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A Discursive Approach to Female Circumcision: Why the United Nations Should Drop the One-Sided Conversation in Favor of the Vagina Dialogues

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A Discursive Approach to Female Circumcision: Why the United Nations Should Drop the One-Sided Conversation in Favor of the Vagina Dialogues

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I. Introduction

Recently, an unprecedented number of members of the international community have called for an official ban on female circumcision. Among several other activists, United Nations officials themselves called for the General Assembly to pass a resolution banning female circumcision in the past two years, during the 65th and 66th Sessions of the General Assembly. The latter Session concluded on September 17, 2012, without fulfilling this request. Though many prominent representatives of the international community remain committed to an official U.N. ban on the practice, their efforts have not yet proven successful. This comment articulates the probable reasons—redundancy, enforcement issues, cultural sensitivity, and the consequences for human rights development—behind the General Assembly passing

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on a resolution (pun intended). The discussion then focuses on how the international community should address female circumcision and why community-based projects are the best alternative to a General Assembly resolution. Specifically, a community-based approach accounts for cultural values and consent issues which female circumcision triggers.

The benefits of a ban on female circumcision would be negligible. For the most part, a prohibition would be utterly repetitive as the majority of nations and a number of international organizations have already outlawed the practice. Disregarding this redundancy, those countries in which the practice is prevalent and outlawed exemplify how enforcement of female circumcision legislation is deeply problematic. Even if the United Nations were to pass a resolution, it would probably do little to stop female circumcision.

Further, any U.N. resolution against female circumcision, a practice deeply rooted in many cultures, would have a negative impact on human rights development. The trouble is, a resolution banning female circumcision would take away a significant tradition from many communities without discussion. Such a

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7 The European Union, for example, has passed a resolution explicitly forbidding FGC. Resolution on Female Genital Mutilation, EUR. PARL. DOC. A5-0285-2001 (Sept. 20, 2001) [hereinafter EU Resolution on FGM].


9 For example, in Kenya, tribal communities hold strong beliefs that the practice
one-dimensional response to female circumcision would likely cause backlash and has, in many instances, increased the number of girls who undergo the procedure, as demonstrated by previous legislative attempts. The United Nations has recently articulated the benefit of taking a culturally sensitive approach to promoting human rights. This approach was likely an important reason the General Assembly did not pass a resolution.

Though passing a resolution forbidding female circumcision is a symbolic step towards eradicating the practice, its effectiveness is undermined by practical concerns. Alternative approaches, such as community-based eradication projects, are better suited to address the human rights issues associated with female circumcision. In fact, the United Nations has taken up this strategy, rather than passing a resolution, in its maintenance of a U.N. Population Fund–U.N. Children’s Fund (UNFPA-UNICEF, respectively) joint program dedicated to opening a discourse with communities that practice female circumcision and finding alternatives to the procedure.

is crucial to reaching adulthood. See Kenya: Report on Female Genital Mutilation (FGM) or Female Circumcision (FGC), U.S. DEP’T OF STATE (June 2001), http://2001-2009.state.gov/g/wi/rls/rep/crfgm/10103.htm [hereinafter Kenya Report on FGC].

See Ylva Hernlund & Bettina Shell-Duncan, Transcultural Positions: Negotiating Rights and Culture, in TRANSCULTURAL BODIES: FEMALE CIRCUMCISION IN GLOBAL CONTEXT 36 (Ylva Hernlund & Bettina Shell-Duncan eds., 2007) [hereinafter TRANSCULTURAL BODIES] (describing how a 1956 ban on circumcision caused many young Kenyan girls to perform the procedure on themselves in protest); Press Release, United Nations Population Fund, Reproductive Health Round-Table Focuses on Violence Against Women, Including FGM (June 24, 1998) [hereinafter Press Release, Round-Table] (discussing the offense Ugandan citizens took to a 1989 effort by the government to ban FGC).


See, e.g., Hernlund & Shell-Duncan, supra note 10, at 37 (describing the challenges in enforcing a ban on FGM).

