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Fact checking has not been the strong suit of anti-“FGM” advocacy groups or of the American press. Indeed, the press in general has served as an effective outlet for the advocacy groups and has kept itself innocent of available sources of information that run counter to the received horror arousing story-line about barbaric or ignorant or victimized Africans who maim, murder, and disfigure their daughters and deprive them of a capacity to experience sexual pleasure. With rare exceptions, the only African women who have been given a direct voice and allowed to speak for themselves in our media are those who oppose the practice.


[F]ar from scaling down, the problem of FGM in Indonesia has escalated sharply. The mass ceremonies in Bandung have grown bigger and more popular every year. This year, the gathering took place in February. Hundreds of girls were cut. The Assalaam foundation’s website described it as “a celebration”. Anti-FGM campaigners have proved ineffective against a rising tide of conservatism.

– Abigail Haworth, Guardian Newspaper, 2012
I. INTRODUCTION AND PRELIMINARY BACKGROUND

II. MISREPRESENTATION/MISINFORMATION AND NEED FOR CAUTION

III. FGR AS A WORTHY CANDIDATE FOR ABOLITION: EXAMINING THE EVIDENCE

   i. What is in a name? “Circumcision” or “Mutilation”?
   ii. Does FGR harbor adverse health consequences?
   iii. Does FGR stifle sex and sexual enjoyment?
   iv. “Barbaric” versus “Civilized” cultures.
   v. Does Islam require FGR?
   vi. Does FGR violate human rights?

IV. CONCLUSION

Abstract: A recent United Nations’ (U.N.) Resolution, “Intensifying Global Efforts for the Elimination of Female Genital Mutilations,” urging all countries to enact legislation outlawing female circumcision or female genital ritual (FGR) signals a disturbingly new frontier in the polemic surrounding the ancient cultural practice. Never before has the apex global institution lent its imprimatur to a project whose foundation is profoundly muddled in uncertainties and murkiness. That the Resolution received an instantaneous and near-universal acclaim as a necessary protective weapon against supposed assault on the human rights of women is not news. After all, aside from essentially validating extant legislative frameworks in several countries, the proclamation fits seamlessly with decades-long agitations of activists, scholars and media pundits of one stripe or the other. What is absurd –indeed, the real news – is continued neglect of calls for a rethinking

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Thanks to Ada Obi Nnamuchi, my able assistant, and my students – too numerous to receive individual mention – whose questions contributed in no small measure to refining many of the positions espoused in this paper. The usual caveats apply.
of the criminalization fervor currently gripping the world, for a reassessment of the evidence trumpeted by abolitionists as justificatory of their unbridled interference in what practicing communities revere as a sacred cultural rite. Relying on the premise that claims regarding harmful impact of FGR, the fulcrum upon which eradication forces depend for their activism, cannot be substantiated, this paper argues that prohibitory regimes based thereon, whether at the U.N. or country level, is per se a violation of the human rights of the women purportedly sought to be protected. Human rights (including, in this case, its self-appointed “apostles”), cannot, as a popular Igbo maxim admonishes, become “outsiders who wept louder than the bereaved.” This is the prism from which this paper analyzes the on-going supranational crusade to suppress FGR. It is a critique of extant FGR legal and policy regimes, an instance of which is the U.N. Resolution, as unrepresentative of legitimate advancement of human rights.

**Keywords:** Circumcision; Culture; Female Genital Ritual; Female Genital Mutilation; Health; Human Rights; Misinformation; Religion; United Nations; WHO.

I. INTRODUCTION AND PRELIMINARY BACKGROUND

A little over a year ago (December 2012), the United Nations (U.N.) adopted a Resolution, “Intensifying Global Efforts for the Elimination of Female Genital Mutilations,” urging all Member States to enact legislation proscribing female circumcision or female genital ritual (FGR) in their respective territories.\(^1\)

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2. Id. at 4.
Sponsored by two-third of the Member States, including the Group of African States, and adopted unanimously, the Resolution was the culmination of years of concerted efforts by quite a formidable array of global actors propelled by a common objective, namely, that FGR must be extirpated regardless of the beliefs, views and attachments of its practitioners. Despite being variously hailed as marking “a major step forward in protecting women and girls and ending impunity for this practice,” “strengthening the global effort to eradicate female genital mutilation,” and a “‘groundbreaking’ action against the brutal practice,” a contrary view is that the Resolution signals quite a disturbingly new frontier in the polemic surrounding FGR. Never before has the apex global institution lent its imprimatur to a project whose foundation is profoundly muddled in uncertainties and murkiness, the kind that currently shrouds FGR and retards any real progress toward its eradication.

This paper risks being misconstrued as an unapologetic argument for the continuation of FGR, but such perception would be monumentally wrong. Grounded in the Kantian principle that individuals, simply by virtue of their humanity, must be held and treated as ends in themselves, not as a means to ends dictated by others, the project of the paper is centrally different. At its most basic level, it is a defense of the decision-making competence and capability of individuals and communities in traditional societies pertaining to matters affecting them, the same liberty inhering in people in other regions of the world to run their own affairs as they see fit. It is a call upon the global community for toleration of the manifestation of this capacity even when in non-conformity with our ideals of proper ethical behavior. It refutes the belief, deep-seated in eradication-now enclaves, that – at least implicitly, denies rationality to circumcised women and their communities by characterizing these women’s autonomously reflective decisions as products of “false


6 U.N. NEWS CENTER, supra note 3.

7 Id.
consciousness,” . . . “outdated customs, attitudes and male prejudice” . . . or, even worse, disparages people subscribing to FGR as being “prisoners of ritual” from which they desperately wish to escape, except that they do not know how.⁸

In very clear departure from mainstream scholarship, this paper challenges the zero-tolerance paradigm that has, over the last three decades, completely defined and sculpted global discourse on this ancient practice. It disputes the bases upon which extant international legal and policy frameworks against FGR are based. A key contention is that, when fully examined, it will become apparent that the abolitionists’ claims – whether centered on adverse health consequences or human rights infringements – the very claims that have been relentlessly pursued by even reputable organizations such as WHO, UNFPA and, more recently, the U.N. itself, lack credible foundations.⁹ Moreover, as argued elsewhere:

Too often, published literature has been dominated by well-packaged theorizations and speculations that appeal to activists and their cohorts but do not, in any substantive way, reflect the views of the people whose intimate lives are at the front and center of the controversy. Credibility is unduly lavished on a handful of activists, usually educated and urbanized, brazen in their eagerness to flaunt their progressive credentials to the outside world. And they, in turn, always manage to get their views assiduously promoted by the media and, in some cases, “scientific” publications, as representative of women’s voices on the issue. In the scramble to stamp out FGR, the view of millions of women throughout the world, those with little or no education, with no

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⁹ See, for instance, U.N., *Intensifying Global Efforts for the Elimination of Female Genital Mutilations*, supra, note 1 at22(inviting the participation of the UNFPA, U.N. Children’s Fund, UNESCO, U.N. Entity for Gender Equality and the Empowerment of Women (UN-Women), WHO, UNDP, U.N. High Commissioner for Human Rights in implementing the Resolution and requesting that, in so doing, these bodies should “take into account the protection and promotion of the rights of women and girls against [FGR] in their country programmes . . . and in accordance with national priorities.”). See also the Prmbl which describes FGR as “an irreparable, irreversible abuse that impacts negatively on the human rights of women” and a “harmful practice that constitutes a serious threat to the health of women and girls, including their psychological, sexual and reproductive health,” and which “can increase their vulnerability” to a host of diseases and adverse health outcomes.

¹⁰ Nnamuchi, *Harm or Benefit?* supranote 8 at 404.
This concern derives from a widely known, but often ignored, fact – and that is, monopoly of the narrative by self-appointed anti-FGR advocates and concomitant suppression of the “views of the silent majority, the primarily affected individuals and communities,” as well as their true representatives. And that, precisely, is what is disconcertingly problematic with extant discourse on FGR, the most recent demonstration of which is the U.N. Resolution and its mammoth train of supporters. Indeed, in the ferocious and unremitting rush to stamp out what its adherent claim as in eliminable part of their cultural identity, the views and concerns of these women themselves, the people whose health and human rights are purportedly at risk and “must” be protected by eradication activists have been “left to wither on the vine.” The struggle of these women to voice their concerns, their lived experiences as a consequence of compliance with their ancestral edicts and what these experiences represent to them, have been muffled by the zealotry and suffocating brazenness of elite groups and individuals, scrambling for the nearest media outlet, all the while confident that their intellectual superiority and their “civilized” upbringing imbue them with unassailable authority to advance the rights of women in so-called primitive and barbaric societies.

The paper challenges this “know-it-all,” “better than thou,” attitude. Triggered by purely epistemic concerns, it is a challenge of a different genre, one that is wholly committed to the idea that “the existence of disagreement between ourselves and others is something that can spur us on to further knowledge,” but then, and this is the key, only “if we are open minded enough to learn what is there to be learned” from the other side. Underlying this discourse, therefore, is a plea for open mindedness, some objectivity in the analysis of differing points of view, unclouded and untainted by preconceived notions of the inferiority (which always implies automatic rejection) of beliefs or practices that fail to measure up to our own. Only in so doing, perhaps, would valid and enduring conclusions emerge from the claims and counterclaims that have combined to cloud the debate and continue to perniciously obfuscate the real issues – to the detriment of “women with no discernible agenda whatsoever other than to be left alone” as they celebrate an aspect of their culture with

11 Id.
12 Nnamuchi, Harm or Benefit? supranote 8 at 404.
13 TOM MORRIS, PHILOSOPHY FOR DUMMIES 334 (1999).
14 Nnamuchi, Harm or Benefit? supranote 8 at 404.
profound ramifications for womanhood and its place in society.\textsuperscript{14}

The World Health Organization (WHO) defines FGR as a procedure whereby the external female genitalia is partially or completely removed or suffers other injury for purposes that are non-therapeutic.\textsuperscript{15} WHO has developed a taxonomy which brackets the procedure into four variants.\textsuperscript{16} Type 1, also known as “clitoridectomy,” consists of partial or total excision of the clitoris and/or the prepuce.\textsuperscript{17} Notice the somewhat all-inclusive and overly broad tone used in describing this procedure. Whereas “clitoridectomy” appropriately describes the first part of this classification (removal of the clitoris), it does not capture the latter part or the mildly invasive nature of the process involved, namely, prepuce removal. As noted elsewhere, the correct medical nomenclature for removal of the prepuce is “hoodectomy” (referring to the hood of the clitoris, another name for the prepuce) or “clitoridotomy.”\textsuperscript{18} The second classification, Type 2, known as excision, involves partial or total removal of the clitoris and the labia minora, with or without excising the labia majora.\textsuperscript{19} Type 3, called infibulation or pharaonic circumcision, refers to cutting of the labia minora and/or the labia majora, with or without excising the clitoris, followed with stitching or narrowing of the vaginal orifice.\textsuperscript{20} A fourth category comprises all other harmful procedures to the female genitalia for non-therapeutic purposes such as pricking, piercing, incising, scraping and cauterizing the genital area.\textsuperscript{21} While expressions of the four forms of FGR are found in various cultures throughout the world, the most common are Types 1 and 2, performed on approximately 90 percent of circumcised women.\textsuperscript{22} The rest, about 10 percent,
undergo infibulation, which is the most invasive.\textsuperscript{23} Most cases of infibulation are found in three countries, namely, Djibouti, Sudan and Somalia.\textsuperscript{24}

Although FGR is a worldwide phenomenon, its primary location is in 27 African countries, some Middle Eastern and Asian nations, and increasingly amongst immigrant populations in Australia, Canada, Europe, New Zealand and the United States.\textsuperscript{25} According to recent WHO estimates, there are 100–140 million girls and women who have undergone FGR and approximately 3.3 million more are likely to be added each year.\textsuperscript{26} But it is very likely that the number of women who have undergone FGR may be higher than the WHO estimates suggest. This is because the estimates are limited in scope, based only upon surveys in Africa and Yemen, to the exclusion of at least one other country with a considerably large population of circumcised women, namely, Indonesia. Findings in nationwide studies conducted in 2003 and 2010, show that between 86 and 100 percent of households in that country subjected their daughters to FGR and an overwhelming majority, more than 90 percent of the adult population, chose to continue the practice.\textsuperscript{27} Yet, for reasons which are yet to become clear, this large country (250 million people in 2103),\textsuperscript{28} in which the practice is endemic,\textsuperscript{29} is not included in the figures released by WHO. But despite this omission, the WHO estimates have continued to be bandied around in anti-FGR literature as authoritative. To put this in proper perspective, Indonesia’s population is more than one-quarter of that of inhabitants of sub-Saharan Africa (888 million in 2013),\textsuperscript{30} the epicenter of the practice and from where existing estimates are largely derived. It is very likely that adding the number of circumcised Indonesian women to the current estimates will exponentially boost the final tally. Therefore, research is needed in this area in order to determine the real global prevalence of the practice.

