

# The Debate on Clitoridectomy: "Act of Love" or Act of Oppression?

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## Introduction

When in the early 1980s, the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities began debating how to apply human rights law to the issue of clitoridectomy, Western members opted to remain silent throughout.<sup>1</sup> Since then, many have tried to cajole white policy-makers out of an overcautious approach based on fear of being accused of imperialism and Eurocentrism,<sup>2</sup> and many African women welcome Western support "without compulsion or direction".<sup>3</sup> Further, it is said that cultural relativism itself does not preclude criticism and debate, rather it pleads that the manner of that criticism be culturally sensitive.<sup>4</sup> Even within the cultures where clitoridectomy is protected as a cultural practice, a willingness to reconsider positions which are widely challenged by others may be said to be illustrated by the Sudanese maxim that "if two people tell you that your head is missing you better check to see if it is still there".<sup>5</sup> Encouraged by the evolving international debate I take up the challenge of analysing whether human rights can assist in eradicating this practice, and if so, how? Involved in the analysis is both an awareness of the cultural relativism versus universalism debate, and a feminist

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1 The choice of language is problematic. I will use the term clitoridectomy because of its anatomical specificity and its technicality. In this way I avoid the sometimes rhetorical extremes of "circumcision", which is a euphemism insinuating that the operations are equivalent to male circumcision, and "mutilation", which is often objected to as being derogatory to African women and indicative of intolerance. Nevertheless, I am aware that the term "clitoridectomy" fails to accurately depict both the mildest forms of the operation and the most extreme forms which remove much more than the clitoris. See Engle, "Female Subjects of Public International Law: Human Rights and the Exotic Other Female" (1992) 26 *New England Law Review* 1509 at 1509-10.

2 Kogbara, "One Woman's Campaign Against Genital Mutilation" (1993) 4 *Ms* 18 at 19. Western retreat in the 1980s stemmed from criticism that the reaction from the West has not always been constructive. There has been a history of inappropriate interventions and a misunderstanding of the issues on the part of Western critics which has now hopefully been overcome.

3 Lightfoot-Klein H, *Prisoners of Ritual: An Odyssey into Female Genital Circumcision in Africa* (1989), p 168.

4 An-Na'im, "Problems of Universal Cultural Legitimacy for Human Rights" in An-Na'im A and Deng F (eds), *Human Rights in Africa* (1990), p 331 at 341.

5 Ibid.

analysis on the use of rights and on how power dynamics operate. Both are essential in order to gain a comprehensive understanding of the issues involved.

In this paper I will first outline the dilemmas created in Australia, a multicultural Western society, in dealing with clitoridectomy amongst migrant communities. I will then discuss the two main theoretical debates which inform this issue and analyse how they help or hinder the attempts to eradicate the practice. I will then place clitoridectomy in the context in which it is most commonly practised and analyse which international human rights instruments offer the most effective and appropriate approach to tackle this worldwide example of human rights violations.

### Australian Context

The global spread of clitoridectomy, as a result of increasing migration from countries where it is considered an integral tradition, has prompted concern in the West as to what the most effective and appropriate domestic responses should be. In Australia, the need to examine the theoretical notions underpinning the debate on clitoridectomy has been heightened in light of impending legislation at both federal and State levels. Recent studies and initiatives have been shrouded by controversy and widespread media attention. The suitability of any proposed domestic response needs to be carefully scrutinised in order to prevent "simplistic outrage and...holier than thou clamour for bans and punishment"<sup>6</sup> which may merely result in shaming the relevant communities and driving the practice underground. At the same time however, Australia must recognise its international obligations<sup>7</sup> and its duty to protect the human rights of its people.

In January 1994, the Family Law Council released a Discussion Paper on Female Genital Mutilation in an attempt to elicit community response and to assess whether additional legislation is required. The Final Report was tabled in Federal Parliament in June 1994, receiving a mixed response from community groups.<sup>8</sup> Importantly, the Family Law Council states that while the incidence of the practice in Australia is expected to be minimal,<sup>9</sup> it is impossible to accurately measure its extent and the Reports' findings are based mainly on anecdotal evidence. Nevertheless, the Report does outline incidents of women

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6 "A test for multiculturalism", *Sydney Morning Herald* (24 February 1994), p 12.

7 As contained in the Universal Declaration of Human Rights (UDHR), articles 3 and 5; the Convention on the Elimination of All Forms of Discrimination Against Women, articles 10(h), 12 and 16(1); the Declaration on Violence Against Women, article 4; the Convention on the Rights of the Child, articles 3, 6, 19, 24 and 37(a); the Convention relating to the Status of Refugees; the Protocol relating to the Status of Refugees; the International Covenant on Civil and Political Rights, articles 6 and 7; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8 Most groups welcomed the acknowledgment of the "pivotal significance" of education however, there was some concern about recommendations to criminalise the practice: "Genital mutilation may become criminal offence", *The Age* (28 June 1994).

9 Family Law Council, *Female Genital Mutilation: Discussion Paper* (1994), p 14.

approaching doctors to perform the operation and reports that women from certain countries are doing the operations themselves.<sup>10</sup> Given the silence and secrecy which shrouds the issue, the paucity of concrete evidence is hardly surprising and does not discount the fact that it is likely that the practice is now occurring in Australia. Further, when examining the experience of other countries with similar migration patterns, "(i)t would be optimistic and naive to assume that somehow Australia is immune from the practice".<sup>11</sup>

In recognising the practice as an exercise of violent domination over women and children, the Family Law Council concludes that the practice should not be accepted in Australia.<sup>12</sup> Unless action is taken to demonstrate this stance of disapproval, Australia could be said to have discriminated against the children on whom the operation is performed, and to have consented to and been complicit in the continuation of the practice.<sup>13</sup> While existing criminal and child abuse laws<sup>14</sup> may be adequate to deal with clitoridectomy, Council is concerned that there is a general lack of awareness in the community of the applicability of these laws. Thus, Council recommended uniform legislation be enacted which would clarify the illegality of "female genital mutilation" and indicate society's condemnation of the practice.<sup>15</sup> A national consultative education campaign is imperative to the success of this strategy, the legislation itself being a "part of the strategy to educate and promote change in culture and attitude".<sup>16</sup>

The cultural relativism debate is exemplified in the Australian situation as we grapple with aligning prohibitory legislation with the federal policy of multiculturalism. The policy of multiculturalism aims to manage "the consequences of cultural diversity in the interests of the individual and society as a whole".<sup>17</sup> The linchpin of this policy is tolerance and respect for cultural differences in order to bind together a society consisting of different ethnic elements. Thus, while clitoridectomy has been described in Federal Parliament as the "worst type of culturally acceptable assault",<sup>18</sup> it would seem that multiculturalism dictates that governments should consult with the communities at risk and should hand over educational tools and power in the decision-making process to the women of these communities. Programs and legislation which evolve from such a forum would be far more palatable, more effective and more

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10 Family Law Council, *Female Genital Mutilation: A Report to the Attorney General prepared by the Family Law Council* (1994), pp 12-14.

