Parmar, *supra* note 24 at 252-53.

⁸⁸ E. Oram, "Zainaba" in M. Badran & M. Cooke, eds., *Opening The Gates: A Century of Arab Feminist Writing* (London: Virago Press, 1990) 63 at 64 [hereinafter "Zainaba"].

⁸⁹ Quoted in Dorkenoo & Elworthy, *supra* note 25 at 25.

2. Experiencing Female Genital Operations as Disempowering

Voices of dissent and despair also exist. Some women are acutely aware of the difficulties in putting an end to the custom: “I don’t know exactly how, but it does not seem to me to be impossible. At what price, I don’t know. But nothing can be done towards abolition of these customs if the women concerned do not get together ...”⁹⁰ Others express uncertainty about how this might be achieved: “I can’t imagine that we would have the power to stop it. I don’t have the power to stop it, but if I did, I would make it stop ... [b]ecause of the pain.”⁹¹ Still others cannot conceive of change, but explicitly articulate their experiences in terms of the disastrous consequences that could befall them or their children should they break with tradition:

“We can’t afford being different. We found our mothers circumcised; we learned that our grandmothers and great-grandmothers were circumcised, and we have to carry the tradition to our children and grandchildren. We can’t think of anyone who is not circumcised. Once a man divorced his wife as soon as he discovered that, out of negligence, one of her two leaves was not cut off. This man told his wife: ‘What have I married? A man or a woman?’ News of this incident spread and the woman did not know where to hide because of the scandal.”⁹²

This sentiment is echoed in the words of Mary, a Gambian woman interviewed by Walker. When asked how she felt about the recent circumcision of her daughter she replied: “I felt sorry for her, but I couldn’t keep her, because it’s the tradition and the child had to go ... Here there are many events and places where a child can’t go if she isn’t circumcised.”⁹³

Awa Thiam sees the practice as irrefutably harmful, notwithstanding community acceptance:

“The little girl who is excised, *even if she wants it because all the little girls of her age are done and because she has been persuaded*, doesn’t feel any less the terrifying pain. Moreover, she feels deeply the hurt done to her body. She is conscious of being wounded, diminished specifically. Whatever else may be suggested, she experiences a mutilation.”⁹⁴

3. Situating Women’s Experiences of Female Genital Operations

It is imperative to recognize that women in many practising cultures are situated in a post-colonial context within which nationalist struggles persist. This has two important consequences. First, the impact of colonialism, particularly efforts

⁹⁰ Quoted in *ibid.* at 24.

⁹¹ Quoted in Walker & Parmar, *supra* note 24 at 323.

⁹² Quoted in Dorkenoo & Elworthy, *supra* note 25 at 27.

⁹³ Quoted in Walker & Parmar, *supra* note 24 at 322.

⁹⁴ Quoted in Dorkenoo & Elworthy, *supra* note 25 at 25 [emphasis added].

directed at eradicating the practice,⁹⁵ may have intensified the desire to preserve traditional rituals in order to maintain tribal identities in the face of the emergence of nation-states created by colonial powers.⁹⁶ The desire to assert a distinct “cultural identity” in the face of undesired external intrusions may also be a factor that has contributed to a spread of the practice. In an interview with a member of the Commission for the Abolition of Sexual Mutilation in Senegal, the following observation was made:

“In Senegal in 1993, sexual mutilations are still being performed, even in circles which traditionally did not practice them previously. I have also been told that in the town of Nbour ... young girls were freely offering themselves to be circumcised — even without asking their parents ... Before, this mutilation was imposed on children. Now young girls offer themselves for mutilation — that is frightening.”⁹⁷

Secondly, contemporary nationalist struggles may influence African women’s perceptions of the importance and timeliness of their concerns in relation to other issues facing their communities. In the words of Dorkenoo:

“[O]ur women are often confused, because we are told that the most important issue to focus on is the nationalist struggle and that once we free ourselves from colonial domination, everything will be OK, and *then* we can address the women’s question. When you delve into the subject, it’s not just the cutting of a woman’s genitals; it’s also the symbolic power of it: it has implications for her psychology and character development. And therefore male-dominated society sees any attempt to change it as a threat.”⁹⁸

The galvanizing of communities around the struggle to end imperialism is extremely important in circumstances where women who take up what is perceived to be the feminist struggle may “qualify for three ‘betrayals’” — betrayal of man, woman and community.⁹⁹ In contexts where women are economically and socially dependent on their community, the difficulties involved in “breaking ranks” is obvious. Thus, “whilst a woman may tell an interviewer ... that she believes a practice is wrong or ought to be different, nonetheless, she may feel her participation in the practice is necessary at least for the moment.”¹⁰⁰ For these reasons, Dorkenoo insists

⁹⁵ In 1946, the British colonial government in the Sudan prohibited infibulation. The practice did not stop, however but, rather, induced families to have the procedure done secretly. Brennan suggests that “this attempt to outlaw circumcision was unsuccessful because it was imposed by a colonial regime and there was no attempt to educate the Sudanese as to why they should abandon a long standing cultural tradition at the behest of a foreign power” (K. Brennan, “The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study” (1989) 7 *L. & Inequality* 367 at 376).

⁹⁶ See Cerny Smith, *supra* note 26 at 2452.

⁹⁷ Quoted in Walker & Parmar, *supra* note 24 at 339-40.

⁹⁸ Quoted in *ibid.* at 249.