\textsuperscript{23} WHO, Understanding and Addressing Violence against Women, supra note 15 at 2; P. Stanley Yoder, Shanxiao Wang & Elise Johansen, Estimates of Female Genital Mutilation/Cutting in 27 African Countries and Yemen, 44 STUD. IN FAM. PLAN. 189–204 (2013).
\textsuperscript{25} WHO, Understanding and Addressing Violence against Women, supra note 15 at 2.
\textsuperscript{26} \textit{Id. at 2}.
\textsuperscript{28} UNFPA, THE STATE OF WORLD POPULATION 2013, 106 (2013).
\textsuperscript{29} Haworth, \textit{The day I saw 248 girls suffering genital mutilation}, supra note 27.
\textsuperscript{30} UNFPA, THE STATE OF WORLD POPULATION 2013, supra note 28 at 108.
This paper consists of four sections. Following this introduction, Part II delves into the central contention of the paper, to wit, the world has been sold a Trojan horse. Surprisingly widespread support of the efforts of the global anti-FGR coalition, even from the intelligentsia in countries where the practice has been celebrated for centuries, is based on wildly spurious claims and conjectures—claims derived from misanalysis, misinterpretation and (in some cases) outright manipulation of data to serve eradication goals. In place of hard evidence, political correctness reigns supreme in the world of anti-FGR activism. A key argument of the section is that on account of very serious design and methodological deficiencies, “studies” projected by anti-FGR coalition as irrefutable proofs that the procedure harbors adverse health consequences are worthless, an exercise in futility. This theme is pursued further in Part III by examining specific claims advanced in anti-FGR literature in justification of their position. Is “mutilation” the appropriate nomenclature for the procedure? Are circumcised women condemned to sexually unsatisfying lives? Is FGR a prescription of Islam? Does FGR really violate human rights of girls and women in practicing societies? These are the questions that the third section of the paper grapples with. To buttress the argument of the previous section, Part III also documents specific studies that contradict research depicting FGR as harmful. The final section—Part IV—maintains, first, that there is no evidence to support the claim that FGR is deleterious to health and wellbeing of circumcised women; and, second, that, when judged from communitarian concept of human rights (as opposed to Western individualistic ethos), it becomes clear that the procedure does not violate human rights. Therefore, it concludes, in absence of an open debate on the claims and counter claims surrounding FGR, extant anti-FGR legal and policy frameworks, whether at the U.N. or domestic level, purportedly seeking to protect women by criminalizing the procedure are themselves human rights violation and must not be seen as legitimate advancement of human rights.

II. MISREPRESENTATION/MISINFORMATION AND NEED FOR CAUTION

Rush Limbaugh, arguably the most popular and flamboyant radio personality in the United States, is always at pains to remind his audience that if “liberals” (by which he means “radical left politicians”) were honest about who they really are (publicly declare their core beliefs about governance and the role of the State in the lives of individuals), no right-thinking American would ever vote for them. Instead, according to Limbaugh, they hide under the veneer of “feel good” activities, all the while insidiously wrecking havoc in the lives and
wellbeing of the population. Limbaugh’s often cited example is the aversion of “liberals” to guns:

. . . (Folks), let me tell you what this point is. The guns in this culture are the secondary target here. The primary target is the Constitution itself. That is what is under assault. That is what is in the cross hairs of people who are using this tragedy to advance an agenda.³¹

Agree or disagree, after all, Limbaugh’s show has been unforgivably savaged as “growing toxicity outside the narrow confines of right-wing talk radio”³² and so offensive “to the degree that ‘divisive’ just doesn’t capture what he does”, ³³ there is some sense to what he is saying, at least in relation to extant FGR polemic. And that is, if anti-FGR crusaders (most of them) are truly open about their motives, the underlying considerations driving their agitations as well as their modus operandi, the result would have certainly been different. There would most certainly have been a rethinking on the subject, particularly from practicing communities and their governments who are increasingly buying into the propagandist “gospel” of compassion and salvation. Motive is an important consideration in light of the continuing recalcitrance on the part of anti-FGR activists to consider contrary evidence and the role of the ever-ready willing accomplices in the media.

A plea in a recent publication in the Hastings Center Report is quite striking – not in its novelty, for the plea is, in reality, merely a restatement of previous commentaries on perceived manipulation in the coverage of FGR; rather, in the realization that despite the logical and common sense imperative of the plea, it has fallen on deaf ears. The authors, describing themselves as “a group of concerned research scholars, physicians, and policy experts,” pulled zero punches in explication of the factor undergirding their study:

Our main aim is to express our concern about the media coverage of female genital surgeries in Africa, to call for greater accuracy in cultural representations of little-known others, and to strive for evenhandedness and high standards of reason and evidence in any future public policy debates. In effect, the statement is an invitation to actually have that debate, with all sides of the story fairly represented.  

The term “little-known others” is not, at all, insignificant. What we have in the FGR debate, as will be unraveled in succeeding sections of this discourse, is a coalition against a practice, conceived by a group of people, for themselves, for their own purposes and which have been fervently observed through generations until some self-appointed advocates (completely alien to the practice, in both understanding and praxis) hijacked the narrative. Very worrisome is that in their zeal to wipe out this centuries-old practice, none of the anti-FGR crusaders have bothered to ask even the most basic questions, a concern highlighted in this thought provoking statement:

Indeed, when, in 1996, legislators at Capitol Hill enacted the Criminalization of Female Genital Mutilation Act . . . they uncharacteristically decided against holding any public hearings or seeking expert testimony, or even soliciting the views of African and Muslim immigrants whose cultural belief and practice the law was poised to completely stamp out. . . Apparently, the United States Representatives and Senators, composed largely of middle-aged White men, who enacted the law “knew better” than the so-called barbaric people who are seen as living in denial of their suffering and subjugation.

As to why this approach is wrong, the author continues:

Portraying and denouncing women who opt for FGR as victims of “false consciousness,” . . . “outdated customs, attitudes and male prejudice” . . . or “prisoners of ritual” . . . will, no doubt, appeal to the elite and radical feminists committed to essentializing women but adds nothing to addressing the needs of the people most affected by thelicted practice.
Interestingly, the *Hastings Center Report* authors are not some kind of homogeneous group bent on promoting or destroying FGR. Their interests are as varied as their backgrounds. Some of them are advocates for circumcision of males but not females; others are in favor of voluntary abandonment of FGR on children; yet, others endorse the right of parents to continue circumcising their sons and daughters under non-harmful conditions. And a number of them oppose subjecting children to the procedure prior to attainment of age of rationally informed consent. Despite these very significant differences in their perceptions and opinions regarding the proper ethical and legal framework that should govern FGR, the authors are, nonetheless, united in a common belief that “any genuine public policy debate should be grounded in the best available evidence and begins with fact checking” – a view that is powerfully consistent with the objective of this paper.

In a 2008 publication in the New York Times, author and journalist John Tierney recounts what he describes as the “The Hazards of Politically Correct Research,” by which he means the duplicity of the media and activists in ignoring or suppressing evidence that goes contrary to the agenda of FGR abolitionists. In substantiating this point, Tierney relies on the analysis and observations of a pair of Swedish scholars – anthropologist Sara Johnsdotter and physician Birgitta Essen – that have been researching FGR for more than a decade. According to the scholars:

One of the hazards for science is when politically correct results are uncritically welcomed, readily published and repeatedly cited; while politically embarrassing results are ignored or marginalized. Perhaps nowhere is this more obvious than in the study of “female genital mutilation,” where the roles of researchers and political activists often seem to be confused.

As an illustration of such “politically correct results,” Johnsdotter and Essen analyze two studies which have been widely accepted as credible

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37 The Public Policy Advisory Network in Africa, *Seven Things to Know about Female Genital Surgeries in Africa, supra* note 34.
38 The Public Policy Advisory Network in Africa, *Seven Things to Know about Female Genital Surgeries in Africa, supra* note 34 at 20.
39 Id.
41 Id.
42 Id.
evidence of FGR-induced harm even though neither of the studies could withstand the kind of rigorous scrutiny required of a scientific work.

The first was a WHO study published by Lancet in 2006.\textsuperscript{43} The authors of the study claim that during deliveries, women who have undergone FGR are at a significant risk of caesarean section, postpartum hemorrhage, episiotomy, extended maternal hospital stay, resuscitation of the infant, and inpatient perinatal death compared to women who have not had the procedure.\textsuperscript{44} Although the study has been lauded as a “high-quality research”\textsuperscript{45} and “of crucial importance to communities where [FGR] is practiced,”\textsuperscript{46} it has also been criticized for its bogus claims and false conclusions. Johnsdotter and Essen report that the WHO study does not show any statistically significant difference between women that have undergone a Type 1 procedure versus those who were not circumcised; neither was there any statistically significant difference between uncircumcised women and those who underwent Type 1, 2 or 3 FGR for the best predictor of child health – birth weight.\textsuperscript{47}

Significantly, although women in the study who had a Type 3 procedure (the most invasive) actually recorded a lower perinatal death rate (193 infant deaths out of 6595 births) compared to those who were not circumcised (296 deaths out of 7171 births), it is only through non-transparent manipulation of the data that the difference became statistically significant in a negative direction.\textsuperscript{48} The two scholars further charge that although data on women across six nations were collected, disaggregated result for each nation was not displayed to see whether there were consistency in the result across participating nations (a key ingredient of a scientific research).\textsuperscript{49} In addition, there was no evidence of direct control of a key confounding factor, namely, quality of health care available for circumcised women versus those who were uncircumcised.\textsuperscript{50}

\begin{itemize}
\item \textsuperscript{43} Emily Banks et al (WHO Study Group), \textit{Female Genital Mutilation and Obstetric Outcome:WHO Collaborative Prospective Study in Six African Countries}, 367 LANCET1835–1841 (2006).
\item \textsuperscript{44} Id. at 1839.
\item \textsuperscript{46} Id.
\item \textsuperscript{48} Id.
\item \textsuperscript{49} Id.
\item \textsuperscript{50} Id.
\end{itemize}
In contrast to the claim by Guyo Jaldesa, consultant obstetrician/gynecologist and the WHO’s principal investigator, that the study has “provided the first conclusive medical evidence of long-term physical harm,” and “proved beyond a reasonable doubt that [FGR] was a health issue, a killer of women and children, as well as a human rights issue,” Johnsdotter and Essenremind readers that not only was the study sample unrepresentative of the whole population, “any reported increased risk for genital surgery was astonishingly small and hardly a mandate for an eradication” of the procedure. The scholars sum up the views of those who, like them, are opposed to distortion of science to serve politically motivated interests:

We agree that there is good reason to be skeptical about the results of this study and the method used. It is a serious weakness that the researchers fail to connect the results of their statistical analyses with current clinical evidence and findings on physiopathology. For instance, they report that women with [FGR] have an increased risk of Caesarean section, but they have not adjusted for obstetrically relevant risk factors like preeclampsia.