11 Ibid, p 16.

12 Ibid, p 35.

13 Note 9 above, p 27.

14 Note 10 above, pp 66-68.

15 Ibid, p 47. The Report recommends that the scope of the proposed legislation should include not only clarification that female genital mutilation constitutes child abuse in Australia, but also sanctions for those who perform, aid, abet or arrange the operation, mandatory notification procedures and provisions making it an offence to take a child out of Australia for the purpose of having the operation performed: see *ibid*, pp 55-57.

16 Note 9 above, p 31.

17 *National Agenda for a Multicultural Australia*, cited in *ibid*, p 24.

18 Trish Worth MP cited in, "Move to outlaw genital maiming", *Sydney Morning Herald* (22 February 1994), p 5.

consistent with our much touted multicultural stance, than legislation which is imposed upon the vulnerable communities.

Prior to the release of the Final Report of the Family Law Council, the NSW Government drafted legislation which bans "female genital mutilation" and includes penalties for offenders of up to seven years jail.<sup>19</sup> The Crimes (Female Genital Mutilation) Amendment Act 1994 (NSW) was assented to in October 1994 but is not yet proclaimed. It is proposed that the legislation will be accompanied by an extensive information and education program aimed at educating the community about the potential health problems associated with this practice. Clearly, a strategy of coherent intervention with a focus on education is desirable, as it would be naive to think that legislation alone will result in eradication.<sup>20</sup> This education should also focus on educating each of the vulnerable communities as a whole, so that clitoridectomy would no longer be a prerequisite for marrying within the cultural group.<sup>21</sup>

It will be interesting to observe what emphasis the NSW Government in fact places on education in light of the Family Law Council's recommendation that the criminalising provisions of the legislation "should not become operative until the education program is satisfactorily established and operating".<sup>22</sup>

The reasons for the speed of the NSW response are not altogether clear. In 1990 the Australian Law Reform Commission (ALRC) reported on the issue and in 1991 a NSW working party also examined the possibility of legislation. Both reports recommended an education focus *without* specific government action banning the procedure. In light of these two studies, why the NSW Bill preceded the Final Report of the Family Law Council, and thus, upon what basis it was deemed appropriate, are matters for speculation. Authoritative government sanctioned action may clearly be justified<sup>23</sup> however, it must be based on much more than "instantaneous revulsion",<sup>24</sup> media pressure and preliminary conclusions based on scarce evidence. Otherwise, we will defeat the original purpose of eliminating this harmful practice and instead send it into fiercely protected hiding. Simplicity, while attractive, is to be avoided at the risk of ignoring the very real pitfalls and dilemmas inherent in this debate.

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19 Initiatives in other States include a report by the Law Reform Commission in Queensland, and expressed interest in legislation by Victoria and South Australia. Legislation banning "female genital mutilation" is also an ongoing item on the agenda of the Standing Committee of Attorneys-General.

20 Efua Dorkenoo, interviewed on "Female genital mutilation", *The Coming Out Show*, ABC Radio (19 March 1994). See "Ban on female mutilation soon", *Sydney Morning Herald* (3 March 1994), p 5 for comments from the Minister for the Status of Women, Mrs Chikarovski.

21 Other ways of promoting awareness of the issue include grassroot actions by women's groups, the integration of campaigns as part of the national health plan, training and education programs, financial assistance, and sensitisation programs.

22 Note 10 above, Recommendation 3, p 55.

23 That national legislation will be passed seems inevitable given that proposals have so far received bipartisan support at both levels of government: see n 18 above, and n 20 above.

24 Note 6 above.

In fact, the State legislation has received scathing attacks from community groups who have described it as a "knee-jerk reaction"<sup>25</sup> and have accused governments of rushing into legislation without consulting women in the ethnic communities where the practice is reportedly occurring. According to some sectors, an understanding is required rather than just "shock at something which is alien and abhorrent to us".<sup>26</sup> In England, the activist Efua Dorkenoo has approached the issue by appealing to families not to circumcise their daughters "as we are now living in a different world from the kind of world that our parents lived in".<sup>27</sup> She appeals to families to use alternative ways of promoting in children integrity and respect for their bodies rather than clinging to "archaic" means of controlling women's sexuality. Kirsty Magarey of the ALRC has stated that specific laws (making it illegal) seem to be "counterproductive" given that widespread reports of the issue seem to "feed a cultural blindness".<sup>28</sup> In fact the NSW Ethnic Affairs Commission reports of racism toward Muslim children in schools during such media attention<sup>29</sup> and the Family Law Council has expressed its concern that sensationalised media treatment of the issue tends to encourage vilification or victimisation of people from particular countries or who practise particular religious beliefs.<sup>30</sup>

Two examples of actions relating to clitoridectomy being heard in the courts are of particular interest. First, a recent Victorian case in which supervision orders were granted for two girls who had been circumcised demonstrated that both the courts and the Department of Health see clitoridectomy as an issue warranting intervention.<sup>31</sup> In that case, the Magistrate said that clitoridectomy was "clearly" taking place in Melbourne and, upon hearing evidence from an interest group,<sup>32</sup> was concerned about the effects this form of assault would have on children.<sup>33</sup> Second, according to newspaper reports, a Nigerian woman in the United States has successfully defended a deportation order using the fear of having her daughters circumcised on return to her native country as a basis for appeal. The case is the first of its kind and is seen as a test case in the United States.<sup>34</sup> Pressure has mounted in the United States for federal legislation

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25 Nancy Marshall, Ecumenical Migration Centre, Melbourne, interviewed on 2BL Radio (3 March 1994) and Pat Johnson, Immigrant Women Resource Centre, Sydney interviewed on *The Coming Out Show*, n 20 above.

26 Dr Christine Bayly cited in, "Painful truth about female circumcision", *Sydney Morning Herald* (3 December 1993), p 11.