⁹⁹ T. Minh-ha Trinh, *Woman, Native, Other: Writing Postcoloniality and Feminism* (Bloomington, Ind.: Indiana University Press, 1989) at 104, cited in Harries, *supra* note 21 at 511.

¹⁰⁰ Harries, *ibid.* at 516.

that “to be successful, campaigns on female genital mutilation should consider carefully not only eliminating but replacing the custom.”¹⁰¹

The purpose of this section has been to demonstrate two points. First, we need to acknowledge that external sources — such as colonialism — may have contributed to the practice in its current dimensions. This might be critical to furthering our understanding of the social meanings currently assigned to female genital operations by practising communities, as well as the likely success of prevention strategies perceived as Western in origin or orientation. The second point is that women in practising cultures may experience their culture and gender intersecting in multifarious ways, so that female genital operations can be experienced as being simultaneously empowering and oppressive. Framing appropriate solutions, therefore, “requires an acknowledgement of, and co-operation with, the different sources of power which affect women in different ways”.¹⁰²

IV. Internal Debate and External Critique — Applying International Human-Rights Standards

Developing a deeper understanding of the significance and complexities of female genital operations is critical to the process of uncovering shared values and norms. I will turn now to the role of international human-rights norms and procedures in this process.

A. *Internal Debate — The Transformative Potential of Human-Rights Norms*

Despite the limitations of human-rights norms as embodiments of universal morality, many states have expressed their commitment to the standards of conduct outlined by them.¹⁰³ International human-rights norms also provide the advantage of a common language through which minority voices can articulate their concerns to their local communities and to the international community.¹⁰⁴ Accordingly, the inter-penetration of ideas between cultures may be facilitated by international instruments that have the potential to spark or animate internal debates. Harries suggests: “[T]hrough this process, internationally defined rights are given a certain localized, ideological context.”¹⁰⁵

While female genital operations have been variously analyzed by outsider scholars as a violation of the right to be free from discriminatory practices,¹⁰⁶ the

¹⁰¹ Dorkenoo & Elworthy, *supra* note 25 at 16.

¹⁰² Harries, *supra* note 21 at 519.

¹⁰³ See *ibid.* at 507.

¹⁰⁴ See *ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ The *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/3/810 (1948) provides that “Everyone is entitled to all the rights and freedoms set

right to be free from torture or cruel, inhuman or degrading treatment,¹⁰⁷ the right to sexual and corporeal integrity¹⁰⁸ and the right to health,¹⁰⁹ vigorous internal debates surrounding the practices have also adopted the language of rights. The next section deals with the use of international human-rights standards in internal discussions about female genital operations.

1. Discrimination Against Women and Children

Article 5(a) of C.E.D.A.W. obliges state parties to take all appropriate measures

[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.¹¹⁰

Burkina Faso, Egypt, Ethiopia, Gambia, Guinea, Senegal, Nigeria, Mali and Kenya have ratified the C.E.D.A.W., whilst Djibouti, Somalia and Sudan (where

forth in this Declaration, without distinction of ... race, colour [or] sex ..." (*ibid.* at art. 2). In a similar vein, the *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31 [hereinafter C.E.D.A.W.], states:

"[D]iscrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (C.E.D.A.W., *ibid.* at art. 1).

...

State Parties shall take ... all appropriate measures ... to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (C.E.D.A.W., *ibid.* at art. 3).

See generally K. Boulware-Miller, "Female Circumcision: Challenges to the Practice as a Human Rights Violation" (1985) 8 Harv. Women's L.J. 155 at 162-63.

¹⁰⁷ "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment" (*Universal Declaration of Human Rights*, *ibid.* at art. 5). Traditionally, the right to be free from torture has exclusively concerned the actions of state agents. The *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 March 1984, Can. T.S. 1987 No. 36, 23 I.L.M. 1027, specifically states that "'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (*ibid.* at art. 1). Recently, however, some human-rights scholars have challenged the legitimacy of this demarcation between the acts of state and non-state actors (see: sources listed at *supra* note 2; R. Copelon, "Recognising the Egregious in the Everyday: Domestic Violence as Torture" (1994) 25 Colum. Hum. Rts. L. Rev. 291).

¹⁰⁸ For a good summary of these arguments, see Boulware-Miller, *supra* note 106 at 169-72.

¹⁰⁹ The *Universal Declaration of Human Rights* provides: "Everyone has the right to a standard of living adequate for ... health and well-being Motherhood and childhood are entitled to special care and assistance" (*supra* note 106 at art. 25).

¹¹⁰ C.E.D.A.W., *supra* note 106 at art. 5(a).

some of the highest rates of female genital operations are recorded) have not.¹¹¹ All of the above-mentioned states, however, have ratified the *African Charter of Human and Peoples' Rights*,¹¹² which specifies that, "the State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."¹¹³

The applicability of article 5(a) of the C.E.D.A.W. to female genital operations depends on the extent to which these practices are seen to be based on the belief that women are inferior or on stereotyped roles for women. Thomas Sunkara, the former President of Burkina Faso, has made this connection quite explicitly:

When a man takes his daughter or his daughters for excision, independently of any cultural and mystical values he wishes and tries to impart to his act, there is a clear difference in the care he shows for his small sons who go to be circumcised and the care, or rather the contempt, disdain and disregard he shows for his daughters in handing them over to undergo a form of butchery.