Despite all these shortcomings, which should have been obvious to any trained eye, the study manages to scale through peer review process and got published in a reputable journal like Lancet. And true to form, mainstream press promptly disseminated the conclusions of the study, passing them off as a true scientific finding. New York Times reporter Elisabeth Rosenthal, for instance, describes the study as finding that FGR “has deadly consequences” for women. Of course, Rosenthal never bothered to carry out an analysis of the study, the kind that is required of a subject imbedded in controversy. Needless, she must have thought, to worry about accuracy since the claims and conclusions of the study are in perfect harmony with her preconceived notions of the practice. As outrageous as this breach of journalistic ethics might sound, Rosenthal is not alone, and this is precisely the problem, the reason anti-FGR propaganda has gradually, but steadily, gained formidable traction in public psyche. In fact, although “many . . . journalists and some institutional representatives do

52 John Tierney, “Circumcision” or “Mutilation”? supra note 47.
53 John Tierney, The Hazards of Politically Correct Research, supra note 40.
54 Elisabeth Rosenthal, Genital Cutting Raises by 50% Likelihood Mothers or Their Newborns Will Die, Study Finds, NEW YORK TIMES, June 2, 2006, available at http://www.nytimes.com/2006/06/02/world/africa/02mutilation.html?_r=2&. 
not have adequate information about this topic, they, nevertheless, parade themselves as experts and, from that vantage position, present conjectures and speculations as verifiable facts, thereby contributing immensely to spreading false information. The evidence is quite glaring – for the past two decades, Western media and their counterpart in other regions of the world have played a prominent role in misleading the public about the supposed consequences of FGR. It is in this context that one could rightly concede activists’ claim of widespread support of their eradication efforts. But the support is also uninformed and, for that reason alone, questionable.

The second study pointed out by Johnsdotter and Essenas demonstrative of the “uncritical rush to convey politically correct results” in proof that FGR is hazardous was undertaken by physician Lars Almroth and colleagues. Although the authors claimed to have established “an association between severe forms of FGM, involving the labia majora, and primary infertility,” their finding lacks credible foundation. Johnsdotter and Essen argue that although the research method was ocular examination of fallopian tubes through laparoscopy, the control group – 180 women who were fertile – was never subjected to laparoscopy. Translation, it was not known whether their tubal condition is the same as those of the comparison group, 99 infertile women. This is critical in light of the hypothesis developed by Almroth et al as to how FGR might cause infertility, namely, there is a possibility that infections occurring as a result of FGR in childhood might progress through the internal genitalia, resulting in inflammation and scarring which subsequently damages the fallopian tube, resulting in infertility. The researchers claim, as their finding, that while only 85 percent of the fertile women had undergone the most severe form of FGR (infibulation), 92 percent of the infertile women had been subjected to the procedure. The conclusion Almroth and colleagues drew from this seven percent difference in FGR type experienced by the

57Lars Almroth et al, id.at388.
58Id. at 385.
59Tierney, The Hazards of Politically Correct Research, supra note 40; Lars Almroth et al, id.at 387.
two groups is that it evidences a causal link between FGR and infertility.\textsuperscript{60} Johnsdotter and Essen are unpersuaded:

We do not necessarily question the statistical correlation that was found in this Lancet study. But we do call for a broader and more rigorous discussion of all published findings on FGM, including those published in prestigious medical journals. When it comes to publications on the topic of “FGM” we don’t see the usual critical scientific discussion regarding possible bias, possible confounders, or weak links in the causal hypotheses used or in study design.\textsuperscript{61}

Continuing, they postulate:

We suggest that this silence has to do with prevalent Western ideology concerning “female genital mutilation” and ongoing political projects. Activists, governmental bodies, funders and even editors of medical journals systematically welcome research results that can be used in preventive work while muting or hesitating to publish results that go against the grain of mainstream thinking regarding this issue. This blurring of the distinction between science and activism is so endemic that researchers often present their “hard facts” with explicit reference to their political agenda.\textsuperscript{62}

Almroth et al are amongst such researchers. The abstract of their article ends with this audacious statement, “[t]he association between FGM and primary infertility is highly relevant for preventive work against this ancient practice.”\textsuperscript{63}

But Johnsdotter and Essen are hardly the only scholars worried about the increasingly virulent penchant in the FGR-prohibition community to advance activism under the guise of science as well as the role of the media as an unreflective partner. Notes University of Chicago cultural anthropologist Richard Shweder:

\begin{itemize}
  \item\textsuperscript{60} Tierney, id; Lars Almroth et al, id.at 388.
  \item\textsuperscript{61} Tierney, id.
  \item\textsuperscript{62} Id.
  \item\textsuperscript{63} Id.; Lars Almroth et al, id.at385. The conclusion repeats the same point, “[t]he association [between the anatomical extent of FGM and primary infertility] is not only statistically highly significant, but also highly relevant for preventive work against this ancient practice.” Id. at 390.
\end{itemize}
Indeed, the press in general has served as an effective outlet for the advocacy groups and has kept itself innocent of available sources of information that run counter to the received horror arousing story-line about barbaric or ignorant or victimized Africans who maim, murder, and disfigure their daughters and deprive them of a capacity to experience sexual pleasure. With rare exceptions, the only African women who have been given a direct voice and allowed to speak for themselves in our media are those who oppose the practice.\textsuperscript{64}

Of course, in contrast to the apparent readiness of the media to champion the cause of anti-FGR advocates is deafening silence when it comes to publications that go against the eradication agenda. Shweder discusses three studies whose findings “were sufficiently eye-opening and significant to warrant media coverage” but which were totally ignored by the media.

The first was a publication by Harvard epidemiologist and medical anthropologist Carla Obermeyer in 1999\textsuperscript{65} – a literature review motivated by the need to examine the extent to which claims regarding the prevalence and harmful effects of FGR, particularly health complications and sexual dysfunction, are supported by available research.\textsuperscript{66} Her review involves an analysis of 435 articles – “all sources in English or French” as of 1996.\textsuperscript{67} Despite this huge number, only about one tenth reported on prevalence or adverse consequences of FGR.\textsuperscript{68} Although the vast majority of these studies were found to suffer serious deficiencies including non-disclosure of data sources or how they were gathered, high rate of non-response to questionnaires, calculation inconsistencies and biased prevalence estimates resulting from poor sampling, their findings and conclusions have never been questioned.\textsuperscript{69} Instead, some of these methodologically flawed publications “have come to acquire an aura of dependability through repeated and uncritical citations.”\textsuperscript{70}

But even if these flaws are discounted, problems still remain. “[O]ne might have anticipated finding a wealth of studies that document considerable increases in mortality and morbidity” given the vast literature on the subject,

\begin{itemize}
\item \textsuperscript{64} John Tierney, “Circumcision” or “Mutilation”?supranote 47.
\item \textsuperscript{65} Carla Makhlouf Obermeyer, Female Genital Surgeries: The Known, the Unknown, and the Unknowable, 13 MED. ANTHROPOL. Q. 79 (1999).
\item \textsuperscript{66} Id. at 79.
\item \textsuperscript{67} Id. at 81.
\item \textsuperscript{68} Id.
\item \textsuperscript{69} Id.
\item \textsuperscript{70} Id.
\end{itemize}
writes an apparently stunned Obermeyer, nevertheless, the review unveiled “no incontrovertible evidence on mortality, and the rate of medical complications suggests that they are the exception rather than the rule.”\textsuperscript{71} Obermeyer’s observation is profoundly striking:

This [absence of research evidence] should be cause to ponder, because it suggests a discrepancy between the forceful rhetoric, which depicts female genital surgeries as causing death and disease, and the large numbers of women who, voluntarily or under pressure, undergo these procedures.\textsuperscript{72}

Paying close attention to the gap between advocacy and research is vital because the world has been sold on the idea that FGR deserves to be banned on account of a litany of adverse health and psychosocial consequences said to result from the procedure. But if the studies upon which these claims are based are suspect, as shown by Obermeyer’s work, then, the clamor for eradication predicated on these “scientific facts” has no foundation and must, therefore, fail.

A subsequent review of the evidence undertaken by Obermeyer in 2002 found no significant changes in the quality of more recent studies (440 sources).\textsuperscript{73} Although there were few well-designed studies, the vast majority still suffer serious design and analytical flaws, particularly, absence of comparison groups, inconsistent figures and incomplete analysis.\textsuperscript{74} Translation, they should be jettisoned as unreliable and worthless.

Epidemiologist Linda Morison’s 2001 research was the third studies highlighted by Shweder.\textsuperscript{75} Described as “perhaps the most scientifically rigorous and large-scale study of the medical consequences of FGR in Africa”,\textsuperscript{76} the study was designed to investigate the association between adult women’s reproductive morbidity in rural Gambia and FGR.\textsuperscript{77} The authors were only able to find a higher prevalence of bacterial vaginosis (BV) and herpes simplex virus 2

\textsuperscript{71} Id. at 92.
\textsuperscript{72} Id.
\textsuperscript{74} Id. at 401.
\textsuperscript{75} Linda Morison et al., \textit{The Long-Term Reproductive Health Consequences of Female Genital Cutting in Rural Gambia: A Community-Based Survey}, 6 TROP. MED. & INT’L HEALTH 643 (2001).
\textsuperscript{76} John Tierney, “Circumcision” or “Mutilation”?\textsuperscript{supranote 47}.\textsuperscript{supranote 47}
\textsuperscript{77} Morison et al., \textit{The Long-Term Reproductive Health Consequences of Female Genital Cutting in Rural Gambia}, supra note 75 at 643.
(HSV2) amongst women who had undergone FGR, but lower prevalence of chlamydia.\textsuperscript{78} Regarding other harms usually trumpeted as resulting from FGR such as damage to the perineum or anus, vulval tumors (including Bartholin’s cysts, excessive keloid formation), painful sex, infertility, prolapse, STI (apart from HSV2) or endogenous infections (apart from BV), the study found no statistically significant difference between circumcised and uncircumcised women.\textsuperscript{79} The authors’ conclusion is quite instructive, aside from higher prevalence of HSV2, “[o]ur study suggests that in a population of rural Gambian women, the commonly cited long-term health consequences of [FGR] were not markedly more common in cut women.”\textsuperscript{80} Consequently, Morison et al caution that continued “exaggeration by activists on the prevalence of death and serious damage to health can result in lack of credibility”\textsuperscript{81} and, furthermore, “[b]y basing health information on sound data rather than implying that severe long-term health consequences are common, activists are likely to make their claims more credible to practicing communities and therefore more effective.”\textsuperscript{82}

Has anything changed since 2001 when the research findings were published? Not really. Recently, a group of Norwegian public health researchers embarked upon a study similar to that of Obermeyer, their objective being to determine the psychological, social and sexual consequences of FGR.\textsuperscript{83} The result of the endeavor, published in 2010, is the most recent serious meta-analysis of FGR publications till date. Very significantly, of 3,666 publications that were retrieved, only 17 met their inclusion criteria,\textsuperscript{84} namely, methodological quality.\textsuperscript{85} Of these 17 studies, only two were considered of high quality, ten of low quality and five moderately quality.\textsuperscript{86} This is the conclusion of the authors following their review of the studies which involved a total of 12,755

\textsuperscript{78} \textit{Id.} at 650. Note that I struck out anemia from the list because, as the authors subsequently admit, although their study reveals slightly higher prevalence of anemia in women that had undergone FGR, the pattern became statistically insignificant when compared across combined ethnic group and circumcision variables. \textit{Id.} at 651.

\textsuperscript{79} \textit{Id.} at 651.

\textsuperscript{80} \textit{Id.} at 652.

\textsuperscript{81} \textit{Id.} at 651 – 652.

\textsuperscript{82} \textit{Id.} at 651.


\textsuperscript{84} \textit{Id.} at 28.

\textsuperscript{85} Note that only cross-sectional and case-control studies were included. \textit{Id.} at 26.

\textsuperscript{86} \textit{Id.} at 36 – 37, 55 – 57.
participants from nine different countries: “[t]he low quality of the body of evidence precludes us from drawing conclusions regarding causality, and the evidence base is insufficient to draw solid conclusions about the psychological and social consequences of [FGR].” Quite an alarming conclusion indeed; yet, not many people knew of this conclusion or of the study itself. And this knowledge gap, more than anything else, is the most resilient contributor to the advancement and success of the anti-FGR movement.

III. FGR AS A WORTHY CANDIDATE FOR ABOLITION: EXAMINING THE EVIDENCE

i. What is in a Name? “Circumcision” or “Mutilation”?