27 Interviewed, n 20 above. The burdens faced in this "new world" include coping with racism and discrimination.

28 Interviewed, n 20 above.

29 Ibid.

30 Note 10 above, p 2-3.

31 "Health officials to supervise circumcised girls, court rules" *The Age* (1 March 1994), p 2.

32 Women Lawyers Against Female Genital Mutilation was granted the status of *amicus curiae* in the proceedings.

33 "Court hears of genital surgery", *Sydney Morning Herald* (2 December 1993), p 4.

34 "Fear of female circumcision" (cited in US deportation hearing), *The Age* (22 March 1994), p 3.

banning clitoridectomy, but is facing opposition based on fears of creating a new category of “cultural asylum”.

### Feminist debate on human rights

Transcending national boundaries we must question the capacity of international human rights law to address the issue of clitoridectomy. Feminists have conducted an international debate over the validity of the use of rights discourse and questioned its ability to achieve equality and justice for women. Many have argued that women should “make ‘rights talk’ their own”<sup>35</sup> and use the discourse as an empowering tool. It follows that international human rights law should, through a greater contribution from women, be made responsive to and more inclusive of women’s claims. For example, this would be achieved by eroding the artificial public/private distinction and by adding a gender dimension to rights by interpreting treaties’ content through subsequent practice.<sup>36</sup> Others point to the severe limitations involved in approaching women’s inequality and systemic subordination on the basis of individual rights rather than on a more comprehensive needs strategy which takes account of the socio-economic context.<sup>37</sup> Rights discourse carries the disadvantage of tending toward constructions of competing rights and of ignoring the ways in which women are subordinated as a group. External critics argue that the existing human rights structures are male defined and male deployed and are simply unable to assimilate women’s issues/demands/rights as the system itself perpetuates women’s subordination.<sup>38</sup>

Rights, however, can be a very powerful tool for certain groups and the attainment of full rights under international law remains a fiercely motivational source of hope for women. “It is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no-power. The concept of rights, both positive and negative, is the marker of our citizenship, our participatoriness, our relation to others.”<sup>39</sup> Thus, for the purpose of this essay I shall adopt the presumption that there *should* be a relationship between international human rights and women’s rights, but the inherent limitations of this strategy should not be forgotten and its effectiveness will no doubt differ from one culture to another. An essential preliminary step is to develop a more expansive

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35 Romany cited in Cook, “Women’s International Human Rights Law: The Way Forward” (1993) 15 *Human Rights Quarterly* 230 at 232, 238. The significance of these and other approaches is beyond the scope of this essay. Suffice to say that recharacterisation is needed so that women’s human rights are not marginalised and the implementation of such rights becomes part of the central agenda of human rights work.

36 Charlesworth, Chinkin and Wright, “Feminist Approaches to International Law” (1991) 85 *American Journal of International Law* 613 at 624–25, 638–40. Also Engle, n 1 above, at 1521.

37 MacKinnon C, *Feminism Unmodified* (1987), p 101.

38 Engle, n 1 above, at 1519–20. Charlesworth, n 36 above, at 634–36 outlines many of the criticisms of “rights”.

39 Williams, “Alchemical Notes: Reconstructing Ideals From Deconstructed Rights” (1987) 22 *Harvard Civil Rights—Civil Liberties Law Review* 401 at 431.

understanding of the context of women's subordination especially where "oppression is exacerbated by poverty or ethnic status".<sup>40</sup> Indeed, while the nature of the subordination and the means to combat it may vary, a Sudanese lawyer has stated that "we must not lose sight of the fact that we are subordinated *because we are women*"<sup>41</sup> and that the overriding aim of eliminating *all* forms of subordination is universal.<sup>42</sup> Having so stated, we must be aware that a feminist recharacterisation of law in a particular society "cannot be imported wholesale either into other types of societies or into the international human rights system".<sup>43</sup>

Thus we are faced with the crucial and complex question of how to legitimise universal human rights in radically different cultures without succumbing either to the homogenising effect of universalism or the paralysis of cultural relativism.

### Cultural relativism versus universalism

Universalism insists that human rights are inalienable rights which everybody has by virtue of being human. Since these rights have been derived through international consensus, they are therefore universally applicable regardless of culture. Donnelly, however, points out that radical universalism, which is at the opposite end of the continuum to radical cultural relativism, implies dangers of moral imperialism which "hardly need be emphasised".<sup>44</sup> Human nature itself is a product of social and natural forces and thus requires significant allowance for cross-cultural variations in human rights. Thus, he advocates a weak cultural relativist approach which would recognise a comprehensive set of *prima facie* universal human rights, such as contained in the Universal Declaration of Human Rights (UDHR), where the presumption of universality can be overcome in particular circumstances by specific cultural arguments.<sup>45</sup> The fundamental value underlying the UDHR and the Covenants is the notion of the inherent dignity and integrity of every human being.

Cultural relativism was originally introduced to combat Eurocentric and racist notions of progress in anthropological studies.<sup>46</sup> Its proponents acknowledge the validity of diverse patterns of life and they stress "the need for tolerance of conventions though they may differ from one's own".<sup>47</sup> Applied to human rights law, this view questions the validity of claims which establish universal principles for judging the conduct of all cultures.<sup>48</sup> Mayer in fact

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40 Cook, n 35 above, at 233.

41 Halim, cited *ibid.*

42 Charlesworth, n 36 above, at 621.

43 Cook, n 35 above, at 234.

44 Donnelly J, *Universal Human Rights in Theory and Practice* (1989), p 110.

45 *Ibid.*, pp 122–24.

46 Mayer, "Current Muslim Thinking on Human Rights" in An-Na'im and Deng (eds), n 4 above, p 133.

47 An-Na'im, n 4 above, p 340.

48 Brennan K, "The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study" (1989) 7 *Law and Inequality* 367 at 370.

questions this application on the grounds that international law is no longer the artefact of imperialism, rather it has evolved and is now the result of contribution and reformulation by all nations.<sup>49</sup>

While recognising legitimate claims to cultural relativism and self-determination, Mayer warns against an approach which resists the application of international human rights protections in the name of applying, for example, Islamic law. Such an approach all too often emanates “from governments and ideologues of movements aspiring to governmental power”.<sup>50</sup> She implies that cultural relativism is used to deny Muslims the same protections that international law affords Westerners. The name of old imperialism and the Eurocentric vision of international law cannot be evoked as adequate justification for this denial of rights.<sup>51</sup> Clearly, we must question whether there is a politically pragmatic purpose in arguing relativism, thus making the call false.