It also shows an attempt to confer an inferior status on women by branding them with this mark which diminishes them and is a constant reminder to them that they are only women, inferior to men, that they do not even have any rights over their own bodies or to fulfilment either bodily or personal. They have limits imposed on them by men.

As we can view circumcision as being a measure of hygiene, in the same way we can only see excision as a measure of inferiorization.¹¹⁴

As I will explain in the following section, however, the framing of the issues by outsider critics in these terms (particularly regarding women's rights over their own bodies) has been controversial.¹¹⁵ At this stage, it is also important to note that the practices have been challenged by internal critics in these terms.

¹¹¹ This is not an exhaustive list of states where female genital operations are practised. This sampling does, however, represent those states where, according to estimates, a high proportion of the female population are engaged in these practices: Somalia (98%), Djibouti (98%), Sudan (80%), Ethiopia (90%), Mali (75%), Burkina Faso (70%), Gambia (60%), Kenya (50%), Senegal (50%), Guinea (60%), Nigeria (50%), Egypt (50%) (see F.P. Hosken, ed., *The Hosken Report: Genital and Sexual Mutilation of Females*, 4th ed. (Lexington, Mass.: Women's International Network News, 1993) at 14).

¹¹² 26 June 1981, OAU Doc. CAB/LEG/67/3/Rev. 5, 21 I.L.M. 59 (entered into force 21 October 1986) [hereinafter *African Charter*]. For ratifications as of January 1, 1995, see "International Instruments Relating to Human Rights" (1995) 16 H.R.L.J. 75 at 88 [hereinafter "International Instruments"].

¹¹³ *African Charter*, *ibid.* at art. 18(3).

¹¹⁴ *Report of the Working Group*, *supra* note 41, Annex 1 at 2.

¹¹⁵ See text accompanying notes 145-150, below.

2. Right to Health

The *United Nations Convention on the Rights of the Child*¹¹⁶ states: "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."¹¹⁷ Burkina Faso, Egypt, Ethiopia, Gambia, Guinea, Senegal, Nigeria, Mali and Kenya have ratified the *Children's Convention*, although Somalia has not.¹¹⁸ Again, all the above-mentioned states have ratified the *African Charter*, which specifies:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.¹¹⁹

In terms of the health consequences of female genital operations, the immediate physical effects of infibulation include "damage to the urethral meatus, Bartholin's glands, the perineum and possibly the rectum,"¹²⁰ depending on the level of resistance of the child. Additional complications include: hæmorrhage (the clitoris has a rich arterial blood supply), shock from pain and blood loss, septicæmia, infection of the wound and internal reproductive organs (tetanus is a real threat due to unsterile instruments), urine retention due to occlusion, damage to and bleeding from adjacent tissues and organs and death.¹²¹ H.I.V. transmission is also a possibility.¹²²

The long-term physical effects of infibulation have also been documented. These include:

[U]rinary tract infections, menstruation difficulty, sterility, extensive malformation and scarring (including vulvar abscesses, epidermoid inclusion cysts, and keloids), pain from reopening the infibulation with a knife on the wedding night, and difficult penetration by the sexual partner. The circumcised female may also experience difficulties giving birth, [including] prolonged labor, per-

¹¹⁶ GA Res. 44/25, UN GAOR, 44th Sess., Supp. No. 49, UN Doc. A/44/49 (1989) 166 [hereinafter *Children's Convention*].

¹¹⁷ *Ibid.* at art. 24.

¹¹⁸ See "International Instruments", *supra* note 112 at 86.

¹¹⁹ *African Charter*, *supra* note 112 at art. 16.

¹²⁰ Cerny Smith, *supra* note 26 at 2451 [references omitted].

¹²¹ See *ibid.*

¹²² Dr. Kouyate, a gynecologist based in Dakar, Senegal, cautions:

"I am convinced that there is a connection between AIDS and female circumcision. Look at the conditions in which circumcision is carried out. It is a communal circumcision: the circumciser has her own blade, she cuts and passes from one child to the next with the same blade, soiled with blood" (quoted in Walker & Parmar, *supra* note 24 at 297-98).

ineal and deep trauma, and rupture of the uterus which may also result in fetal death or brain damage.¹²³

Dr. Kouyate describes the long-term complications based on her experience:

“The woman has been cut and traumatized, so intercourse is very painful and there are a lot of problems giving birth. An area which is normally elastic has become a cicatrix area. As a result, many women tear, at the top and at the bottom. If they are in hospital, you can perform an episiotomy, you can enlarge the opening. But just imagine these women who have to give birth at home ... [t]hey are just left with a tear at the top and bottom, at the top causing massive hemorrhaging, at the bottom even worse — the tear can enlarge to the anus, so that women can no longer contain their feces. ... Not only are women affected, but babies are affected, too.”¹²⁴

Dorkenoo and Elworthy report that members of the medical profession in Egypt, Somalia, Sudan, Kenya, Djibouti, Mali, Nigeria, Burkina Faso, Ghana and the Ivory Coast have spoken out about the harmful consequences of female genital operations.¹²⁵ In reference to the results of a survey of forty-three Sudanese gynecologists, they state:

[A]ll agreed that any form of mutilation was bound to create medical complications. Every respondent believed that it was a harmful and unnecessary practice and that an effort should be put to end it. They were unanimous that a wide campaign of publicity was needed, showing not only the dangers of mutilations but also the erroneous belief that it was required by religion.¹²⁶

The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children was established in 1984 and has focused on the issue of female genital operations. Twenty-four affiliated African committees have since been established to develop and co-ordinate strategies and plans to eradicate female genital operations. The Sudan National Committee on Harmful Traditional Practices, for example, has been involved in activities ranging from the education and training of health workers and traditional birth attendants (who commonly perform the practice), establishing alternative employment programmes for traditional practitioners and initiating consulting workshops with a broad range of community group leaders.¹²⁷

¹²³ Cerny Smith, *supra* note 26 at 2451.