Politicians and other professionals who thrive on public opinion would readily admit that the person with control over the language of a debate or an issue has, from the onset, gained a formidable advantage over his opponent. This is because words or expressions at times connote meanings that are not readily apparent from the words or phrases themselves. Often imbedded are meanings beyond literal interpretations, designed to arouse specific feelings or passions on the part of the proselytized public or individuals. In many instances, the idea is to weaken your opponent ab initio by painting him or his position with a repulsively broad brush, putting him in a morally bad light from which he would have difficulty extricating himself; thereby elevating yourself to a higher moral ground from which to unleash unrelenting attack on his position until – hopefully – he is subdued. This is usually the case with controversial subjects. A great illustration is abortion.

Notice that abortion supporters never describe themselves as “pro-abortion.” Instead, their preferred label is “pro-choice.” They understand very well that most people view termination of pregnancy as a moral wrong save in some narrow circumstances such as rape, incest or to save the life of the mother. They reason that to allow themselves to be painted as “pro-abortion” would create a belief that they are irredeemably in support of abortion “on demand,” risking alienation of public sympathy to their cause. Their preferred term “pro-choice” is meant to insulate them from public attack by subtly shielding themselves from being perceived as encouraging abortion. They would, instead, like to be seen as merely supporting or defending women’ rights, surrendering the ultimate decision to the pregnant woman – after all, having a choice of action (liberty) is an original American credo. Packaged in this way,
it becomes somewhat logical for them to claim that their mission is women empowerment, to give voice to women in their own affairs, namely, the choice to procure abortion unencumbered by the dictates of a third party.

It is for this same reason that abortion advocates would never call their opponents “pro-life.” Aside from yielding moral ground to their opponents, to do so would validate the claim of their opponents that abortion advocates are promoting death of unborn babies. This is a very difficult moral position to defend—a reason they therefore refuse to allow themselves to be characterized as such. Conversely, abortion defenders seek to push their adversaries into an inferior moral position. Since, generally speaking, public sentiment (at least in the United States and the rest of free world) is always aligned with liberty or choice to do as one pleases (respect for individual autonomy), abortion advocates coined the word “anti-choice” as a name for those opposed to abortion. The latter, not wishing to be seen as anti-liberty, refuses to accept that appellation, and have continued to refer to themselves as “pro-life” while, at the same time, insistent on describing the opposing camp as “pro-abortion”.

So, how does this relate to FGR? An insight is provided by Shweder:

“Female genital mutilation” is an invidious and essentially debate-subverting label. The preemptive use of that expression is just as invidious as starting a conversation about a women’s right to choose by describing abortion as the “murder of innocent life.” Pro-choice advocates rightly object to the presumptive disparagement implied by that label; many African women similarly object to naming a practice which they describe in local terms as “the celebration” or the “purification” or the “cleansing” or the “beautification” as “the mutilation”. Notably in most ethnic groups where female genital surgeries are customary, male genital surgeries are customary as well and are named with the same terms.88

The origin of the term “FGM” is quite revealing. We are told that it was a creature of an African non-governmental organization (NGO), not an imposition by people outside the geography of the practice. True, the word was first used in 1990 at the third conference of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC), an NGO based in Addis Ababa, Ethiopia.89 It is noteworthy that quite unlike other NGOs

88 Tierney, “Circumcision” or “Mutilation”? supranote 47.
89 Eliminating Female Genital Mutilation: An Interagency Statement: UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNHCR, UNICEF, UNIFEM, WHO, WHO
operating in Africa, the tentacles of IAC spread very far and wide. In fact, the organization has been described as “the largest African women’s regional organization with national chapters in 28 African countries working to end [FGR].” True, but what no one has bothered to explain is how the organization raises fund for its region-wide activities – who are the funders and what is the nature of the relationship between the funders and the organization? The adage, “he who pays the piper dictates the tune” still holds true and is relevant here, particularly in light of the propagandist and at times vitriolic nature of the debate surrounding FGR.

In 1991, WHO recommended that the U.N. and its organs and agencies adopt the term “FGM” in its official documents. This is so despite the fact that in none of the practicing communities is the procedure referred to by any other name except circumcision or its equivalent. This condescension notwithstanding, WHO’s recommendation has led to the use of the pejorative term by virtually all anti-FGR groups, including the U.N. and a battery of other international and regional organizations. Buoyed by this widespread usage, some writers have gone some steps further, describing FGR as “amputation” or “castration.” Yet, it is clear that FGR is a far cry from the imagery conveyed by the appellation “FGM” or similar horror-arousing terms. There is no doubt that the idea behind the pejorative term is to arouse revulsion at the procedure and garner support for eradication efforts, sort of “the end justifies the means” tactic. But this tactic is generally condemned as morally indefensible, even if successful as in the case of FGR.

92 See, for instance, MARTHA NUSSBAUM, SEX AND SOCIAL JUSTICE 120 (1999); Frances A. Althaus, Female Circumcision: Rite of Passage or Violation of Rights? 23 INT’L FAM. PLAN. PERSP. 131 (1997).
94 Nnamuchi, “Circumcision” or “Mutilation”? supranote 18 at 94.
The word “mutilate” was certainly designed to conjure up a ghastly and grisly imagery, the kind of injury that nobody in his right senses would wish on another, not the least on a delicate part of human body. Nonetheless, it is clear that modification (not maiming or disfiguring) of the genitalia is the end result of most cases of FGR, a point recently made by Nowa Omoigui, Nigeria-born cardiologist practicing in the United States, “[t]here is a huge difference between Circumcision and Mutilation” and “[t]o group all forms of age old religious circumcision into one large category under the guise of medical enlightenment and “civilization” is very unfortunate.” Omoigui postulates that not every genital ritual connotes the same horror or harbors the same consequences as clitoridectomy, excision or infibulation. For instance, he refers to a type of circumcision in Edo region of Nigeria that involves only prepuce removal or clitoridotomy, pointing out that the procedure does not mutilate either the clitoris or any other part of the genitalia, and “[i]n fact, in many cases the ‘removal’ is symbolic –and part of a traditional marriage ceremony.” The same type of FGR (clitoridotomy) is also common amongst the Igbos – one of the three largest ethnic groups in Nigeria as well as other parts of Africa.

Without the need to restate all the arguments made elsewhere, it is sufficient to point out that “[w]hatever the rationale for the extant approach [renaming

95 Id.
97 On the other hand, it is arguable leaving the prepuce intact constitutes a hindrance to maximizing sexual enjoyment considering that women whose prepuces have been removed have been shown to enjoy greater sexual satisfaction – more intense and, in some cases, multiple orgasms. See Nnamuchi, “Circumcision” or “Mutilation”?, supra note 18 at 92, FN40; ELLEN GRUENBAUM, THE FEMALE CIRCUMCISION CONTROVERSY: AN ANTHROPOLOGICAL PERSPECTIVE 143 – 144(2001); Michael P. Goodman et al., A Large Multicenter Outcome Study of Female Genital Plastic Surgery, 7 J. SEX MED. 1565 (2010); G. J. Alter, Aesthetic Labia Minora and Clitoral Hood Reduction Using Extended Central Wedge Resection, 122 PLAST. RECONSTR. SURG. 1780 (2008).
100 For a more in-depth examination of the question, see Nnamuchi, “Circumcision” or “Mutilation”?, supra note 18 at 92 – 95.
circumcision “FGM”),” it is undeniable that “one of its consequences has been the alienation of people whose support is needed to make headway in abolishing [the practice]. This explains why, in many countries with laws on the books criminalizing [it], the practice continues to flourish.”\textsuperscript{101} Concern about this alienation has forced a rethinking upon a handful of scholars on the use of “FGM,” leading increasingly to substituting female genital cutting (FGC) for “FGM.”\textsuperscript{102} But the damage has—perhaps, irredeemably—been done.

\textit{ii. Does FGR Harbor Adverse Health Consequences?}

A somewhat authoritative statement issued toward the end of 2012 eloquently reflects the most critical strand holding eradication activists together: “Harmful practices, such as [FGR], constitute a serious threat to the health of millions of women and girls worldwide . . .”\textsuperscript{103} This statement powerfully echoes one of the pillars of the 2012 U.N. Resolution referenced previously.\textsuperscript{104} The terms of the Resolution make it abundantly clear that amongst the underlying currents motivating the action of the global body was a belief that:

[FGR is]a harmful practice that constitutes a serious threat to the health of women and girls, including their psychological, sexual and reproductive health, which can increase their vulnerability to HIV and may have adverse obstetric and prenatal outcomes as well as fatal consequences for the mother and the newborn, and that the abandonment of this harmful practice can be achieved as a result of a comprehensive movement that involves all public and private stakeholders in society. . .\textsuperscript{105}

This claim (that FGR harbors multitude of immediate, short term and long term health complications) has, for decades, been the rallying cry of anti-FGR groups throughout the world and has been repeated thousands of times in abolitionist

\textsuperscript{101} \textit{Id.} at 95.
\textsuperscript{103} U.N. NEWS CENTER, \textit{supra} note 3.
\textsuperscript{104} U.N., Intensifying Global Efforts for the Elimination of Female Genital Mutilations, \textit{supra} note 1.
\textsuperscript{105} \textit{Id.} Prmbl.
litterature and the media. In fact, there are very few anti-FGR publications that do not contain a litany of morbidities and adverse health outcomes neatly dressed and packaged as the inevitable consequences of the procedure. But the question one has to consider is whether these claims have any foundation in reality? Is there a body of scientific work that incontrovertibly establishes the laundry list of morbidities and poor health outcomes that are constantly heaped upon FGR?

Although many in the eradication camp would attempt an affirmative response, they would be unable to point to any methodologically sound study which points in that direction. A reading of Part II of this discourse (Misrepresentation/ Misinformation and Need for Caution) shows compellingly that what is being promoted as studies establishing adverse health consequences are based on false data, poor design or suspect analysis and, therefore, unreliable.

Aside from the meta-analyses and other studies discussed in Part II, there is a corpus of additional research work whose findings directly contradict many of the associations made between FGR and poor health. For instance, a study by physician Birgitta Essén et al., published in 2002, was unable to find any relationship between perinatal deaths and circumcision status of mothers in the study. A subsequent research by her team, aimed at finding out whether there was a causal link between FGR and obstructed or prolonged labor, was unable to uncover such link. Does FGR lead to obstetric fistula? Research by Andrew Browning, surgeon who has performed over 5000 fistula operations, and colleagues shows no causality. And contrary to repeated claims by anti-FGR activists, there is no difference in duration of labor for women who

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106 WHO, Eliminating Female Genital Mutilation, supra note 89 at 33, 35 (listing a number of these health complications).
107 Birgitta Essén et al., Is There an Association Between Female Circumcision and Perinatal Death?, 80 BULL. WORLD HEALTH ORG. 629, 630 (2002).
110 Andrew Browning et al., The Relationship Between Female Genital Cutting and Obstetric Fistulae, 115 OBSTETRICS & GYNECOLOGY 578, 580 – 582 (2010) (study limited to Types I and II). See also Amber Peterman & Kiersten Johnson, Incontinence and Trauma: Sexual Violence, Female Genital Cutting and Proxy Measures of Gynecological Fistula, 68 SOC. SCI. & MED. 971, 971 – 979 (2009).
were circumcised in comparison to those who were not,\textsuperscript{111} neither is there any evidence that infibulated women are more susceptible to cesarean delivery than non-infibulated ones.\textsuperscript{112} As to whether there is an association between FGR and infertility, HIV infection, syphilis, and other STIs, the research work of public health researcher Elise Klouman et al shows there is none.\textsuperscript{113}

iii. Does FGR Stifle Sex or Sexual Enjoyment?

Does having undergone FGR constitute a barrier to the woman’s sexual fulfillment? To put it differently, are circumcised women sexually repressed? Or, do such women enjoy sexual relationships in much the same way as uncircumcised women? Eradication activists would readily return affirmative responses to questions number one and two, and deny the same response to the third question. Althaus, for instance, claims that FGR “reduces a woman’s ability to experience sexual pleasure.”\textsuperscript{114} But how exactly does FGR interfere with sexual pleasure? The typical response is that by “ablating some or all of the genital organs, or their innervations,”\textsuperscript{115} normal sexual functioning is compromised. The clitoris, which is the part of the genitalia that is often cut, is believed to be the most erogenous part of the female body and the trigger of sexual arousal and orgasm in women. Its removal, therefore, automatically brings an end to sexual pleasure and orgasmic experience amongst those that underwent FGR.