In order to diffuse charges of ethnocentrism it is often said that for human rights to be effective they must be embraced and respected as part of the culture and traditions of the given society otherwise implementation at all levels will be thwarted.<sup>52</sup> To do this it is necessary to seek ways to support and legitimise human rights using the values, norms and processes of change belonging to the relevant cultural tradition.<sup>53</sup> “When the law of women’s human rights is associated with an impersonal and homogenising Western state, the rights are discredited.”<sup>54</sup> Understandably, the effectiveness of prohibitory laws is questioned when the people do not believe that certain cultural traditions are violations of human rights. “What is the point of all the Constitutional protection if ‘ethnic identity’ is an acceptable justification for reducing the status of women according to diverse cultural practice?”<sup>55</sup> Coomaraswamy therefore argues that “legal strategies to emancipate women need to allow women to touch base with their traditional sources of empowerment”.<sup>56</sup> It is hoped that through both internal discussion and cross-cultural debate, the ability of African and Middle Eastern women to understand and address the nature of gendered subordination in their own societies will be enhanced. The aim is to broaden universal cultural consensus on women’s rights without the cross-cultural dialogue imposing on African and Middle Eastern women the terms of debate derived from the experience of other societies.

An obvious response to these claims is that it is often religions and “traditional cultures”, that are the source of women’s oppression.<sup>57</sup> This is true

49 Mayer, n 46 above, p 153.

50 Ibid, p 154.

51 Ibid. Donnelly proffers a similar warning against the “cynical manipulations” of claims by repressive regimes to cultural relativism, n 44 above, p 119.

52 An-Na’im, n 4 above, pp 332–33 and also Coomaraswamy cited in Cook, n 35 above, p 235.

53 An-Na’im, n 4 above, p 339.

54 Cook, n 35 above, p 235.

55 Coomaraswamy cited in *ibid*, p 236.

56 Ibid.

57 Charlesworth, n 36 above, at 620.

at all levels of society when one also considers the role of the sanctity of the home and family in creating and perpetuating hierarchies. These paradigms ensure that the power structure which places men in a position of control over women continues to exist.<sup>58</sup> One corollary is to prefer a secular option but is this possible in societies where religion or culture constitute women's only frames of reference or discourse?

The notion that there is already cross-cultural consensus on certain values is evidenced by the almost universal proclamation throughout industrialised and developing nations of a commitment to human *rights*. Even in the countries where practice may fly in the face of these proclamations, reducing their value to mere rhetoric, nevertheless, "such a widespread international moral 'fashion' must have some substantive basis".<sup>59</sup> Donnelly later says that it would

be difficult to imagine cultural arguments against recognising the personal rights of Articles 1–3 (of the UDHR) which recognise rights to life, liberty, and security of the person;...and protections against...inhuman or degrading treatment. These are so clearly connected to basic cross-cultural requirements of human dignity...(that) I am even tempted to say that conceptions of human nature or society that are incompatible with such rights would be indefensible almost by definition.<sup>60</sup>

The problem would seem to be one largely of pragmatism. While it is infinitely tempting for Western feminists to reject a cultural relativist perspective and argue for universal human rights, attempts to enforce universalism are inevitably plagued by relativist resistance. Valid theoretical notions do inform cultural relativism and the notion of human rights is dynamic requiring constant reworking as an increasing number of claims from dispossessed groups are made.

### Clitoridectomy as a case study

The practice of clitoridectomy is often used as a case study to highlight the difficulties in this debate. It has been variously described as "a particularly horrendous example of the abuse of women",<sup>61</sup> an "extreme example of misogyny and (male) societal control over female bodies",<sup>62</sup> and "a barbaric mutilation of women and children".<sup>63</sup> Unlike footbinding in China and clitoridectomy in the Western world, both of which are often compared and contrasted to African and Middle Eastern clitoridectomy, this practice has proved remarkably resistant to attempts of reform. Controversy surrounds the issue and has served to stifle the objectives of first achieving consensus to an appropriate approach and then positive action to eradicate this form of abuse.

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58 Wright, "Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions" (1992) 12 *Aust YBIL* 242.

59 Donnelly, n 44 above, p 113.

60 *Ibid*, p 122.

61 Wright, n 58 above.

62 Engle, n 1 above, at 1510.

63 Giorgis cited in Lightfoot-Klein, n 3 above, p 174.

I would argue that we should use the valuable insights into the linguistic and power dynamics of the international human rights system already provided by feminist critiques, but that we must also recognise and respond to the differences *among* women. The particular complexities surrounding clitoridectomy result from the fact that the procedure which is almost universally performed by women, is often claimed to be a desired “act of love”, and it is also deeply rooted in culture. In order to understand these complexities we must acknowledge and engage this “Exotic Other Female”.<sup>64</sup> Engle claims that in the current debate, radical feminists see the relativist position as false and inconsistent but in the process they ignore or dissipate the “Exotic Other Female” by assigning to her “false consciousness”. Thus radical feminists, while challenging notions of universality and essentialism in international law, on this issue become guilty themselves of assuming an essential women’s voice.<sup>65</sup> On the other hand, liberal feminists or doctrinalists, who do acknowledge the tension between cultures but then try to work around it, are in effect maternalistically trying to change her mind. They do not confront the practice itself, nor try to engage the women who condone it.

In attempting to take up the challenge of listening to a multiplicity of women’s voices and engaging the women who condone the practice, it is important to examine the context in which clitoridectomy occurs.

The procedures are said to have been performed for 2,500 years (well before the advent of Islam which is often thought to be a source of the practice) and are currently practised through much of Africa and the Middle East. Estimates of the number of women and young girls currently operated on ranges from 30–100 million.<sup>66</sup> In Sudan for example, it is estimated that 85 per cent of the population are pharaonically circumcised. The operation ranges in severity from a ritual scratch of the clitoris (mild sunna) which leaves little or no damage, to the more drastic infibulation (pharaonic circumcision). Infibulation involves the removal of the clitoris, labia minora and the fleshy inner layers of the labia majora followed by the closing of the orifice of the genital organs leaving only a pea size opening to allow menstrual and urinary flows.<sup>67</sup> The opening is cut at the time of marriage and widened to allow penetration of the male sex organ and then again at childbirth after which the woman is often reinfibulated.

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64 Engle, n 1 above, at 1512. The term is used to “signify collectively those women within a culture that practises clitoridectomy, who through their action (or inaction) condone the practice”.