¹²⁴ Quoted in Walker & Parmar, *supra* note 24 at 296.

¹²⁵ See Dorkenoo & Elworthy, *supra* note 25 at 15.

¹²⁶ *Ibid.*

¹²⁷ See A. Hassan, “Sudanese women’s struggle to eliminate harmful traditional practices” (1995) International Planned Parenthood Federation Home Page.

B. *Translating Principle into Action — Internal Initiatives and Strategies*

One example of how international human-rights norms might be incorporated into strategies for change at the local level is illustrated in the following extract from a lecture given by Zainaba (a local nurse) to the midwives of Touil, Mauritania:

“The Way of the Prophet ... tells us that women should be circumcised. It is not a sin if it is not done, but it is better if it is. In any case it is said that the matter in which it should be performed is that one third of the clitoris should be cut off and two thirds should be left intact. Someone who practically attacks a girl with a knife, cutting off everything ... is, in any case, going directly against the words of the Prophet ... (*Disturbed chatter; ‘I didn’t know ...’*) God created woman to be with man. He created her to be his wife so that they could help each other. It is not right if only the man has feeling and the woman feels nothing. That is a great sin. After all, a man and a wife are from the same tribe aren’t they, and people from the same tribe should always work together and help each other, shouldn’t they? ... If a woman’s entire clitoris is cut off, it leaves her cold, lazy, without interest, humourless. Doing that is like killing her, it is a sin. ...

“You all must not, as is your custom, rush into a family’s tent when they call you to circumcise their daughter saying, ‘Give me the child, give me the razor blade and get my payment ready!’ First you must clean everything. Today we are teaching you to be nurses — we will give each of you medication and explain how to use it all ... When you go back to your villages, you have a duty. You must be an example of cleanliness and health to everyone ...”¹²⁸

Significantly, Zainaba did not attempt to invalidate the practice, for to do so may have been completely unacceptable to her and her audience. She does, however, challenge the midwives to use their power responsibly in the interests of women. Oram observes that:

In light of the fact that Maures believe so strongly in female circumcision, Zainaba’s lecture presented the traditional midwives with a challenge. This challenge was made even more poignant because Zainaba is both a Maure and a woman ... As a Maure, Zainaba is part of the culture that she is trying to change. She is a Muslim, herself circumcised. She is subject to the beliefs and pressures of Maure society just as the midwives are.¹²⁹

Instead, Zainaba concentrated her efforts on ensuring that the physical intervention was minimized, by invoking well-recognized and respected norms and authority such as the word of the Prophet, community cooperation and duties to the community. By emphasizing critical connections between the way in which the operation is performed, the overall physical and mental health of women and children

¹²⁸ Translated from Arabic by E. Oram, “Lecture on Cliteridectomy to the Midwives of Touil, Mauritania — 1987” in Badran & Cooke, eds., *supra* note 88, 67 at 68-69.

¹²⁹ “Zainaba”, *supra* note 88 at 65.

and God's will, she was able to persuade the midwives of the seriousness and importance of taking care in performing their operations.¹³⁰ Her presentation not only underscores the importance of women's health, but also the "sinfulness" of discriminatory treatment: "It is not right if only the man has feeling and the women feels nothing."¹³¹ She is engaging in what An-Na'im calls an "internal struggle for control over the cultural sources and symbols of power within that society".¹³² It may be that the traditional practitioners could accept her directions *because* she is able to legitimize them by using powerful cultural symbols. By analyzing Zainaba's approach, outsiders may develop a sharper insight into the cross-cultural content of human-rights standards relating to health and discrimination.

However, tension persists. For those internal critics who wish to see the practices completely eradicated, the strong focus on the health aspects insidiously obscures the systemic factors that underlie the practices and prevents these from being adequately addressed. Dorkenoo has observed:

"Genital mutilation is basically a social practice, with a health consequence. Generally, people have been dealing with it on the health side, and my impression is that if you don't get to the roots, which is the social meaning of it, we will never be able to deal with it."¹³³

This dilemma is evident in the recent controversy over female genital operations in Egypt.¹³⁴ In 1994, the Egyptian Health Minister pledged the government's commitment to eradicating female genital operations at the International Conference on Population and Development.¹³⁵ This provoked a strong reaction from leaders in the Muslim community, culminating in the promulgation of an edict by the Grand Sheikh of Cairo's Al-Azhar University which stipulated that female genital

¹³⁰ See *ibid.*

¹³¹ *Ibid.*

¹³² "Toward a Cross-Cultural Approach", *supra* note 7 at 20.

¹³³ Quoted in Walker & Parmar, *supra* note 24 at 244.