As convincing as the argument seems, it makes sense only on a very superficial level. Physician Uche Megafu is in agreement that the clitoris is the most erotic organ in female bodies, but asserts that upon its removal through circumcision, its erotic function is taken over by other sensitive parts of the body such as

\textsuperscript{111} S. Wuest et al., \textit{Effects of Female Genital Mutilation on Birth Outcomes in Switzerland}, 116 BRIT. J. OBSTETRICS & GYNAECOLOGY 1204, 1204 (2009).
\textsuperscript{113} Elise Klouman, Rachel Manongi & Knut-Inge Klepp, \textit{Self-Reported and Observed Female Genital Cutting in Rural Tanzania: Associated Demographic Factors, HIV and Sexually Transmitted Infections}, 10 TROPICAL MED. & INT’L HEALTH 105, 105 –115 (2005). Note that the study did find a positive, though insignificant, association with bacterial vaginosis.
\textsuperscript{114} Althaus, Female Circumcision: Rite of Passage or Violation of Rights? supranote 92 at 131.
the labia minora, the breasts and the lips. The most logical conclusion, as Megafu himself points out, is that “[s]exual urge therefore is not impaired by the removal of the clitoris.” Yet, for some inexplicable reasons, Megafu himself claims to have found that uncircumcised women are more susceptible to orgasm during coitus than their circumcised counterpart, 69 versus 59 percent. One may characterize his research as confusing; still, it is in line with earlier studies on the link between FGR and sexual satisfaction which for the most part have been contradictory, some reporting negative findings and others the reverse. It is this sort of confusion generated by findings claiming that FGR destroys sexuality in women that has given rise to a number of systematic reviews of the literature, to determine what real science might tell us.

Following a comprehensive review of the literature on FGR, 435 publications in all, Obermeyer concludes:

[S]tudies that systematically investigate the sexual feelings of women and men in societies where genital surgeries are found are rare . . . and the scant information that is available calls into question the assertion that female genital surgeries are fundamentally antithetical to women’s sexuality and incompatible with sexual enjoyment.
In 2005, Obermeyer undertook to update her earlier work on the subject.122
From a total of 600 titles published between 1997 and 2005, 35 were selected for review based on the fact that they provide new data on the relationship between FGR and health and sexuality effects and are of methodological acceptable quality.123 As far as sexuality is concerned, her review shows that “most of the existing studies suffer from conceptual and methodological shortcomings, and the available evidence does not support the hypotheses that circumcision destroys sexual function or precludes enjoyment of sexual relations.”124

A somewhat similar opinion was reached by a team of researchers after conducting a systematic review of the literature in 2010.125 Based on a retrieval of 3,666 publications, out of which only 17 which met their inclusion criteria was reviewed,126 the authors note that although the results of the review show an association between FGR and diminished sexual functioning in women, “the low quality of the body of evidence precludes us from drawing conclusions regarding causality.”127 Surprisingly, however, the authors subsequently assert, “[o]ur estimate showed that women with [FGR] were more likely to . . . experience less sexual satisfaction than women who had not been subjected to [the procedure].”128 Yet, by their own explicit admission, “[w]e do not have sufficient evidence to say whether these associations are of a causal nature”129 and “[t]he result of our meta-analysis for orgasm, another central phase of the sexual response cycle, was inconclusive.”130

This tortured meta-analysis should be a source of concern to everyone, notwithstanding the aisle of the debate one falls into. The researchers base their attribution of low sexual satisfaction to circumcised women on two studies which, by their own statement, are of “moderate and low study quality,”131 and

123 Id.
124 Id. at 443,459.
125 BERG, DENISON & FRETHEIM, PSYCHOLOGICAL, SOCIAL AND SEXUAL CONSEQUENCES OF FEMALE GENITAL MUTILATION/CUTTING (FGM/C), supra note 83.
126 Id. at 28.
127 Id. at 50
128 Id.
129 Id.
130 Id. at 53
131 Id. at 44.
even two other studies which they assert purportedly support this finding were characterized as being of “moderate study quality.” The implication, then, is that neither the two set of studies (primary sources of the claim) nor the two supportive ones can be rightly characterized as high quality scientific works. For that reason alone, their summations ought to have been discarded or at least approached with extreme caution. Alarmingly, the researchers themselves use the words “very low” to express the quality of the evidence provided by the first two studies; yet, this did not dissuade them from relying on these same suspect studies for their very bold and unsubstantiated claim.

Be that as it may, studies whose methodological frameworks have not been questioned –well designed ones – have consistently arrived at the conclusion that sexual pleasure and orgasm are not destroyed by FGR. Research show, for instance, that clitoral excision does not hamper sexual urge, and that there is no statistically significant difference between circumcised and uncircumcised women in terms of rate of sexual arousal, sexual intercourse or orgasmic experience during sex – a reason “female genital cutting cannot be justified by arguments that suggest that it reduces sexual activity in women . . .” Furthermore, a recent publication by a team of Italian researchers documents ground-breaking findings. They report that the vast majority of circumcised women, including those that have been infibulated, achieved orgasm, leading them to conclude that the procedure “does not necessarily have negative impact on psychosocial life (fantasies, desire, pleasure, ability to experience orgasm”). As to why these findings are important, this author cites two reasons one of which is particularly compelling. Aside from constituting a formidable response to abolitions claims of morbidity, mortality and horrible sexual consequences, these findings portrays practitioners of FGR, not as “primordial brutes committed to maiming their women and depriving them of sexual pleasure,” but as people engaged in a “legitimate cultural ritual like any other elsewhere and, therefore, worthy of respect.”

132 Id.
133 Id.
134 Megafu, Female Ritual Circumcision in Africa, supra note 116 at 795.
135 F. E. Okonofua et al., The Association between Female Genital Cutting and Correlates of Sexual and Gynaecological Morbidity in Edo State, Nigeria, supra note 119 at 1089.
136 Lucrezia Catania, et al, Pleasure and Orgasm in Women with Female Genital Mutilation/Cutting (FGM/C)4J. SEX MED. 1666 (2007).
137 Id. at 1673.
iv. “Barbaric” versus “Civilized” Cultures

The popular saying “imagery is everything” (meaning that packaging is at times more important than the thing being packaged) is no truer than in the controversy surrounding FGR. The imagery that has successfully been etched in the minds of most Westerners regarding FGR and its practitioners is of a people mired in the hazards and ignorance of prehistoric life. Popular media account of the ceremonies and festivities accompanying the ritual depict ill-clad, unkempt and rough-looking people, their bodies bathed in assorted weird colors, with the circumciser – usually a haggard and mournful-looking creature – staring gleefully at an assortment of “Stone Age” instruments that she would use in the ritual. The ceremony is shown to take place in a cleared spot in the wood or on a dirt floor of a make-shift thatch house. Then inject some chanting and esoteric music in the background, to add vital solemn ambience to the event, and the picture of the “other” is complete. This is the imagery that FGR-abolitionist campaign projects to the outside world, explaining the confidence exuded by activists like Abigail Haworth in reminding us that “across large swathes of the world” there is agreement that the revered culture “is barbaric.”

The psychology of this portrayal is one of the powerful, though subtle, pillars sustaining the eradication movement. Significantly, this psychology transcends Western world to also reach deeply into the recesses of people in other parts of the world including, quite paradoxically, African elite, who has joined others in basking in the euphoria of postmodernity. Over the years there has been a remarkable jump in the number of organizations run by Africans, all with some form of Western-style education, which have come to disparage FGR and its benefits with the same contemptible disdain as people external to the geography of the practice. As a result of their embrace of Western ontological frameworks, these organizations and their leaderships are always trumpeted as evidence that the crusade against the practice is not ethnocentric, that even “informed” Africans are up in arms against FGR and its practitioners.

But the weight of this evidence is suspect. These people are, much like the “African social scientists, politicians, human rights scholars, activists, and lawyers” whom human rights scholar Josiah Cobbah squabbles with in his thought provoking essay, “seriously handicapped by this incarceration through

139 Haworth, *The day I saw 248 girls suffering genital mutilation*, supra note 27.
their Western training” and from which they need “to liberate themselves.” Their “incarceration” does not mean that they are not well-intentioned; instead, it does suggest that like their acolytes in the Western world, who are bereft of relevant facts and information regarding FGR, they are also wrong. They, of course, are not ignorant of the benefits of FGR but have allowed themselves to be hoodwinked into the idea that the procedure harbors adverse health consequences and violates human rights. Their opposition centers on the notion that even if there are benefits associated with the practice, they dwarf when juxtaposed against the adverse consequences – consequences which they, like the rest of the abolition forces, think FGR practitioners are ignorant of.

Emphasis on “otherness,” how strangers to one’s moral community is sometimes perceived, is warranted in this case because it is the virus insidiously lurking behind the underlying assumptions that manifest themselves in the caricatured portrayal of, and attitude to, FGR practitioners by people claiming to be protecting them from themselves. People who embrace the practice are thought of as lacking requisite human faculty – rationality or reason. The “other” (or the dehumanization represented) is never explicitly stated but clearly discernible by anyone who bothers to look very closely. But this is not new. Even hallowed human rights instruments embody this subtle denial of humanity to certain category of persons, a basis for an observation made elsewhere, to wit, “despite attempts at their rehabilitation, neither the United States Bill of Rights (1789) nor the French Declaration of the Rights of Man and Citizen (1789) is truly a human rights charter.” The reason is not far-fetched: “the human rights they proclaimed were reserved for certain, not all, Homo sapiens in the respective territories.”

It is striking the respect with which people throughout the world hold the second paragraph of the American Declaration of Independence, as a beacon of hope for people struggling against political subjugation. The Declaration’s proclamation of the obvious, “[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain

inalienable rights,” remains one of the most irrefutable arguments against repression of human liberty and freedom worldwide. Yet, although at the inception of the republic, descendants of African slaves insisted that they too were included in equality and human rights guarantees of the Declaration, their plea was muted by the majority White population whose intelligentsia drafted the somewhat elegant document. The reason was simply that eighteenth century America considered blacks as lacking in reason, explaining why a grown man, even a grandfather, was called “boy” by slave owners and their beneficiaries. Worse still, even “We the People” in the United States Constitution (1787) was widely understood to refer to certain kinds of people, excluding Blacks. As Chief Justice Taney describes them in Dred Scott v. John F. A. Sanford, they are “beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect law.” Certainly, the saying, “the more things change, the more they remain the same,” is true. It is this sort of mindset that pervades FGR discourse, the way proselytizers interact with practitioners, the reason for Western portrayal of FGR as “irrefutable evidence of the barbarism and vulgarity of underdeveloped countries . . . [and] the primitiveness of Arabs, Muslims and Africans all in one blow.”

Philosopher Richard Rorty’s incisive essay (published in 1993) on the atrocities committed during the Serbian war, eloquently speaks to the issue at hand – how once constructed as the “other,” it becomes morally unproblematic to treat groups and individuals without respect and dignity due to them: “to the Serbs, the Muslims are no longer human . . . Muslim prisoners, lying on the ground in

142 Id.
144 A similar observation was made by Richard Rorty in 1993: “For most white people, until very recently, most black people did not count. For most Christians, up until the seventeenth century or so, most heathen did not so count. For the Nazis, Jews did not count.” See Human Rights, Rationality and Sentimentality, in STEPHEN SHUTE & SUSAN HURLEY, EDS., ON HUMAN RIGHTS: OXFORD AMNESTY LECTURES 1993(1993), reprinted in PATRICK HAYDEN, ED., THE PHILOSOPHY OF HUMAN RIGHTS 250 (2001).
145 The argument of noted abolitionist Frederick Douglas, himself a former slave, that “[w]e the People” in the preamble to the Constitution of the United States was all-inclusive, “not we, the White people,” was equally dismissed as a hogwash. See LINDA R. MONK, THE WORDS WE LIVE BY: YOUR ANNOTATED GUIDE TO THE CONSTITUTION 209 (2003).
146 60 U.S. 393(1857).
147 Id. at 407.
148 NAHID TOUBIA, WOMEN AND HEALTH IN SUDAN 101 (1988)
rows, awaiting interrogation, were driven over by a Serb guard in small delivery van.”  