See Deen, supra note 11.

See id.
The underlying reason for the success of the community-based projects is undoubtedly the respect the programs give to cultural values. This raises important questions of how much deference to give to other customs and the extent to which the international community should respect decisions women freely make about their own bodies. Clearly, international law should protect a woman's choice not to undergo female circumcision. But what about her informed decision to go ahead with the procedure?

In practice, accepting a woman's decision to be circumcised at face value fails to promote the individual empowerment and agency that it theoretically embraces. Because of the extremely private nature of most female circumcision rituals and the age at which most of those rituals are performed, whatever consent a woman gives is usually problematic. International organizations like the United Nations cannot guarantee adequate consent in each traditionally-performed circumcision. Therefore, an approach that celebrates a woman's right to freely choose will, in practice, do little to promote that right. Without the education and

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15 See id. (describing the success of a UNFPA-UNICEF initiative to eliminate FGM using culturally sensitive approaches).

16 The United Nations, for example, usually draws the line at “harmful traditional practices” like FGC. See Press Release, Cultural Sensitivity, supra note 11.


18 See id.

19 See Rymer & Momoh, supra note 8, at 21 (describing the practice as “covert”).


21 See Dya Eldin M. Elsayed et al., Female Genital Mutilation and Ethical Issues, 6(2) SUDANESE J. OF PUB. HEALTH 63, 66 (2011), available at http://www.siph.net.sd/files/Vol6N2/Brief%20Communications1.pdf (noting that informed consent of a patient, or patient's parent if the patient is a minor, is typically required for medical procedures such as FGC, and how informed consent to FGC is not sought in Sudan).

22 Traditionally performed ceremonies are highly choreographed and intimate experiences for the young girls going through the ceremony. See Smith, supra note 20, at 2460-65.

23 This is not to say that certain safeguards—age requirement, mandated counseling session, health regulations—could not better guarantee consent. However, any implementation of these safeguards runs the risk of resembling a compromise rather
discussion that community-based programs enable, freedom to choose is relatively meaningless in practice.24

First, this comment provides a background on female circumcision and the international legal landscape regarding the practice. Second, it addresses the question of why, with so many calls for the General Assembly to take action, no resolution banning female circumcision has passed. The three most probable reasons for failing to pass such a seemingly uncontroversial resolution are: (1) many nations where female circumcision is prevalent already have a legal ban in place;25 (2) those bans have proven extremely difficult to enforce even for governmental bodies with enforcement mechanisms superior to that of the United Nations;26 and (3) legal prohibitions are absolute, culturally insensitive, and tend to foment insurrection rather than compliance.27 To exemplify the third point, the discussion reviews recent uprisings in Kenya28 and other African nations29 where the government has legally banned female circumcision.

With so many factors weighing against a U.N. resolution, what can be done to ensure human rights around the world? To answer this question, this comment will evaluate alternative approaches to passing an international resolution. The current—and most

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24 See discussion infra Part IV.D.3

25 See Promoting Gender Equality: FAQs, supra note 6.

26 Cf. UGANDA HUMAN RIGHTS REPORT, supra note 8, at 43; ETHIOPIA HUMAN RIGHTS REPORT, supra note 8, at 43 (stating that "no criminal charges have ever been brought for FGM" since enactment of the ban in 2007); DJIBOUTI HUMAN RIGHTS REPORT, supra note 8, at 15 (explaining the Djibouti government has not convicted anyone under the statute banning FGC).

27 See Hernlund & Shell-Duncan, supra note 10, at 36 (recalling a 1956 ban on circumcision which prompted a number of young Kenyan girls to perform the procedure on themselves in protest); Press Release, Round-Table, supra note 10 (discussing the offense Ugandan citizens took to a 1989 effort by the government to ban FGC).