¹³⁴ Although Gunning, writing in 1992, refers to a pre-existing Egyptian law which prohibits female genital operations (see Gunning, *supra* note 5 at 246), Dorkenoo and Elworthy, also writing in 1992, state that "[m]any references have been made to legislation in Egypt, but after researching the available materials, all that has been traced is a resolution signed by the Minister of Health in 1959, recommending only partial cliteridectomy for those who want the operation, to be performed only by doctors" (Dorkenoo & Elworthy, *supra* note 25 at 11). This is in contraposition to legislative action taken by other states to prohibit the practice of female genital operations and, in particular, medical involvement in the practice (see e.g.: *Crimes (Female Genital Mutilation) Amendment Act 1994* (N.S.W.), 1994, No. 58; *Prohibition of Female Circumcision Act 1985* (U.K.), 1985, c. 38; *Act (1982: 316) Prohibiting the Circumcision of Women* (Swed.), 1982, c. 316; in the United States, bills have been introduced in both the House of Representatives (H.R. 941, 104th Cong., 1st Sess. (1995)) and the Senate (S. 1030, 104th Cong., 1st Sess. (1995)) proposing legislation prohibiting the practice of "female genital mutilation").

¹³⁵ See "Egypt: Conflicting Decree on FGM" (1995) 17 *Inter-African Committee on Traditional Practices Affecting the Health of Women and Children* 17.

operations were a duty for all Muslim women.¹³⁶ In response, the Egyptian government significantly relaxed its position on female genital operations by permitting the practice in public hospitals.¹³⁷ This course was justified on the grounds that performing the practice under medically controlled conditions would minimize the health risk involved.¹³⁸

On the question of medicalizing the practice, Dorkenoo and Elworthy state:

[T]he tendency to "clean up" the gory aspects of the operations by either offering to perform them in hospitals, or by providing midwives and other operators with anaesthetics and penicillin ... [for the purpose of] ... sanitizing the custom, and thus effectively removing the health based objections, must be refused.¹³⁹

This is consistent with the approach adopted by the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children ("I.A.C.T.P."). The I.A.C.T.P. has established a task force for the purpose of developing strategies for combating the practice in Egypt, which do not involve medicalization as an intermediate measure.¹⁴⁰ The main question, in the face of these internal tensions, is how to determine the appropriate role and form of external criticism.

C. *The Role of External Criticism*

As indicated in Part I, above, An-Na'im theorizes that external criticism of a cultural practice or belief is most likely to be effective when made in support of the "proponents of enlightened perceptions" within a culture and framed in a manner consistent with internal values.¹⁴¹ Statements made by a range of African spokespeople support this view.

Like all other practices that oppress African women, genital mutilation must be fought against. But the priorities and the weapons used in the battle must be chosen by Africans themselves, and more especially by women. For these practices will not disappear of their own accord for a very long time. . . Outside support can only be effective and perceived as non-imperialist if it takes as its starting point informational and educational activities necessarily carried out in each country.¹⁴²

¹³⁶ See D. Ezzat, "Female Genital Mutilation. Promise Compromised" (1995) 22 *Populi* 4.

¹³⁷ See *ibid.* Recent reports, however, indicate that Egypt has again reversed its position by reimposing the ban on the performance of female genital operations in public hospitals (see J. Mann, "A Welcome Reversal" *The Washington Post* (27 December 1995) F13) and by extending the ban to private clinics (see "Female Circumcision Ban" *Pittsburgh Post-Gazette* (19 July 1996) A5). This fluctuating situation reflects the nature of the internal struggles and disagreements surrounding the issue.

¹³⁸ See Ezzat, *ibid.*

¹³⁹ Dorkenoo & Elworthy, *supra* note 25 at 15.

¹⁴⁰ See "Egypt: Conflicting Decree on FGM", *supra* note 135 at 17.

¹⁴¹ See text accompanying notes 12-15, above.

¹⁴² M.A. Savané, "Why We are Against the International Campaign" (1979) 40 *Int'l Child Welfare Rev.* 37 at 39, quoted in Boulware-Miller, *supra* note 106 at 175-76.

Similarly, Abdoul Diouf, in his capacity as President of Senegal, stated: "The main part of this struggle will be waged by education rather than by anathema and from the inside rather than from the outside."¹⁴³

This point has also been made in international fora. For example, paragraph 45 of the "Review and Evaluation of Progress Achieved in the Implementation of the (1975) World Plan of Action: Health", considered at the 1980 United Nations Women's Conference in Copenhagen, states:

Female circumcision and infibulation can lead to complications during pregnancy. The Second Regional Conference on the Integration of Women in Development ... condemned sexual mutilation practices, but *was also critical of uninformed international campaigns against these practices*, and called upon Governments and women's organizations to seek solutions to the problem.¹⁴⁴

These criticisms have focused, in particular, on Western characterizations of the practice as a violation of the "right" of women to control their bodies and sexuality.¹⁴⁵ Some Western critics have contended that the practice violates the right to sexual and corporeal integrity¹⁴⁶ on the grounds that it is performed for the purpose of suppressing sexual drive and has the effect of degrading and impairing women's sexual organs and of subjugating women generally.¹⁴⁷ These approaches have, in some circumstances, been met with antipathy and rejection by African women. Boulware-Miller points out:

[O]ne response to the sexual and corporal integrity argument is that the term "mutilation" is disrespectful of African women who have been circumcised. While advocates ... use the word "mutilation" to express their outrage at the practice, in so describing an important part of African women's cultural identity, they offend all Africans.¹⁴⁸

Allegations of Western insensitivity and imperialism inevitably arise in this context:

The aggressive nature of the campaign, the insensitive attitude towards a different culture, the paternalism and activism displayed have left us shocked and enraged. The campaign has been undertaken on the basis of Western prejudices — the mentality of the "centre" — themselves founded uniquely on the morals and culture of the Christian West. In their desire to stir the passions of the general public in the West, the men and women responsible have forgotten that

¹⁴³ Sanderson, *supra* note 41 at 371.