65 Ibid, at 1514, 1524.

66 Lightfoot-Klein, n 3 above, p 31. She believes Hosken’s 1982 estimate (80 million) is likely to be the most accurate. If adjusted for 2.9 per cent population increase it would equate to 94 million in 1989.

67 For a more detailed description of the various procedures see Lightfoot-Klein, n 3 above, pp 32–36, 52–55 for actual accounts. For the purposes of this analysis with regard to human rights violations, I am interested in the more commonly performed operation of infibulation. I agree with Slack in her conclusion that if an educated, married woman decides to undergo the milder operation of a ritual scratch then that is her prerogative. See Slack, “Female Circumcision: A Critical Appraisal” (1988) 10 *Human Rights Quarterly* 437 at 472. However, infibulating a baby girl is an altogether different operation.

The often severe and debilitating physical and psychological effects of the operation are well-documented.<sup>68</sup> It is often done under conditions of poor hygiene with no anaesthetic,<sup>69</sup> and unlike male circumcision which is less problematic, the operation can be life-threatening. These dangerous and debilitating operations are performed on girls aged anywhere from eight days to their early teens.<sup>70</sup>

### Reasons for the procedure

The most common reason usually given for continuing the practice is that it is "simply custom, and everyone must bow to custom".<sup>71</sup> Other reasons usually proffered include protecting women's chastity upon which family honour is dependant; reducing women's sexual desires; persuading women to adopt their secondary position in the tribe;<sup>72</sup> preventing rape; a belief that it is required by Islam; and various tribal myths. Examples of these myths include: the clitoris is poisonous and will kill a man if it comes in touch with his penis; that if it is not excised the clitoris will grow to the size of a man's penis; that clitoridectomy enhances fertility or makes childbirth easier (in fact the reverse is true of both); and that clitoridectomy is a cure for melancholy, insanity, epilepsy and kleptomania.<sup>73</sup> We should remember that some of these myths were also used to justify circumcising Western women as late as the 19th century. Several studies in recent years have shown many of these firmly held beliefs to be without foundation.<sup>74</sup>

**Tradition:** Authorities concerned with the preservation of tribal group identity argue that clitoridectomy is one of the traditional rituals which must be preserved to ensure these identities are maintained. This is problematic. First, Cerny Smith argues that the anthropological analysis which supports this conclusion is flawed.<sup>75</sup> Second, the procedure is often accompanied by gifts and great fanfare which leads to the description of it being a "celebration of womanhood".<sup>76</sup> However, many girls later report feelings of terror, tremendous humiliation and betrayal.<sup>77</sup> The Report of the Working Group on Traditional

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68 Hosken, "Female Genital Mutilation and Human Rights" (1981) 1 *Feminist Issues* 3 at 6–7. Slack, n 67 above, at 450–54.

69 Slack, n 67 above, at 442–43 describes the conditions and instruments used.

70 Cerny Smith, "Female Circumcision: Bringing Women's Perspective Into the International Debate" (1992) 65 *Southern California Law Review* 2449 at 2487. Lightfoot-Klein, n 3 above, p 52: In Sudan they are generally carried out on girls between 4–8 years although when several girls from a family are done together they can range from 2–11.

71 Lightfoot-Klein, n 3 above, p 38.

72 Cerny Smith, n 70 above, at 2471.

73 Slack, n 67 above, 447–48 and Lightfoot-Klein, n 3 above, pp 38–39.

74 It is beyond the scope of this essay to embellish on these points. See Lightfoot-Klein, n 3 above, pp 40–41, 69, and Slack, n 67 above, at 459–61.

75 Cerny Smith, n 70 above, at 2473.

76 Gunning, "Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries" (1991–92) 23 *Columbia Human Rights Law Review* 189 at 218.

77 Lightfoot-Klein, n 3 above, p 74.

Practices found that the two cultural functions served by the practice (of initiating girls to womanhood and of testing their capacity to endure suffering and the pain of childbirth) were now obsolete in light of changes in the practices.<sup>78</sup> This supports the argument that it is done largely in blind obedience to tradition.<sup>79</sup>

The question then arises “whether a society has the right to carry on a tradition, simply for the sake of tradition, even if it is dangerous or possibly fatal”.<sup>80</sup> The debate is often turned at this point to question Western practices which are also known to be unhealthy or dangerous such as self-starvation techniques and cosmetic surgery. Gunning argues “the general air of superiority and self-righteousness (of Western feminists) must wither away upon reviewing...how far we still have to go in our own cultures”.<sup>81</sup> Slack focuses on the notion of voluntariness, which I discuss later, as the distinguishing factor.<sup>82</sup> Indeed, compared to the “voluntary” practice of cosmetic surgery, non-compliance with the tradition of clitoridectomy carries with it a number of sanctions. A woman who has not participated in the ritual is likely to be denied the possibility of marriage<sup>83</sup> and is thereby foreclosed access to certain privileges of her society. Other sanctions include the inability to inherit and having one’s children declared illegitimate or even strangled (in East African Nandi).

**Religion:** Although the people who continue the practice commonly believe it is required by Islam, two problems exist with this viewpoint. First, it is not mentioned in the Qur’an and it is argued that the Prophet Muhammad in fact supported sexual fulfilment for both sexes. Also, in 80 per cent of the Islamic world today, the practice is unknown.<sup>84</sup> Secondly, the operation does not necessarily ensure virginity before marriage, nor fidelity during marriage. Reinfibulation is always possible to give the appearance of virginity and interfering with the external genitalia may affect orgasmic ability but does not seem to impair the psychological desire for sexual activity. Demonstrating refusal to accept religion as a valid reason, El Sadaawi states: “If religion comes from God, how can it order man to cut off an organ created by Him as long as that organ is not diseased or deformed?”<sup>85</sup>

### Arguments and measures against the procedure

The arguments against the procedure encompass a general revulsion from the physical perspective; a frustrating awareness that it is mostly carried out unnecessarily as a result of inaccurate beliefs and myths; and a belief that the

78 Warzazi H, *Report of the Working Group on Traditional Practices Affecting the Health of Women and Children* (1986) UN Doc E/CN.4/1986/42 at pp 11–13. Girls are now circumcised well before puberty, in some cases with anaesthetic.