29 See, e.g., Press Release, Round-Table, supra note 10 (describing how a rebellion ensued shortly after the Ugandan government and activists led a campaign to ban female circumcision).
effective—approach is a community-based program in which U.N. representatives immerse themselves in local communities in an attempt to understand the legitimate cultural values behind female circumcision. Ultimately, the goal is to find alternative ways to honor those traditional values, "separating" them from female circumcision. Not surprisingly, this strategy has seen the best results.

A second alternative approach, often implemented in tandem with the community-based initiatives, involves retraining practitioners. This strategy alone has not proven very effective. Even if women defy the odds and leave their lucrative, independent careers as circumcisers, other women are quick to fill their positions. As a stand-alone solution, retraining practitioners just does not produce the same results as a culture-intensive program.

Because improving human rights one community at a time is a painfully slow process, especially for those who come face-to-face with female circumcision each day, many physicians have proposed a surgical compromise. The proposal was a response to the fear that the U.S. ban on female circumcision forces families into more dangerous circumstances to circumcise their daughters. This alternative would be a comparatively sterile procedure involving only a small nick. However effective this proposal

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31 Press Release, Round-Table, supra note 10.

32 See, e.g., id. (describing a community-based program which successfully ended the practice in the Kapchorwa community just two years after launching the program).

33 See KHADIJA HASHI & LEYLA SHARAFI, UNITED NATIONS POPULATION FUND, A HOLISTIC APPROACH TO THE ABANDONMENT OF FEMALE GENITAL MUTILATION/CUTTING 8 (Barbara Ryan ed., 2007).


35 See id.

36 See Belluck, supra note 23.

37 See id.

38 See Stephanie Chen, Pediatricians Now Reject All Female Circumcision, CNN
might be in improving human rights, it has virtually no public support and is thus impracticable.\textsuperscript{39} Further, because physicians would typically perform the proposed nick on minors, it fails to address important consent issues associated with female circumcision.\textsuperscript{40}

Arguably, consent is at the heart of this debate.\textsuperscript{41} Therefore, this comment will explore—as the final alternative—whether women should have the right to this procedure if they want it. Issues with consent are, for the foreseeable future, deeply rooted in circumstances which do not foster free choice.\textsuperscript{42} Because the traditional ritual is performed on minors,\textsuperscript{43} and puts a great social,\textsuperscript{44} economic,\textsuperscript{45} and occasionally physical\textsuperscript{46} strain on women, there is no practical way to guarantee the free consent that would promote women’s rights.

II. Background

A. Female Circumcision

Female circumcision is the “partial or total removal of the external female genitalia.”\textsuperscript{47} The terms female genital cutting

\begin{itemize}
\item \textsuperscript{39} See id.
\item \textsuperscript{40} See Elsayed et al., \textit{supra} note 21, at 66.
\item \textsuperscript{42} See discussion \textit{infra} Part IV.A.
\item \textsuperscript{43} See, \textit{e.g.}, Smith, \textit{supra} note 20, at 2470.
\item \textsuperscript{44} See Natalie C. Friedenthal, \textit{It's Not All Mutilation: Distinguishing Between Female Genital Mutilation and Female Circumcision}, 19 \textit{N.Y. Int'l L. Rev.} 111, 118 (2006).
\item \textsuperscript{45} See Smith, \textit{supra} note 20, at 2485 (noting that uncircumcised women may be “ostracized,” find it difficult to marry, and thus lose their economic support).
\item \textsuperscript{46} See \textit{Immigration and Refugee Board of Canada, Kenya: Update to KEN35138.E of 2 August 2000 Regarding the Prevalence of Female Genital Mutilation (FGM) in the Kikuyu Ethnic Group; Age at Which Practised; Consequences of Refusal for Grandparents; Availability of State Protection} (Dec. 16, 2002) [hereinafter \textit{IRBC Update}], available at http://www.unhcr.org/refworld/topic,463af2212,469f2e382,3f7d4dbae,0,IRBC,,.html.
\item \textsuperscript{47} \textit{Female Genital Mutilation: A Fact Sheet}, World Health Organization (Feb.
(FGC), female genital mutilation (FGM), and female circumcision are used interchangeably to describe this practice. There are four types of FGC: (1) clitoridectomy, which is a removal of the clitoris or hood; (2) excision, a removal of clitoris and labia minora; (3) infibulation, a removal of clitoris, labia minora, and labia majora; and (4) “[a]ll other harmful procedures to the female genitalia for non-medical purposes,” such as “pricking, piercing, incising, scraping and cauterization.”