¹⁴⁴ UN Doc. A/CONF. 94/9 (1980) at para. 45 [emphasis added].

¹⁴⁵ See generally Boulware-Miller, *supra* note 106 at 169.

¹⁴⁶ See Boulware-Miller who seems to suggest that this "right" can be derived from the principle of non-discrimination, the right to be free from cruel, inhuman and degrading treatment, and the prohibition on torture (see *ibid.* at 169).

¹⁴⁷ See *ibid.* at 169-70.

¹⁴⁸ *Ibid.* at 170 [references omitted].

they might be damaging the self-respect of every woman they are setting out to “save”, by destroying the foundations of their beliefs.¹⁴⁹

The force of these criticisms, together with the pragmatic belief that health-based strategies are likely to be the most successful, has led some commentators to conclude that health-based approaches are the most appropriate.¹⁵⁰ By confining criticism to principles, such as the right to health, and strategies, such as education, the backlash against Western interference may be minimized. External agents are not then seen to be imposing their will on unique cultural contexts. Moreover, this approach can be more easily integrated into existing values and social and economic priorities.¹⁵¹ Harries, for example, reports that local legislation mandating female excision in the Kapchworo district of Uganda remained in effect, notwithstanding condemnation by government officials.¹⁵² Yet, subsequent educational campaigns informing men about the dangers of the practice have reversed attitudes in some cases, leading an increasing number of men to prevent their daughters from being circumcised.¹⁵³ Most importantly, focusing on health and education approaches does not tend to place women in the position of having to “choose” between enforcing “substantively hollow rights”¹⁵⁴ and remaining part of an extant social structure that rejects those rights.¹⁵⁵

However, as recent proposals to medicalize the practice indicate, the health-based objections may not adequately cover the field. Ironically, Egypt’s proposal might be viewed as being consistent with health-based objectives. In this case, the appropriate form of external criticism must not only draw attention to Egypt’s international obligations under C.E.D.A.W., but must underscore the right of all women to be free from discriminatory practices, *in addition* to their right to health. This approach would lend support to the dissenting Egyptian groups that initiated efforts to challenge the Egyptian government’s proposal to allow the practice to be performed in public hospitals.¹⁵⁶ The recent reversal in Egypt’s position¹⁵⁷ implies that this form of protest can be effective.

It is suggested that the health-based objections to the practices have had, and continue to have, the effect of raising consciousness within practising communities about the health dangers associated with the practice. Ongoing discussion holds the potential to further inform the processes of changing local conditions and percep-

¹⁴⁹ Savané, *supra* note 142 at 37.

¹⁵⁰ See Boulware-Miller, *supra* note 106 at 172.

¹⁵¹ See *ibid.*

¹⁵² See Harries, *supra* note 21 at 535.

¹⁵³ See *ibid.*

¹⁵⁴ *Ibid.* at 521.

¹⁵⁵ See *ibid.*

¹⁵⁶ Ezzat reports that 15 non-governmental organizations have filed suit against Egypt on the basis that the performance of female genital operations in public hospitals violates international agreements and Egyptian law (see Ezzat, *supra* note 136 at 4).

¹⁵⁷ See: Mann, *supra* note 137; “Female Circumcision Ban”, *supra* note 137.

tions, so that the practices may be effectively challenged on a variety of grounds. It may be, for instance, that the impetus for challenging the practices as violent and discriminatory may gain greater prominence after the health concerns have been widely discussed and largely confirmed. The internal debate surrounding Egypt's proposals may be a case in point. This demonstrates that cross-cultural dialogue is a process in constant flux and, accordingly, should be subject to constant revision as cross-cultural understandings expand and internal re-interpretations of cultural norms change local conditions.

D. *An Assessment of the Participatory Role of International Bodies*

An examination of the work of United Nations bodies and conferences evidences the tensions discussed above. It also illustrates the way in which cross-cultural dialogue on this issue has evolved in response to those tensions. For a long time, United Nations agencies declined to examine the practice.¹⁵⁸ In 1984, however, amid growing international concern and pressure from women's groups, the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities established a working group to investigate and report on traditional practices affecting the health of women and children.¹⁵⁹

Significantly, the Working Group on Traditional Practices Affecting the Health of Women and Children analyzed female genital operations "from a cultural and historical perspective as well as from a human rights perspective".¹⁶⁰ In particular, the working group focused on how female genital operations, as a rite of passage and as a test for women's capacity to endure acute suffering, operate as cultural justifications for the practice.¹⁶¹ This has led one commentator to conclude that the working group perceived its task as a balancing act between the harmful health consequences of female genital operations and the cultural significance of the practice.¹⁶²

¹⁵⁸ In 1959, the Economic and Social Council requested the World Health Organisation ("W.H.O.") to study the practice. The W.H.O. declined on the basis that the practice is "based on social and cultural backgrounds, the study of which is outside the competence of the World Health Organisation" (quoted in Brennan, *supra* note 95 at 378). U.N.I.C.E.F. also declined to examine the practice until 1980 (see *ibid.*). However, at the insistence of Western and African women, the W.H.O. sponsored a series of educational conferences in 1979 and 1984 addressing the harmful health consequences of female genital operations (see *ibid.*).