79 Brennan, n 48 above, at 390.

80 Slack, n 67 above, at 463.

81 Gunning, n 76 above, at 213.

82 Slack, n 67 above, at 468–72, and see text at notes 114–19 below.

83 In many of these cultures, no one would marry an uncircumcised woman.

84 Lightfoot-Klein, n 3 above, pp 41–42.

85 El Sadaawi cited in Wright, n 58 above.

practice is degrading to women. Slack claims that the dominant and most widely based objection is based on the concern for the subjection of so many women and children to excruciating pain, physical damage and even death.<sup>86</sup> Efforts have thus been made at domestic and international levels to eradicate the practice.

#### *African domestic laws:*

Evidence that an approach which ignores a contextual analysis is not only theoretically flawed, but also practically speaking virtually useless, exists in the ineffectiveness of pieces of domestic legislation which were externally imposed rather than the result of an accepted growth or change in values. An examination of attempts to outlaw the practice in Kenya, Sudan and Egypt shows that legislation alone is insufficient to deal with the increasing occurrence of the practice and that measures which are externally imposed are unlikely to be enforced.<sup>87</sup> While many women still lively support the practice, outlawing it will mean they will merely hide it and will not seek medical attention when things go wrong.<sup>88</sup> Furthermore, many of the countries in which the practice continues are culturally opposed to legally punishing women and thus punitive laws are not acceptable to the local people.<sup>89</sup> Clearly, legislation without education or a substantive change in values is unworkable.

#### *International human rights law:*

In May 1993, the World Health Organisation's annual assembly officially condemned the practice in all its forms. December 1993 then heralded the adoption of the Declaration on Violence Against Women by the United Nations General Assembly.<sup>90</sup> This ground-breaking document uses a sophisticated definition of violence which specifically includes "female genital mutilation and other traditional practices harmful to women".<sup>91</sup> Furthermore, article 4 condemns the use of custom, tradition and religion as a justification to avoid eliminating violence against women. Together with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), these instruments have demonstrable value in their focus on women's well-being. However, neither contains procedures for enforcement or complaints and CEDAW is riddled with reservations. These instruments' lack of "teeth" underlines the need to ensure that other treaties are also used to protect women.<sup>92</sup> In fact, various international instruments are often argued as

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86 Slack, n 67 above, at 450.

87 Boulware-Miller, "Female Circumcision: Challenges to the Practice as a Human Rights Violation" (1985) 8 *Harvard Women's Law Journal* 155 at 158-60.

88 Gunning, n 76 above, at 229.

89 El Dareer A. *Woman Why Do You Weep?* (1982), p 95.

90 GA Res 48/104 (1993).

91 Article 2(a). See Charlesworth, "The Draft Declaration on Violence Against Women" (1993) 2 *Human Rights Defender* 3 at 3-4, for discussion on the then Draft Declaration.

92 United Nations, "Violence Against Women", *United Nations Focus*, UN Department of Public Information (1993), p 3 and United Nations Information

providing the basis for rallying against the practice on the grounds of human rights.

**Rights of the child:** The Declaration of the Rights of the Child, principles 2 and 4, and the Banjul Charter on Human and People's Rights article 18(3) assert that children must be guaranteed the opportunity to develop physically in a healthy and normal way. Principle 9 of the Declaration also protects against cruel and degrading practices. These rights have been translated into and expanded upon in articles 3, 6, 19, 24 and 37 of the Convention of the Rights of the Child (CRC). Article 24(3) of CRC specifically requires States to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children". The main problem with asserting these rights however, is that the argument has been interpreted as implying that African and Middle Eastern women are incompetent and abusive mothers.<sup>93</sup> In fact, these women circumcise their daughters because it is thought to be in their best interest, not as an attempt to abuse them.

**Right to sexual and corporal identity:** These rights are collectively drawn from the various instruments.<sup>94</sup> This argument "stresses that the practice violates a woman's right to control her own body and is intended to deprive her of her sexuality".<sup>95</sup> Proponents of this approach argue that the clitoridectomy is intended to suppress sexual drive, restricts and disfigures women's anatomy and subjugates and denigrates women and children. Because these claims are dressed in terms which describe the practice as barbaric, they are often objected to as being culturally insensitive.

**Right to be free of cruel and degrading practices:** These rights<sup>96</sup> may be violated due to the pain and trauma caused by the conditions under which the operations are mostly performed.

**Right to health:** UDHR article 25 provides that "(e)veryone has the right to a standard of living adequate for...health and well-being...Motherhood and childhood are entitled to special care and assistance". The Banjul Charter contains a similar provision in article 16 as does CEDAW in article 12. This is widely argued in light of the menacing health problems which clitoridectomy produces.

Centre, "Women's Conference Backgrounder", *Press Release*, Sydney, (8 November 1993), p 4.

93 Boulware-Miller, n 87 above, at 166.

94 Universal Declaration of Human Rights article 3; Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) article 1, and the Banjul Charter, articles 4 and 6.

95 Boulware-Miller, n 87 above, at 169.

96 Universal Declaration on Human Rights, articles 5; International Covenant on Civil and Political Rights (ICCPR) article 7; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, articles 1(2) and 4; and the Banjul Charter, article 5. The ICCPR and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment both have enforcement procedures.

### Which approach should be adopted?

Many commentators advocate adopting the cautious and arguably culturally sensitive approach of strategic positivism whereby rights are not stressed but the argument most likely to succeed, the health argument, is accepted.<sup>97</sup> They argue that under this approach both governments and women are more likely to accept an end to the practice because it uses non-inflammatory language and it avoids an "imposing and judgmental approach".<sup>98</sup> In the same vein, the Sub-Commission, having adopted a resolution that the practice was a violation of human rights,<sup>99</sup> then avoided the normal usage of persuasion and embarrassment of governments in favour of recommendations to assist public education and other African efforts toward eradication.<sup>100</sup> Brennan heralds this low key approach aimed at gradual change as an example of how human rights bodies can "appropriately address cultural practices".<sup>101</sup>

However, Engle is critical of this strategy because "(r)ather than finding out why women defend the practice, they try to convince them to change their minds, by phrasing the issue as one of health".<sup>102</sup> In fact, the UN Report on Traditional Practices, found that women within the cultures in which clitoridectomy is practised rarely cite health as a reason for opposing it. Rather the reasons discussed were "violation of human rights", "social complication", "cultural conformism" and "violation of women's image".<sup>103</sup> Indeed, it has been stated that more appropriate than the health approach would be one "that would focus on the uselessness of the practice coupled with sexual enlightenment geared to minimise the guilt surrounding sexual desire and enjoyment".<sup>104</sup>

Other problems recognised with the health approach include the handing over of the practice to a male dominated medical profession which brings attendant negative consequences.<sup>105</sup> Also, if the negative health consequences could thus be eliminated then by obligating States to ensure better health conditions for the practice, international law "might actually become complicit in the practice".<sup>106</sup>

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97 For example, Brennan n 48 above, Slack n 67 above, Gunning n 76 above, and Boulware-Miller n 87 above.