Recall that in a report described as “the most comprehensive United States assessment of atrocities in Bosnia,” the Central Intelligence Agency’s (CIA) conclusion was that Serbian forces were responsible for 90 percent of “ethnic cleansing” during the war.  

Rorty’s analysis of the psychology undergirding these atrocities is quite revealing, “Serbian murderers and rapists do not think of themselves as violating human rights. For they are not doing these things to fellow human beings, but Muslims.” That is to say, in the minds of Serbs, “[t]hey are not being inhuman, but rather are discriminating between the true humans and the pseudohumans.” Bringing the point nearer home, Professor Rorty digs deep into the mindset of one of the most significant of the founding fathers:

The founder of my university was able both to own slaves and to think it self-evident that all men were endowed by their creator with certain inalienable rights. He had convinced himself that the consciousness of Blacks, like that of animals, ‘participate[s] more of sensation than reflection.’

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152 Id.

153 Id. citing Thomas Jefferson, Notes on Virginia in LIPSCOMB & BERGH, EDS., WRITINGS 1: 94 (1905). Jefferson writes:

Their grieves are transient. Those numberless afflictions, which render it doubtful whether heavens has given life to us in mercy or in wrath, are less felt, and sooner forgotten with them. In general, their existence appears to participate more of a sensation than reflection. To this must be ascribed their disposition to sleep when abstracted from their diversions, and unemployed in labor. An animal whose body is at rest, and who does not reflect must be disposed to sleep of course.”  

Id. Cast as animals, incapable of reflection, it becomes easy to treat Blacks as beasts of burden, not worthy or deserving of attributes of humanity such as equality and the panoply of rights and entitlement that come with it.
While it is true that America and the rest of the Western world have advanced beyond the parochialism of this mentality, in many areas of our national life, the ashes of Thomas Jefferson still hold sway. For doubters, we may do well to recall that during the debate leading up to the enactment of anti-FGR legislation in the United States, not even a single woman from the African or Muslim community, the people whose cultural rite was being assailed in very unsavory terms, was called to testify.

Like the revered Jefferson, Congress was of the opinion that, being black, they are incapable of independent thought and analysis. And this attitude is reflected in many anti-FGR legislation in the West. For instance, the New Zealand anti-FGR statute stipulates that “[i]t is no defence to a charge under this section that the person on whom the act involving [FGR] was performed consented to that act, or that the person charged believed that such consent had been given.” In other words, the application of the principle of autonomy, a credo of Western civilization, which allows rational adults to accept or reject involvement in anything, even of a harmful nature so long as no harm results to an innocent third party, does not extend to people from “primitive” cultures in distant lands. They deserve different moral consideration. As argued elsewhere:

Evidence of this racial superciliousness and Eurocentrism abound, and understanding its historical, philosophical and ideological underpinnings is crucial to proper contextualization of Western opposition to cultural expressions that insufficiently measure up to what they conceive as proper ethical orientation. It boils down to how one culture perceives the “other.”

As far as issues pertaining to third world culture are concerned, especially when linked to human rights, this is the prism through which to analyze the claims and counterclaims arising from different quarters, howsoever packaged.

155 Nnamuchi, The Goose and the Gander supra note 35 at 216.
157 Id. at § 1(6).
159 Id.
v. Does Islam Prescribe FGR?

The question whether FGR is prescribed by Islam is one upon which a lot of ink has been spilled; yet, no resolution appears to be forthcoming. Controversy surrounding this question hinges on a critical idea—and, that is, if it could be shown that the practice was religiously ordained as virtually all Islamic women who have been circumcised believe, it would be difficult to assail the practice. After all, religious liberty, the freedom to organize one’s life according to the dictates of his or her religion is recognized as a fundamental human right under international law and a host of domestic legal frameworks. This is the reason why, although there is a serious dispute even amongst Islamic scholars on this question, anti-FGR activists discount the disagreement and continue to operate as if a common understanding pervades the subject. Notice the ultimate finality in the tone of this article penned by an activist, after witnessing mass circumcision ceremony in Indonesia, a Muslim country, “[i]t is well established that [FGR] is not required in Muslim law. It is an ancient cultural practice that existed before Islam, Christianity and Judaism.”160 Once activists succeed in denying the sacredness or religion imbedded nature of FGR and, instead, depict it as a mere cultural practice, many of which have previously been unmasked as violating human rights, it becomes easy to label FGR as one of such cultural manifestations. To accentuate this crucial distinction, the activist continues, “[i]t is also agreed across large swathes of the world that it [FGR] is barbaric.”161

Obviously the characterizations explored above reflect the ruminations of an outsider, looking in. Nevertheless, when she denigrates what she admits is a centuries-old practice as “barbaric,” she intones the perception of not only FGR in her own society but also the arrogance and condescending attitude prevalent amongst other elite abolitionists regarding the people in FGR practicing communities. This arrogance inspires the dismissive attitude of the views of these people regarding the religious character of the procedure. The challenge is typically framed in terms that there is no passage in the Quran explicitly requiring women to submit to FGR, that many Islamic scholars have voiced opposition to the practice.162

160 Haworth, The day I saw 248 girls suffering genital mutilation, supra note 27.
161 Id.
Anthropologist Michelle Johnson findings are quite instructive. She reports that her study of Mandiga people (Guinea Bissau) reveals that the “relationship between [FGR] and Islam extends beyond what is explicitly stated (or not stated) in Islamic texts.” Mandiga Muslims, including their religious scholars, regard the passage prescribing FGR as one of the mysteries of the Quran, that non-visibility of the verses to the naked eyes does mean their non-existence. As a religious scholar explains to Johnson, “even experts are not always perceptive enough to see or understand all the mysteries of the Quran.” Anticipating the thoughts of naysayers, Johnson cautions that there are many instances of “hidden, deep or ‘secret’ meanings beyond the readily visible or apparent” in much of the ethnographic studies on Africa. In African culture, the former is treasured more than the latter, and is considered “truer and more profound.” “Indeed,” as Johnson concludes, “secrecy in African contexts should not be seen as subversive and antisocial but instead as a key to understanding of African politics, religion and social relations.”

Africa or Islamic faith is hardly alone in incorporating practices not specifically recognized in holy texts as part of their religious culture. Many of the practices in Christendom, particularly its earliest sect – Catholicism – are nowhere written in the Bible. Christmas and Easter, celebrated throughout the Christian world as commemorating the birth and death respectively of Christ, are rooted in paganism. In addition, participation in the celebration of mass is a sacrament of utmost significance to adherents of the Catholic faith. Similarly, confession of sins and their absolution are regarded in Catholic teaching as perquisites for entry into paradise. None of these prescriptions or injunctions is specified anywhere in the Bible; yet, their legitimacy as religiously ordained practices is not under any serious scrutiny anywhere. So, why would FGR and its roots in Islamism be any different?

164 Id. at 221.
165 Id.
166 Id.
168 Id. at 222.
170 Nnamuchi Obiajulu, Harm or Benefit? supranote 8 at 394, FN 61.
vi. Does FGR Violate Human Rights?

The following utterance by an obviously jubilant spokesperson of the U.N. Secretary General, following the adoption of the U.N. Resolution on FGR in 2012, is representative of the sentiment in the anti-FGR coalition world, “[harmful practices, such as genital mutilation . . . violate their [women’s] fundamental rights.”¹⁷¹ This statement echoes an often repeated mantra in anti-FGR literature, namely, that the procedure violates the human rights of women in FGR societies, and that eradication campaign is geared toward protecting the human rights of these women against patriarchal tyranny and assault. Dressed in this garb of compassion and individual liberty, it becomes difficult to assail the campaign since no one wishes to be seen as a defender of the indefensible, defending human rights infringement. But, then, the difficulty is, who determines what constitutes human rights – the self-appointed activists or the women themselves? And since most of the campaigners against FGR are Westerners or Western-trained, is their conception of human rights the same or at variance with that of the communities upon which they seek to impose changes?

Traditional definition of human rights as those freedoms and liberties that inhere in individuals simply on account of their humanity provides no useful guidance. The definition does not address the question whether community X, Y or Z is free to determine for itself the exact parameters of these rights. Can Africa or Europe, for instance, decide to recognize some freedoms and liberties as human rights and reject others even though accepted as such by people in other regions? A plurality of human rights scholars would unhesitantly return a negative response, and go to great lengths philosophizing on universality narrative of human rights. They would point to the Universal Declaration of Human Rights (UDHR),¹⁷² International Covenant on Civil and Political Rights (ICCPR)¹⁷³ and International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁷⁴ –the International Bill of Human Rights – as setting a common standard for all mankind. For people with this orientation, widespread ratification of these instruments is demonstrative not only of an

¹⁷¹ U.N. NEWS CENTER, supra note 3.
agreement on the constitutive elements of human rights but, perhaps more
important, also of their universal application. It would not matter a bit to them
that other considerations might have subtly “coerced” agreement to these
standards by some States. Yet, as human rights scholars Adamantia Polis and
Peter Schwab point out:

The “international bill of human rights” is hailed as reflecting a world-
wide consensus on the nature and substance of human rights. It is a
decievably false consensus. Ratification of the various covenants and
conventions, frequently with exceptions, is an assertion of membership
in the world community and not a commitment to the implementation
of these rights or to their legitimacy.175

In other words, widespread ratification, even if by all the Member States of
the U.N., does not mean acceptance of the terms of the treaty or agreement
as to universal application of the provisions. Threat of economic sanction or
other coercive tactics typically employed in getting countries in impoverished
parts of the world to ratify treaties has its consequences. Disparate application
of human rights across countries who are States Parties to major international
human rights instruments is the most obvious.

African anthropologist Asmarom Legesse asserts that the States in the West
“have already succeeded in writing most of their values and codes of ethics into
the Universal Declaration [of Human Rights]” as a result of which, “human
rights movement faces the danger of becoming an instrument of cultural
imperialism.”176 Legesse is of the opinion that had the UDHR been written by
Africans, “they might have ranked the rights of communities above those of
individuals.”177 And this prioritization, whether communal rights trump those
of individuals or vice versa, is at the core of the divide between Western and
African concept of human rights – a subject to which we shall subsequently
return.

175 Adamantia Polis & Peter Schwab, Introduction in ADAMANTIA POLIS & PETER
SCHWAB HUMAN RIGHTS: NEW PERSPECTIVES, NEW REALITIES 1 – 30, 15
(2000).
176 Asmarom Legesse, Human Rights in African Political Culture in KENNETH W.
THOMPSON, ED., THE MORAL IMPERATIVES OF HUMAN RIGHTS: A WORLD
SURVEY 130 (1980).
177 Id. at128 (1980). See also Virginia A. Leary, The Effect of Western Perspectives on
International Human Rights in ABDULLAHI AHMED AN-NA’IM &FRANCIS M.
DENG, EDS., HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES
20 (1990) (noting the Western orientation of the UDHR, and pointing out that even two
Without the need to indulge in a drawn out disputation on relativist versus universalist nature of human rights, one may just assert that if recent trends in global protection of human rights provide any clues, it is that praxis leans heavily in the direction of relativism. Differently put, much of what is being witnessed in recent years in human rights praxis are validating the idea that human rights are culture- or society-specific, that community A’s human rights may not necessarily fit within community B’s idea of human freedoms and liberties. Polis’ observation is quite helpful, “[h]uman rights, both their philosophic and/or theoretical formulation” as well as “their practice, are rooted in the specifics of particular societies and civilizations.”  

A great illustration is homosexuality. Is homosexual sex a human right? Until quite recently, sexual intercourse between members of the same sex was universally proscribed and participants, generally regarded as perverts, were severely punished. A statute in the Commonwealth of Virginia aptly captures the public sentiment:

A. If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a Class 6 felony, except as provided in subsection B.

B. Any person who carnally knows by the anus, or by or with the mouth, his daughter or granddaughter, son or grandson, brother or sister, or father or mother, shall be guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild, and such child or grandchild is at least thirteen but less than eighteen years of age at the time of the offense, such parent or grandparent shall be guilty of a Class 3 felony.

When, in 1624, Richard Cornish was executed in Virginia, becoming the first person in the United States to suffer capital punishment for sodomy, there

of the seven principal drafters of the UDHR who were non-Western were products of Western education: René Cassin (France), John P. Humphrey (Canada), Eleanor Roosevelt (United States), Hernán Santa Cruz (Chile), Charles Malik (Lebanon) P.C. Chang (China) and Fernand Dehousse (Belgium).