¹⁵⁹ It is noteworthy that the Sub-Commission discussed the issue for two years before reaching the decision to establish the working group. In fact, that discussion was initiated by the report placed by the Minority Rights Group before the Sub-Commission during its 1981 session (see Brennan, *ibid.* at 382). Brennan also reports that several Sub-Commission members from practising countries admonished members to respect practising cultures, and many asked that the practice be considered as a humanitarian concern rather than a human-rights violation (see *ibid.* at 382). Brennan also notes: "Western members did not, for the most part, participate in these discussions" (*ibid.* at 382-83).

¹⁶⁰ *Ibid.* at 381.

¹⁶¹ See *ibid.* at 389.

¹⁶² See *ibid.*

This may explain the Working Group's reticence on the question of whether the practice constitutes a violation of human-rights. The Working Group concluded that the custom had serious physical and psychological health consequences and was "at variance" with human-rights standards.¹⁶³ It did not, however, specifically enumerate which human-rights standards the practice contravenes.¹⁶⁴ According to Brennan, the Working Group's conclusion was influenced by opposition to the practice within practising communities, evidence that the initiatory aspects of the practice were diminishing in significance and the ratification of international human-rights instruments.¹⁶⁵

Although the *Report of the Working Group* failed to state which human-rights standards prohibited the practice, the Sub-Commission subsequently adopted a resolution that the practice was a violation of the "rights of women and children".¹⁶⁶ According to Brennan, the Sub-Commission preferred to support internal efforts to eradicate the practice — based on education and persuasion — rather than coercing governments into taking active steps to prohibit female genital operations.¹⁶⁷

On the one hand, the *Report of the Working Group*, the processes leading to its creation and the Sub-Commission's response, constitute a good example of how cultural sensitivities can be incorporated into international discussions.¹⁶⁸ The approach adopted emphasized the importance of consultation with members from practising countries in an effort to understand the cultural significance of the practices.¹⁶⁹ It also recognized the importance of recommending action that underscores the internal struggles surrounding the practice rather than concentrating on external pressure.¹⁷⁰ This preference for broad education efforts has the added advantage of placing female genital operations in an organic context, as one issue in a continuum of health concerns for African women.¹⁷¹

On the other hand, the *Report of the Working Group* has been criticized for not adequately addressing the gender dimension of female genital operations. The focus on cultural significance, at the expense of gender inequities, oversimplified the analysis¹⁷² and prevented the working group from addressing concerns about discrimination and the control of women's sexuality.¹⁷³ It also circumvented the obvious need to examine other factors that may contribute to the continuation of the

¹⁶³ *Report of the Working Group*, *supra* note 41 at 21, cited in Brennan, *supra* note 95 at 390.

¹⁶⁴ See Brennan, *ibid.* at 391.

¹⁶⁵ See *ibid.* at 391-92.

¹⁶⁶ Sub-Commission Resolution: 1988/34, UN Doc. E/CN.4/Sub.2/1988/45 at 62, cited in Brennan, *ibid.* at 392.

¹⁶⁷ See Brennan, *ibid.* at 382.

¹⁶⁸ See *ibid.* at 382-87.

¹⁶⁹ See *ibid.*

¹⁷⁰ See Gunning, *supra* note 5 at 245.

¹⁷¹ See *ibid.*

¹⁷² See *ibid.* at 244.

¹⁷³ See *ibid.*

practice, such as the economic dependence of women,¹⁷⁴ nor did it address questions about empowering women in practising communities so that their voices and priorities may be heard.¹⁷⁵

The international discussion, however, has continued to evolve in light of greater participation from men and women from practising cultures, changing the perceptions and the re-interpretation of internal norms. More recent international efforts to address female genital operations are incorporated in the "Programme of Action" adopted by the International Conference on Population and Development,¹⁷⁶ and the "Platform for Action" adopted by the Fourth World Conference on Women.¹⁷⁷ Although neither document is legally binding, each, nonetheless, evidences a commitment by participating governments to the principles and recommendations enumerated therein.

The Cairo Programme of Action, focusing on the health and educational aspects of the practices, states:

Governments and communities should urgently take steps to stop the practice of female genital mutilation and protect women and girls from all such similar unnecessary and dangerous practices. Steps to eliminate the practice should include strong community outreach programs involving village and religious leaders, education and counselling about its impact on girls' and women's health, and appropriate treatment and rehabilitation for girls and women who have suffered mutilation. Services should include counselling for women and men to discourage the practice.¹⁷⁸

Elsewhere in the Programme, however, the violent and discriminatory nature of the practice is addressed, and the following recommendation is made: "Governments should take effective action to eliminate all forms of coercion and discrimination in policies and practices. Measures should be adopted and enforced to eliminate ... female genital mutilation."¹⁷⁹

The Beijing Platform for Action addresses female genital operations under the categories of "Women and Health" and "Violence Against Women."¹⁸⁰ While health concerns and educational strategies remain important priorities, the document also

¹⁷⁴ Evidence suggests that economic independence allows women to take risks in challenging cultural practices. For example, Boulware-Miller reports that women joined the Eritrean People's Liberation Front "to avoid the knife" (*supra* note 106 at 167-68). See also Gunning, *ibid.* at 245.

¹⁷⁵ See Gunning, *ibid.* at 245.