98 Boulware-Miller, n 87 above, at 166–67. Slack argues for a strategy aimed at educating people about the health risks because the approach is politically more acceptable and "the governments of these countries...will be more easily convinced of the importance of dealing with the issue of circumcision if it is linked with the right of their people to have decent health", n 67 above, at 485–86.

99 Sub-Commission Res 1988/34, UN Doc E/CN.4/Sub.2/1988/45 at 62.

100 Brennan, n 48 above, at 392.

101 Ibid, at 395.

102 Engle, n 1 above, at 1515.

103 Warzazi, n 78 above, p 15.

104 Shaalan cited in Lightfoot-Klein, n 3 above, p 171.

105 Gunning expresses concerns about the insensitivity of a male-dominated medical profession to the needs of women: n 76 above, at 230. Hosken argues it would constitute a misuse of scarce modern medical equipment: n 68 above, at 9.

106 Engle, n 1 above, at 1515.

The most crucial failure of the approach outlined is that it does not recognise patriarchal control of women and the need for economic independence. By focusing very narrowly on health issues, it avoids the more difficult problems of changing cultural norms. I believe the most valid and theoretically honest approach is to view clitoridectomy as a manifestation and exercise of male power. Through the various ripple effects, physically, socially and economically, clitoridectomy ensures the continued subordination of women in the cultures where it is practised. They are deprived of their sexuality and health, deprived of an opportunity to be economically independent,<sup>107</sup> deprived of choice over their own bodies and in some cases pay the ultimate price when they are deprived of their lives. Because these women's choices are so severely restricted by the requirement of this ritual, and because marriage and sexual orientation toward men are seen as an inevitable component of their lives, the link between clitoridectomy and powerlessness becomes undeniable. Genital surgery is used to maintain women's submissive position in society to the benefit of men in power because it leaves all power and control with men.<sup>108</sup>

Although patriarchal thinking varies in its cultural embodiments, there appears to be an "astounding convergence"<sup>109</sup> of cultures as to the permissibility, if not necessity, of violence as a means of enforcing a patriarchal system. Some international initiatives have recognised and addressed this pervasiveness of gender based violence. The Committee on the Elimination of Discrimination Against Women has clearly stated that violence against women is a form of discrimination "that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".<sup>110</sup> The Declaration on Violence Against Women goes further to recognise it as a manifestation and mechanism of women's subordination.<sup>111</sup> However, despite these examples where a more sophisticated analysis has been applied to international human rights *policy*, there is precious little in terms of enforcement mechanisms which would transform these refined statements of principle into accepted practice.

Adopting the approach above, I am wary of Engle's criticisms lest the focus on subordination becomes an exclusive focus and thus leads to an analysis which generalises the extent to which all women have an interest in overcoming men's power. Women are not all essentially the same and I accept that women disagree on this issue, in the same way that women disagree on other thorny issues such as pornography. However, it is not enough to hide behind cultural relativism arguments which are often used to manipulate and silence debate. "Ultimately the purpose of feminist theory is...to help women of different cultures, races, and classes name their experiences, speak their truths, and fight

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107 This is because they are not only ostracised but also often immobilised by the physical effects.

108 See Rich, "Compulsory Heterosexuality and Lesbian Existence" in Snitow A et al (ed), *Desire: The Politics of Sexuality* (1983), p 212 at 218–220, 223.

109 Copelon cited in Cook, n 35 above, at 249.

110 General Recommendation 19 (1992).

111 Declaration on Violence Against Women: Preamble.

their daily oppressions."<sup>112</sup> Thus the purpose of highlighting the oppressive nature of clitoridectomy is to make the oppression visible and to allow women of these cultures to speak their experiences and alter traditional practices.

Why *do* women often perform and insist on the operations?<sup>113</sup> A common response is that due to lack of knowledge about the falsity of many of the reasons (as exposed above), the claim of voluntariness is false. For example, the recurrent, manifold problems suffered by women are considered to be "normal" and are not understood to be an outgrowth of the early childhood operation.<sup>114</sup> "If women had accurate information, they may choose to refuse to perform or allow circumcisions. Thus, their choice is not in fact 'voluntary'".<sup>115</sup> Further, females do not actually voluntarily choose to undergo the procedure. Given the increasingly young age at which the operations are performed, consent is not applicable, rather it is a choice made for them by their parents. Social pressure plays a large role also as the fear of ostracism for rejecting tribal values and of not being "suitable" for marriage underlies many of the decisions. "(W)omen insist on circumcision for their daughters in order to assert their indispensability as the potential mothers of men...(and so they may) attain a position of respect in (their) old age".<sup>116</sup> Hosken questions the notion of choice by asking: "How many children would be operated on if men would publicly declare that henceforth no one will marry a girl who is operated on?" Her prediction is that "(t)he operations would instantly stop everywhere".<sup>117</sup>

Also, it can be said that intimidation enforces conformity: "the ritual surrounding circumcision may function to cover up painful experiences of members and the participants to accept [their] culturally prescribed destiny under the guise of a desirable norm".<sup>118</sup> Economic reasons may force women to undergo the operation as without the support of a husband there are few ways to earn a living. Thus it appears that any choice to subject themselves to this ritual is far from "voluntary", and these observations point to the fact that women *may* actually experience clitoridectomy as an oppressive practice. Indeed educated women in Khartoum are becoming aware that other options exist and are expressing a sense of outrage and beginning to reject the feminine role assigned to them.<sup>119</sup>

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112 Cerny Smith, n 70 above, at 2489.

113 In a study conducted in Sudan it was found that 82.6 per cent of women and 87.7 per cent of men were in favour of continuing the practice: El Dareer, n 89 above, p 66.

114 Lightfoot-Klein, n 3 above, p 59. Lack of information is also attributable to the illiteracy amongst African women which is reported to be at 90 per cent in some countries: Hosken, n 68 above, at 11.

115 Cerny Smith, n 70 above, at 1587.

116 Lightfoot-Klein, n 3 above, p 40.

117 Hosken, n 68 above, at 16.

118 Cerny Smith, n 70 above, at 1587. Lightfoot-Klein, n 3 above, p 61 refers to a "highly developed ability to adapt, and thereby survive" which involves a form of trance or self-hypnosis which occludes a horrendously painful event.