These procedures can be very dangerous. They are often performed in unsanitary conditions. Women are not given anesthesia or antibiotics and rarely have access to medical treatment. Those who undergo the procedure in unsanitary conditions are at risk for infections, shock, hemorrhaging, abscesses, benign nerve tumors, cysts, excess scar tissue, progressively enlarging scars, and sterility. Even under sanitary conditions, women are still at risk of hemorrhaging, shock, excess scar tissue, and sterility.

While the practice of female circumcision is estimated to be about 2500 years old, it has been estimated that related practices

48 Cultural relativists prefer the more politically correct “FGC” to female genital mutilation. See, e.g., Statement by African Women Are Free to Choose, The Patriotic Vanguard (Feb. 20, 2009), http://www.thepatrioticvanguard.com/article.php3?id_article=3752 (noting that the term “female genital mutilation” is offensive to women and that the term “female circumcision” is preferred to describe the practice). For this reason, this article will use either FGC or female circumcision to refer to the practice.

49 See FGM Fact Sheet, supra note 47.
50 See id.
52 See id.
53 See id.
54 See id. at 6; see also FGM Fact Sheet, supra note 47.
55 See End FGM, supra note 51, at 6; see also Rymer & Momoh, supra note 8, at 21 ("The covert nature of this ritualistic practice and illegality of the procedure has meant that there are few opportunities for [doctors] . . . to build knowledge, skills and experience of dealing with this client group.").
56 See Gregory A. Kelson, Gender-Based Persecution and Political Asylum: The
have existed for 6000 to 14,000 years.\(^\text{57}\) FGC is most widely associated with Muslims because the African communities in which it is most practiced are “predominantly Islamic.”\(^\text{58}\) However, female circumcision has been practiced by Jews, Christians, and other African religious groups as well.\(^\text{59}\)

An estimated 135 million girls and women have undergone FGC.\(^\text{60}\) Two to three million girls a year, or 6000 a day, are “at risk”\(^\text{61}\) of female circumcision.\(^\text{62}\) The practice is so prevalent because it signifies a woman’s acceptance into society and establishes her eligibility for marriage.\(^\text{63}\) Many believe it inspires submissiveness in women and reduces the chance of sex outside of marriage, which is important to guarantee the paternity of a child.\(^\text{64}\) Groups that practice female circumcision “universally [think] that the procedure benefits girls.”\(^\text{65}\) The procedure can serve as a prospective groom’s insurance of his bride’s virginity,\(^\text{66}\) and is often required before any marriage can take place.\(^\text{67}\) Many tribal members believe that “ancestors will curse the girls who have not undergone” female circumcision.\(^\text{68}\)

**B. International Legal Response**

Many Western countries have taken legislative measures to make their beliefs crystal clear: female circumcision is flat-out wrong. Some, like the Netherlands, include their ban of FGC in

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\(^\text{57}\) See Friedenthal, supra note 44, at 113 n.6.

\(^\text{58}\) Id. at 113 (citing Barrett Breitung, Comment, Interpretation and Eradication: National and International Responses to Female Circumcision, 10 EMORY INT’L L. REV. 657, 661-64 (1996)).


\(^\text{60}\) See FGM Fact Sheet, supra note 47.

\(^\text{61}\) The World Health Organization’s Fact Sheet does not clarify exactly what “at risk” entails. Id.

\(^\text{62}\) See id.

\(^\text{63}\) See id.

\(^\text{64}\) See id.

\(^\text{65}\) Kenya Report on FGC, supra note 9.

\(^\text{66}\) See Friedenthal, supra note 44, at 119.