180 Id.

181 See BETH MARSCHAK & ALEX LORCH, LESBIAN AND GAY RICHMOND (IMAGES OF AMERICA: VIRGINIA) 9 (2008). See also Doe v. Commonwealth’s
was no public outcry. The prevailing moral ethos was overwhelmingly anti-homosexuality. As a recent paper aptly elucidates:

[S]exual intercourse was constructed as exclusive prerogative of a man and a woman. Sex between individuals of the same sex was considered immoral, perverse and against the laws of nature, and prohibited at the pain of harsh criminal penalties, calculated to deter the conduct, especially between males. Sodomy, derived from Ecclesiastical Latin *peccatum Sodomiticum* (Sin of Sodom), was condemned…

One might be tempted to characterize defendant Cornish’s saga in terms that he became a pervert and got his due, but does this thinking represent current understanding in the United States or, indeed, the rest of Western world? Hardly; and this can be traced to the disintegration of the influence religion has over public life in these countries – what, in a related context, I described as the “ascendancy or triumph of secular humanism over religious morality.”

A critical juncture in this triumph of secularism was reached in the United States in 2003 by the ordination of Gene Robinson, an openly gay man, the Bishop of New Hampshire, by the Anglican or Episcopal Church. In Vancouver, Canada, the Anglican Church leadership in that country blessed same-sex union even though opposed by the vast majority of the laity, and Church leaders in England endorsed ordination of gay bishops despite widespread opposition. Regardless of one’s position about homosexuality and its place in national life, it is undeniable that these dictatorial impositions or, what many consider as transgression of the church leadership marked a significant milestone in the relationship of Anglican Church with the “sin of Sodom.” It was largely as a result of this doctrinal reengineering or radical

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183 For an in-depth account of homosexuality as a human right and inter-country disagreement relating thereto, see Nnamuchi, *Toward a New Human Rights Paradigm, supra* note 141 at 49 – 66.


shift in morality that “the religiously embedded foundation of this injunction [against homosexuality] has rapidly weakened, and attitudes are beginning to soften”\(^{187}\) in these countries. A recent paper explains:

As the cloak of deviancy is surreptitiously stripped off homosexuality by the protestant churches in the United States, so also is the connotation of iniquity with which gay sex was once associated in secular world being eroded. *Lawrence v. Texas* is a landmark case in the annals of American constitutional law. . . For the first time ever, the United States Supreme Court held that private sexual intercourse between two consenting gay men is a constitutionally protected liberty under the due process clause of the Fourteenth Amendment, explicitly overruling *Bowers v. Hardwick*, where the Court had earlier denied constitutional protection to exactly the same conduct. . . Howsoever one reads the judgment, it is fairly apparent that what was once profane and perverse is gradually and steadily sauntering into the American mainstream.\(^{188}\)

Evidence of this emergence of “what was once profane and perverse . . . into the American mainstream”\(^{189}\) is provided by the recent controversial Supreme Court decision in *United States v. Edith Windsor*.\(^{190}\) This decision renders §3 of the Defense of Marriage Act (DOMA), which defines marriage as excluding same-sex union, unconstitutional.\(^{191}\)

The effect of the preceding analysis is to show that not only has homosexual sex been recognized as a human right in the United States, so also has marriage between individuals of the same sex been baptized with the cloak of human rights. The question which arises is whether these newly recognized “rights” in the United States are (or ought to be) acceptable in other parts of the world? The response to this question has both religious and secular dimensions.

\(^{188}\) Id.
\(^{189}\) Id.
\(^{190}\) 570 U. S. (2013) (Slip Op.). §3 of DOMA provides as follows:

In determining the meaning of any Act of Con-gress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as hus-band and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife. 1 U. S. C. §7.

Although the Anglican Church leadership in Western world sees nothing inimical to Christianity in according human rights status to homosexuality and its expressions, their more doctrinally conservative brethren in Africa, Asia and Latin America cling on to a different view. These evangelical (conservative) Anglicans remain adamant that homosexuality is irredeemably at odds with their articles of faith.\textsuperscript{192} Conservative Archbishop of Lagos and then primate of the Nigeria Anglican Communion, Peter Akinyola, reflects the views of his flock in this response to Western Anglican Communion’s dalliance with homosexuality: “This is an attack on the Church of God —a Satanic attack on God’s Church.”\textsuperscript{193} Indeed, the primate may be demonized as a bigot in the West but “his attitudes nevertheless represent a deep-rooted conservative tradition in African Christianity that is flourishing and growing.”\textsuperscript{194}

There is a great lesson here, and that is, even amongst people of the same faith and denomination, different conceptualizations of human rights (in this instance, homosexuality) persist, influenced sometimes by extra-religious mores prevailing within particular communities of religious adherents. This is the reason why, unlike the Supreme Court of the United States, no court in Africa would have struck down §3 of the Defense of Marriage Act (DOMA). Africa does not recognize homosexual sex or marriage as a human right. In fact, many countries in the region have adopted or are in the process of adopting legislation criminalizing homosexuality and same sex marriage.\textsuperscript{195}

DOMA and homosexuality are of great relevance to FGR because the underlying value beneath each of them revolves around community cohesion. Undergirding DOMA is a “moral disapproval of homosexuality, and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality”\textsuperscript{196} – in other words, the argument was that placing homosexuality on the same pedestal as heterosexuality risks damaging the moral fabric of the society. This pits the interest of the individual against that

\textsuperscript{192} Id.
of the entire community in which case, the question which arises is, which of the two competing interests would prevail? Does individual autonomy supersede communal interest?

The answer hinges on the type of community, its orientation and moral compass; in other words, whether individualistic or communalistic. The structuring of society according to this pattern has a critical role to play in what it blesses with its seal of human rights. And this is decidedly at the core of the differences between conceptualizations of human rights in Western and African societies. Individualism of Western societies, which ascribes primacy to the interest of the individual at the expense of the larger community, is precisely the reason privacy interest inherent in such thorny issues as homosexuality and abortion is far more a feature of nations of Europe and North America than in other parts of the world. The “right to be let alone”\textsuperscript{197} which is encompassed in privacy (and autonomy) guarantees of the United States Constitution ensures that the individual is undisturbed by community needs and expectations. This seems to be the point Legesse was making in this assertion:

In the liberal democracies of the Western World the ultimate repository of rights is the human person. The individual is held in a virtually sacralized position. There is a perpetual, and in our view obsessive, concern with the dignity of the individual, his worth, personal autonomy and property.\textsuperscript{198}

This is not to suggest that there are no traces of communalism in Western cultures; instead, the point is that when in conflict, communal claims typically give way to individual needs and interests.

The ethical orientation in a communitarian setting is starkly different. Rather than hold the individual as the repository of rights, communal interests are prioritized. In fact, as a Western human rights scholar describes it, communitarian ethical framework is “rooted not in individual claims against the state, but in the physical and psychic security of group membership.”\textsuperscript{199}

\textsuperscript{197} Id. at 195. See also Olmstead v. U.S., 277 U.S. 438, 478 (1928) (Justice Brandeis, dissenting: “They [the founding fathers] conferred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men. To protect, that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.”).

\textsuperscript{198} Legesse, Human Rights in African Political Culture, supra note 176 at 124.

\textsuperscript{199} Howard, supra note 65, at 166.
This is the reason in why individual interests, in societies such as Africa and other traditional societies, are fused together with that of the community to produce a cohesive communal platform. The platform thus created ensures that individual interests are nullified in conflicting circumstances. Elsewhere this author amplifies this relationship in the following terms:

In African ontology, a person or personhood is defined in terms of affinity to family, clan, village and so forth, to which the individual owes his existence. This affinity or relationship not only gives individuals their identities but also structures their very existence.\(^{200}\)

The effect of this rootedness in the community to which one belongs is that “your business” is not exclusively yours but also “every other person’s business,” explaining why in Africa, even lovemaking, which is considered by most people to be the most intimate of all private activities, is not seen as within the exclusive province of the couple, but involves also the community.\(^{201}\) The thrust and reach of communitarianism run very deep into every aspect of the community and remain the most important determinant of morality, including in the realm of human rights.

Does FGR violate human rights of girls and women in such societies? The response to this question hinges on two factors, namely, whether FGR is hazardous to health and whether it is consistent with the best interest of people submitting to the procedure. In a paper aptly subtitled, “Is Parental Consent to Female Genital Ritual Ever Defensible,” this author explores the rationale behind the procedure, why loving parents would submit their children to an intervention which is widely castigated as cruel, inhuman and in their best interest.

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\(^{200}\) Nnamuchi, Toward a New Human Rights Paradigm, supra note 141 at 41. This echoes the widely referenced postulation of Mbiti:

Only in terms of other people does the individual become conscious of his own being, his own duties, his privileges and responsibilities towards himself and towards other people. When he suffers, he does not suffer alone but with his corporate group: when he rejoices, he rejoices not alone but with his kinsmen, his neighbours and his relatives . . . Whatever happens to the individual happens to the whole group, and whatever happens to the whole group happens to the individual. The individual can only say: “I am, because we are; and since we are therefore I am.” This is the cardinal point in the understanding of the African view of man. 


hazardous to health. But it is an exploration of a different genre, one that privileges the voices of the women themselves (those with actual experience of FGR) and their views, as articulated by them, not through some self-appointed elitist spokespersons. This is critical because it supplies the missing link in FGR literature; it enables one to acquire “an understanding of the ritual as presented in women’s own words, which reflect their own truths.” One after another, anthropologist Rogaia Abusharaf who conducted the original study reveals positive reverential feelings from the lips of women in Sudan who have been circumcised and are proud of the experience. These are women who underwent the most invasive type of FGR – infibulation. The response of one of the informant is particularly striking:

Our mothers and grandmothers taught us that circumcision is very important for women and girls. I was given pharaonic circumcision when I was eight years . . . I still remember the operation being painful, but to this day I believe it is necessary . . . Female circumcision is a good custom because the removal of the external genitalia is necessary for girls . . . People try to do the sunna, but the real circumcision is pharaonic because a lot of doctors and some women are trying to teach people that their ways are wrong. Circumcision is what makes one a woman because by removing the clitoris, there is no way that her genital will look like a man’s. The woman with a big clitoris is just like a man. How can a woman carry such a long organ between her legs and pretend that things are normal? That is why we say that pharaonic is good, because after it is done, the girl’s genital area becomes very beautiful and smooth . . . For this reason, all my daughters were given pharaonic. None of them had any complications. Of course, during the first days after the operation, they were not very comfortable. But when their wounds healed, they were fine. I continue to believe in it and I hope that people don’t abandon it. It is an old Sudanese custom that should not be changed because without it, women’s bodies are not as beautiful. A woman should do everything in her power to keep her body beautiful and she should do the same thing for her daughters, too.

202 Nnamuchi, Harm or Benefit? supranote 8 at 377.
203 Id. at 403 – 416
204 Rogaia Mustafa Abusharaf, Virtuous Cuts: Female Genital Circumcision in an African Ontology, 12 DIFFERENCES: J. FEMINIST CULTURAL STUD. 1222 (2001)
205 Id.
206 Id. at 123 – 124.
Other women in the study equally describe FGR in positively satisfying terms, explaining, for instance, that FGR promotes women empowerment by enabling women to have more self-control which they could deploy as a bargaining tool in getting their husbands to see things their way, ensuring marriageability – with all the attendant privileges and facilitating better sexual experience.

For those that might be dismissive of these experiences as products of ignorance on the part of these women, here is a supporting observation by an African anthropologist, who grew up in the United States and chose to be circumcised as an adult according to the tradition of her homeland, Kono (in Sierra Leone), “[s]o, contrary to much of the rhetoric of the anti-[FGR] campaigns, the female sex and female sexuality are not oppressed in, through or by these ritual practices, [instead] female sexuality and reproductive powers are celebrated and reified. . .” explaining, in her view, why circumcised Kono girls and women were able to speak “in positive, almost reverential terms, about the practice, their bodies and the experience of womanhood.”