¹⁷⁶ *Report of the International Conference on Population and Development*, UN Doc. A/CONF.171/13 (October 1994) (Mimeo.) c. 1 [hereinafter Cairo Programme of Action].

¹⁷⁷ *Report of the Fourth World Conference on Women*, UN Doc. A/CONF.177/20 (October 1995) (Mimeo.) c. 1 [hereinafter Beijing Platform for Action].

¹⁷⁸ Cairo Programme of Action, *supra* note 176 at para. 7.40.

¹⁷⁹ *Ibid.* at para. 5.5.

¹⁸⁰ Part C and Part D, respectively, of the Beijing Platform for Action, *supra* note 177 at 37-59.

regards the practice as a form of discrimination against women¹⁸¹ and specifically characterizes it as a form of violence against women:

The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Accordingly, violence against women encompasses but is not limited to the following: ... female genital mutilation and other traditional practices harmful to women ...¹⁸²

The Platform also includes substantive recommendations that aim to translate these principles into action. In relation to health and education, the Platform recommends that governments

[g]ive priority to formal and informal educational programmes that support and enable women to develop self-esteem, acquire knowledge, make decisions on and take responsibility for their own health, achieve mutual respect in matters concerning sexuality and fertility and educate men regarding the importance of women’s health and well-being, placing special focus on programmes for both men and women that emphasise the elimination of harmful attitudes and practices, including female genital mutilation ...¹⁸³

In addition, paragraph 124(i) recommends that governments

[e]nact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, ... and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices.¹⁸⁴

On the one hand, these recommendations appropriately demonstrate an appreciation of existing tensions between cultural sensitivity and international human-rights standards. They support the efforts of some internal critics and activists who are challenging the practice in their communities, by using strong language to criticize the practices as a manifestation of violence and discrimination. At the same time, the reaffirmation of the importance of health- and education-based

¹⁸¹ It states:

Discrimination against girls, often resulting from son preference, in access to nutrition and health-care services endangers their current and future health and well-being. Conditions that force girls into early marriage, pregnancy and child-bearing and subject them to harmful practices, such as female genital mutilation, pose grave health risks. ... (*ibid.* at para. 93).

¹⁸² *Ibid.* at para. 113.

¹⁸³ *Ibid.* at para. 107(a). The substance of this recommendation is reiterated in relation to the girl-child (see *ibid.* at para. 277(d)).

¹⁸⁴ *Ibid.* at para. 124(i). See also *ibid.* at para. 283(d) which relates to protecting the girl-child from all forms of violence.

strategies, together with the focus on encouraging the efforts of grass-roots organizations, ensures that those who are best placed to incorporate the experiences of women from practising cultures will be significant participants in program planning. This is fundamental to ensuring that the women most affected by the practices are not alienated from the constantly evolving cross-cultural dialogue.

Conclusion

What I have attempted to demonstrate is that by taking a dynamic view of culture as a series of ongoing internal and external debates, the role of cross-cultural dialogue in expanding cross-cultural understandings of human rights looks promising. I have argued that this approach opens up opportunities for discourse by orienting us to the cultural and historical assumptions that inform human-rights debate. The methodology proposed encourages us to re-evaluate theoretical positions and strategies in light of the actual (rather than imagined or imposed) experiences and priorities of those with the cultural tools to devise the best strategies for dealing with human-rights concerns. At the same time, I have argued that cross-cultural dialogue should not be used to silence external criticism. Such criticism, however, should be supportive of and sensitive to the substance of internal debates and norms.

The customary practice of female genital operations has attracted considerable attention and criticism from commentators outside practising cultures. For a longer time, internal commentators have been addressing the issues arising from these practices within their communities. In response to these internal and external processes (sometimes reflective, sometimes ill-informed) a cross-cultural dialogue has emerged. The centring of women's experiences is a necessary part of this dialogue for the following reasons. First, with this perspective, outsider assertions about the nature and reasons for continuation of the practice can be tested and, perhaps, challenged. Secondly, we can appreciate the form and content of the internal struggles and debates surrounding the issue. Finally, we might subsequently engage in a form of criticism that supports those internal agitators in culturally appropriate ways.

International human-rights norms can play a critical role in facilitating and animating both internal and external criticism of cultural practices. Both outsider and insider commentators have adopted the language of rights to articulate their criticisms of the practice. However, the particular "rights" relied upon and the reactions to these claims have varied among and between outsiders and insiders. In recent times, the health-based objections to the practice have been preferred because the discrimination-based objections have been criticized for failing to appreciate local norms and perceptions. Outsider criticism that is insensitive to local contexts may indeed be ultimately counter-productive by undermining the efforts of internal critics seeking to gain cultural legitimacy for their position; but this does not mean that outsiders have no valuable contribution. From the perspective of an outsider, I

have argued that focusing exclusively on the health-based aspects of the practices is undesirable. While health-based analyses of female genital operations are less challenging to cultural (and patriarchal) sensitivities, they may also be less likely in the long term to effectively integrate women's experiences of injustice into human-rights law. This focus may also have the undesired effect of displacing critical questions about the social meaning of female genital operations and their role in controlling female sexuality. These concerns have been raised by women within practising cultures and require closer examination. I have suggested that the terms of cross-cultural dialogue should be subject to constant revision as cross-cultural understandings expand and internal re-interpretations of cultural norms change local conditions. This means that criticism, comment and strategies that are inappropriate at one stage in the process of dialogue will not necessarily always be so.