119 Lightfoot-Klein, n 3 above, p 76.

Another important contextual consideration is that even amongst knowledgeable African women who see clitoridectomy as a lamentable practice, it is nowhere near the top of women's priorities in these countries. They suffer from "chronic malnutrition, excessive work, little obstetrical care and poor environmental conditions which are equally if not more mutilating than female circumcision".<sup>120</sup> While this is not a reason to abandon the fight for eradication, the practice should not be isolated from the whole range of debilitating conditions which constitute the reality of African women.

The fundamental object must be to empower African women and importantly this need not necessarily lead to denigration of traditional life but the two can be symbiotic. To explain this argument Cerny Smith reduces the debate to the conflict between two equally valid rights: the rights of tribal groups to maintain traditional practices<sup>121</sup> versus women's right to protection by the State from the traditional practice of clitoridectomy.<sup>122</sup> She then asks why the conflict is currently resolved in favour of tribal groups and continues to criticise a male-biased Western tradition which rests on binary oppositions<sup>123</sup> and inevitably gives priority to the leading term which aids male supremacy.<sup>124</sup> Why does choosing one right have to involve sacrificing the other? She concludes that the survival of tribal identities

depends not only on maintenance of important traditions, but also on the unity and equality of the tribal members. Women having the power to refuse female circumcision, the power to control their own sexuality, and the power to control their own lives will benefit, not destroy, the tribe. Tribal unity can exist *without* hierarchy.<sup>125</sup>

This view is supported by the statement made by Dualeh at the 1979 WHO Seminar:

The women and people of Somalia consider that as long as women are subject to measures which discriminate against them or restrict them in the flowering of their human potential and in the exercise of their political and economic rights, their society will become weak.<sup>126</sup>

Women's rights should not be defined in opposition to tribal group rights rather the debate should recognise that the rights of the two are interrelated and interdependent.

Any effective strategy must also address the practical fact that many African women support the continuation of the practice because it is one of the only sources of economic and social status for the two groups of women who benefit:

120 Giorgis, cited *ibid*, p 174.

121 UN Charter article 1(2); International Covenant on Economic, Social and Cultural Rights article 1(1); Banjul Charter articles 17(3), 18 and 20.

122 Based on the right to be free from cruel and degrading practices, the right to sexual and corporal identity *and* the right to health.

123 For example: unity/diversity, identity/difference, presence/absence and universality/specificity. See Cerny Smith, n 70 above, at 3501.

124 *Ibid*, at 2499–2502.

125 *Ibid*, at 2502.

126 Cited in Hosken, n 68 above, at 4.

midwives and grandmothers.<sup>127</sup> "The economic significance of the practice to (medically trained midwives) cannot be overemphasised".<sup>128</sup> Thus an approach which recognises the interests of these women must provide other sources of empowerment such as increased opportunities for economic independence which do not involve the abuse of young females. The idea of total economic and social liberation of women is a primary and vital step in the campaign for eradication.

One of the few instances where an actual, clear-cut rejection of the practice has been reported in Africa is amongst girls from particular areas in Ethiopia who chose to join the Eritrea People's Liberation Front, which opposes clitoridectomy. This removed them from their villages and family for some time and upon return they all refused to be circumcised. Within five years the practice was totally eradicated in that area and has not returned.<sup>129</sup> An economic alternative to marriage was created and women changed their self-conception of their abilities and roles. This is testament to the idea that "(e)conomic independence for women and their children can be a critical factor in allowing women to take risks in changing social customs".<sup>130</sup>

A remaining impediment to the implementation of international law is the notion of State responsibility which makes a State responsible only for breaches attributable or imputable to the State. Advocates of a theory which would require reconceptualising and redefining human rights argue that because clitoridectomy is a "private" practice (not officially State conducted), it cannot be seen as a human rights violation until the international human rights field has been reconceptualised to include the private sphere.<sup>131</sup> However, modern developments of the law have enhanced the prospect of State accountability for the actions of non-States along the lines of three theories: government agency, government complicity by failure to act, and government responsibility for the unequal application of the law.<sup>132</sup> Clearly further analysis is required on these theories to hold States responsible for the investigation, prevention and punishment of violations of women's rights.<sup>133</sup>

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127 Gunning points out some Sudanese contend that the insistence by these women on the operations is a thinly veiled attempt to manipulate their own personal economic power and status at the expense of the empowerment of women: Gunning, n 76 above, at 222–23.

128 Lightfoot-Klein, n 3 above, p 50.

129 *Ibid*, p 51.

130 Gunning, n 76 above, at 246. Another example given is the marked decrease in operations performed when social and economic reforms were introduced in Egypt that changed the "national, social and political position of women".

131 Engle, n 1 above, at 1520–21.

132 Cook, n 35 above, at 250–51: The sufficiency of the latter theory has been questioned in relation to enforcement of rarely used laws criminalising clitoridectomy already existing in nations such as Sudan.

133 Further analysis is beyond the scope of this essay. See *ibid*, at 250–51. Note however that the definition of violence in article 1 of the Declaration on Violence Against Women explicitly covers violence "in public or private life" and under article 4(c) States must punish acts of violence against women whether perpetrated by the State or by private persons.

## Conclusion

One notion which does deserve universal status is that all women deserve to be treated with dignity and deserve to control their own bodies. The practice of clitoridectomy is anathematic to this notion and in order for positive and effective action against the practice to be achieved, the terms of debate need to be reevaluated. First, the rights of women should not be put in opposition to rights of tribal groups, rather it must be recognised that they are interrelated and interdependent. In fact, if women have the power to refuse clitoridectomy, tribal group identity may actually be strengthened. More generally, the failure of the current human rights system to deal with this violation against women attests to feminist claims that abstract rights are currently defined by a male-dominated power structure. Only when the broad issue of patriarchal control of women, and women's unique experiences and oppressions are recognised, will the victims of the protected oppressive practice be heard and visible:

if these women have the power to name their true oppressions and experiences in the international community, they may be able to work together to reevaluate the traditions that silence them. Then they may choose which traditions truly are necessary for tribal unity from their point of view and reject those traditions that continue to oppress them.<sup>134</sup>

It is only through the process of empowering the women affected by the practice that they will be able to fight to be free of this form of gender violence. Meanwhile, to recognise clitoridectomy as a human rights issue is to put it firmly on the international political agenda where it should attract world-wide attention and support.

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134 Cerny Smith, n 70 above, at 2503.