These experiences sharply contrast with decades-long and continuing portrayal of FGR in mainstream literature. Even without any credible evidentiary base, anti-FGR scholars, activists and the popular media have succeeded in convincing many people that the practice is associated with tons of horrible diseases, has no benefits whatsoever – in short, “an excuse for male barbarism and domination” and abuse of human rights. But to agree to these claims, cautions Shweder:

You must believe that African parents (mothers and fathers) are either (a) monsters (“mutilators” of their children) or (b) fools (who are incredibly ignorant of the health consequences of their own child rearing practices and the best interests of their children); or (c) prisoners of an insufferably dangerous tradition that they themselves would like to escape, if only they could find a way out, or else (d) that African women are weak and passive and live under the patriarchal thumb of cruel, loathsome or barbaric African men.

207 Nnamuchi, Harm or Benefit? supra note 8 at 409.
208 Id. at 410 – 411.
209 Id. at 407.
211 Id. at 15.
The experiences of circumcised women, as shown above, do not bear this out. Instead, in submitting their children to FGR, women are acting in accordance with what they believe best protects the interest of the children. Undergirding their decision is “quintessential parental love, an unquenchable and unswayable desire that transcends culture, race or creed.”\textsuperscript{213}

Viewed through the lenses of a communitarian setting, where individual liberties are freedoms are geared toward community cohesion and wellbeing, there is no question that FGR does not violate the human rights of girls and women in practicing societies. The reason for widespread belief that the practice amounts to an infringement of human rights is that the argument has been constructed on the platform of individualism, with the points of reference being consent and individual autonomy. In this moral horizon, consent of the individual trumps all other considerations, even communal solidarity and cohesion.

This understanding of the foundation of human rights clearly is at odds with the communitarian underpinning of human rights in Africa. This is a dangerous cultural clash with significant implication for human rights. Cobbah has it right when he argues that what is seen as human rights abuses, such as the kind that is now associated with FGR, is a direct result of the “dysfunction that plagues the imposition of Western liberalism over communal African lifestyle.”\textsuperscript{214} Cobbah strongly believes that allegations of human rights abuses in the region arise precisely “because we are attempting too hard to make Westerners out of Africans.”\textsuperscript{215} His conclusion, sort of an appeal for a rethinking on the construction of human rights, by scholars of African extraction, is particularly striking:

As for the African scholars who have mastered the litany of Western human rights and seek to apply the same to Africa in their quest to modernize the continent, I will only direct their attention to the fact that the individualistic assumptions of the Western human rights concept, like all their Western and non-Western philosophical concepts, are still being debated. Coming from a society in which the worldview emphasizes commonality rather than individuality we may have

\textsuperscript{213} Nnamuchi, \textit{Harm or Benefit?} supra note 8 at 415.
\textsuperscript{214} Cobbah, \textit{African Values and the Human Rights Debate}, supra note 140 at 326.
\textsuperscript{215} \textit{Id.}
something to contribute to the international fecundation of concepts about human rights and human dignity.\textsuperscript{216}

The debate on the place of human rights in African culture is still evolving. Topical issues such as FGR and, more recently, homosexuality should task the intellectual resources of African scholars, to frame a reasonably reflective and thoughtful response that is centrally African. The political leadership in Africa was right when, in its instruction to African experts gathered in Dakar, Senegal, in 1979, to prepare the draft of an African legal framework on human rights, it charged them “to prepare an African human rights instrument based upon an African legal philosophy and responsive to African needs”\textsuperscript{217} – in other words, a legal framework that clearly reflects an “African conception of human rights.”\textsuperscript{218} Therefore, there is nothing strange or odd in articulating a position that reflects the worldview of people in the region, one that departs from global attempts at essentializing every person and all cultures. There is no reason for treating the rights specified in the International Bill of Rights – whether the UDHR, ICCPR or ICESCR – as etched in stone or treating the African communitarian foundation of human rights as a step child or subservient to Western individualistic ethos. Indeed, to think there is nothing the world can learn about human rights from Africa is mistaken.\textsuperscript{219}

IV. CONCLUSION

Over two decades ago, the Committee on the Elimination of Discrimination against Women, the body charged with implementing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),\textsuperscript{220}

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\textsuperscript{216} Id. \\
\textsuperscript{219} For a more comprehensive account, see Nnamuchi, Toward a New Human Rights Paradigm, supra note 141 at 24 – 85. \\
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issued General Recommendation No. 14, urging States Parties “to take appropriate and effective measures with a view to eradicating the practice of female circumcision.” A curious paragraph in the Recommendation specifies, amongst the measures that States Parties could adopt in implementing the treaty, the “encouragement of politicians, professionals, religious and community leaders at all levels including the media and the arts to cooperate in influencing attitudes towards the eradication of female circumcision.” Whether this Recommendation could be properly characterized as the origin of the unholy alliance, documented throughout this discourse, between anti-FGR scholars, activists and the media is debatable. Beyond debate, however, is that the conspiracy does in fact exist. Otherwise, what is the explanation for the blatant failure on the part of even top journals to subject anti-FGR submissions to regular rigorous scientific scrutiny as a basis for determining their publishability or the unrelenting regurgitation of anti-FGR propaganda by the media, free of any fact-checking whatsoever, as if they are unassailable truths? One might also question why studies with findings or conclusions contradictory of eradication propaganda never receive the kind of sensational and instantaneous reporting that typically accompanies the opposite view. The list is endless.

As argued previously, there are two major pillars sustaining this conspiracy and pulling the anti-FGR bandwagon forward, namely, claims that the practice is hazardous to health and, second, that it violates the human rights of girls and women that have undergone the procedure. But the appropriate response to these claims and one which this paper has consistently asked is: where is the evidence? True, the anti-FGR literature is filled with a litany of morbidities and adverse health outcomes trumpeted as inevitable for girls and women that have been circumcised. It is also undeniable that “scientific” studies have been published purportedly supporting this claim. Yet, upon meta-analysis of these studies, their findings were found to be baseless and completely unwarranted, leading an apparently surprised author of one of the analyses to conclude:

On the basis of the vast literature on the harmful effects of genital surgeries, one might have anticipated finding a wealth of studies that document considerable increases in mortality and morbidity. This

222 Id.
223 Id.
review could find no incontrovertible evidence on mortality, and the rate of medical complications suggests that they are the exception rather than the rule.\textsuperscript{224}

This conclusion is not unique. Even the latest meta-analysis expresses strong reservations about the scientific quality of available anti-FGR studies.\textsuperscript{225} Recall that although the Norwegian researchers who conducted this meta-analysis were able to retrieve 3,666 sources, only 17 of them somewhat met their inclusion criteria,\textsuperscript{226} and out of this number, only two studies were considered of high quality – a reason for their conclusion that claims regarding “the psychological and social consequences of [FGR]’ cannot be substantiated by reference to existing literature.\textsuperscript{227}

Significantly, it is not only meta-analyses that have exposed the hollowness of anti-FGR claims. As shown previously, there are also a number of well-designed studies, reporting that causal link between the practice and most of the mortalities widely documented in mainstream scholarship is non-existent. This was what prompted Morison and colleagues to issue this caution, “[b]y basing health information on sound data rather than implying that severe long-term health consequences are common, activists are likely to make their claims more credible to practicing communities and therefore more effective.”\textsuperscript{228}

The only commonality between these researchers is their shared motivation, namely, quest to know the truth – the same desire for knowledge, for an open debate about the health consequences of FGR that grounds this paper.

Regarding the second question, whether FGR violates human rights, the answer hinges critically on whose opinion is sought and, perhaps more importantly, on the philosophical framework upon which that opinion is constructed. Such construction is, in itself, a product of how the relationship between individuals and the community is understood in the culture being considered. As shown in the previous section, in moral communities where human rights are conceptualized on the basis of individualism (and, concomitantly, the principle of respect for individual autonomy), the logical

\textsuperscript{224} Obermeyer, \textit{Female Genital Surgeries}, supra note 65 at 92.
\textsuperscript{225} BERG, DENISON \& FRETHEIM, \textit{PSYCHOLOGICAL, SOCIAL AND SEXUAL CONSEQUENCES OF FEMALE GENITAL MUTILATION/CUTTING (FGM/C)}, supra note 83 at 60.
\textsuperscript{226} Id.
\textsuperscript{227} Id.
\textsuperscript{228} Morison et al., \textit{The Long-Term Reproductive Health Consequences of Female Genital Cutting in Rural Gambia}, supra note 75 at 651.
and inevitable conclusion must be that the human rights of women submitting to FGR have been compromised. In this conceptualization, consent of the individual (as a key element of autonomy) is the primary and ultimate consideration, and since anti-FGR coalition is predominantly of the view that the procedure was not the result of informed consent on the part of the women, their conclusion is that violation of the human rights of these people have taken place. Quite unsurprisingly, virtually every writer subscribing to this view relies, as an authority, on core human rights instruments such as the UDHR and the ICCPR, and these, in turn, are projected as embodying universal values binding upon all mankind. For instance, human rights scholar and philosopher Fernando Tesón, although writing on a different subject, instantiates this strand of thought when he claims that “international human rights treaties, both regional and [international]” constitute the core of human rights and “offer a surprisingly uniform articulation of human rights law.”

As shown in the preceding section, notable African scholars have veered in a different direction, arguing against relying on these instruments as a basis for determining whether countries in the region could appropriately be condemned as domains of human rights abuses. Indeed, the African view of human rights is starkly different from that of the West, explaining the postulation by Legesse, that had Africans been the ones that authored the UDHR, “they might have ranked the rights of communities above those of individuals.” Asmarom’s point is quite simple – and that is, consequential differences exist between Western and African ontological human rights frameworks, that in Africa, communities, not individuals, are the primary right holders. Moreover, if we accept, as philosopher Kwasi Wiredu argues, that “a people’s conception” of human rights invariably “reflect[s] their fundamental values,” then, cross cultural differences in entitlements that are cognizable as human rights and variants of what could appropriately be termed human rights violations should be expected. Attempt to blunt these differences, essentialize or homogenize all human beings and cultures, is plainly wrong, impracticable and, therefore,

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bound to fail. In fact, it seems foolhardy to deny “diversity of conceptions of human rights” as a reason for the failure, thus far, of “[e]fforts to forge a consensus on the substance of human rights.”

Russian historian and diplomat Natalia Narochnitskaya affirms this thinking in a recent submission at the U.N., “[t]here was no country or civilization where freedoms, human rights and equality were not of major importance, but there were different perceptions of these issues.”

The problem is that the communitarian basis of human rights has been (almost completely) neglected in mainstream literature. African scholars who ought to be in the vanguard of advocating “another view” in the way human rights are conceptualized have abdicated this role, unreflectively surrendering to the Hobbesian notion of man in a state of nature as autonomous being possessed of inherent, inalienable rights. Although a quintessential Western construct, there seems to have been acquiescence on the part of these scholars that the notion transcends culture, race and creed – and, for that reason, should be embraced by Africans and their governments alike, no questions asked. This, again, is a mistake. There is nothing wrong in exploring disagreements on core human rights issues such as its philosophical underpinnings and, if need be, taking a position that differs from the mainstream. Since such an exercise promotes, rather than dilutes, genuine advancement of human rights, it deserves encouragement, not condemnation.

It is our position that once the analytical framework assumes the narrative of African communitarianism, which in seeking to balance the liberties and freedoms of individuals against the needs of the community prioritizes the latter, FGR would be seen in a different light, as not infringing upon human rights. The reference point, evident in the testimony of the women who have undergone the procedure, is group identity, not individual autonomy. It is an issue of personhood and relationship to the society, communitarianism versus individualism, and understanding this distinction is the key to appropriate analysis (of a human rights nature) of FGR and the rich cultural context that gives the practice its meaning in various communities throughout the world where the practice is celebrated. Disagreement from the abolitionist camp will surely arise, but such disagreement is consistent with the thrust of this paper,

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232 Polis, Liberal, Socialist, and Third World Perspectives of Human Rights, supra note 178.
a plea for an open debate on the U.N. Resolution which claims that FGR is not only a health hazard but also violative of human rights. Ultimately, the conclusion must be that in absence of an open forum in which all the claims and counter claims are carefully x-rayed, and facts separated from fiction, legal and extra-legal measures purportedly seeking to outlaw FGR are in themselves violations, not legitimate advancement, of human rights.