\(^\text{67}\) See id. at 118.

\(^\text{68}\) Kenya Report on FGC, supra note 9.
physical abuse laws. In Canada, performing female circumcision is considered aggravated assault. The United Kingdom passed the Prohibition of Female Circumcision Act in 1985, outright banning the two more drastic forms of female circumcision, excision and infibulation. The United States has also passed federal legislation forbidding female circumcision in all forms with very limited exceptions.

International bodies have fallen in line with the Western approach of condemning female circumcision. The United Nations first provided a meaningful denunciation of female circumcision in 1989 when it produced the Convention on the Rights of the Child. The Convention specifically forbids "all forms of physical or mental violence, injury or abuse," and "torture or other cruel, inhuman or degrading treatment or punishment." Around the same time, the U.N. Committee on the Elimination of Discrimination against Women formally included female circumcision within the gender-based discrimination it seeks to eradicate. Now, the United Nations openly condemns

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69 See Renee Kool, *The Dutch Approach to Female Genital Mutilation in View of the ECHR The Time for Change Has Come*, 6 UTRECHT L. REV. 51, 51 (2010). The European Court of Human Rights includes its ban of FGC in its child abuse laws. *Id.* at 54.

70 See Canadian Criminal Code, R.S.C. 1985, c. C-46 § 268(3) (2012) (expressly including excision, infibulation, or mutilation of "the labia major, labia minora or clitoris of a person" within the purview of the aggravated assault statute). The Canadian Criminal Code does include an exception for licensed physicians to perform genital surgery for health reasons or for having normal sexual appearance. *Id.* § 268(3)(a). Further, a person who reaches majority (eighteen years old) may elect to have the surgery if "there is no resulting bodily harm." *Id.* § 268(3)(b).

71 See Friedenthal, *infra* note 44, at 127.


74 *Id.* art. 19(1), cited in Friedenthal, *supra* note 44, at 133.

75 *Id.* art. 37(a), cited in Friedenthal, *supra* note 44, at 133.

female circumcision in all forms. Interestingly, in a report on the prevalence of FGC, the U.N. Commission on the Status of Women conforms to the international community’s practice of using the terms “female circumcision” and “female genital mutilation” interchangeably, indicating that as far as the Commission is concerned, the two are one and the same.

Eventually, the African Charter on the Rights and Welfare of the Child followed the United Nations lead, calling on African states to “take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare [and] dignity . . . of the child.” The Charter specifically mentions customs that are detrimental to the health of the child, and those that are discriminatory “on the grounds of sex or other status.”

Not to be outdone by the efforts of other governing bodies, the European Union joined forces with Amnesty International to announce a strategy “for Europe to end FGM.” The scope of the strategy is confined to eliminating female circumcision in Europe and is intended to bolster the already-existing EU resolution

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78 C.S.W. Report, supra note 77, at 2 (using a CEDAW committee general recommendation to end “female circumcision” to bolster the assertion that “female genital mutilation” is a human rights violation).


80 Id. art. 21(1)(a).

81 Id. art. 21(1)(b).


83 See End FGM Campaign Launched, supra note 82.
against female circumcision. The strategy lists “key” channels through which the European Union can “protect women and girls living with, or at risk of, FGM.” Those channels are:

1. Collection of data on prevalence of FGM in Europe;
2. Accessible and appropriate healthcare for women living with FGM in Europe;
3. Better protection mechanisms to address violence against women and children;
4. Clear asylum guidelines for those under threat of FGM; and
5. Mainstreaming of FGM in EU’s dialogues on cooperation with [third party] countries where FGM is prevalent.

The European Union’s strategy reiterates the clear message from the international community that female circumcision is intolerable.

III. Discussion

Despite the international community’s unequivocal disapproval of female circumcision, emphasized in declarations and binding conventions, the practice persists. The King of Rock n’ Roll himself indicated in a 1968 hit, “a little less conversation, a little more action” is necessary. The question is, what action will

84 See EU Resolution on FGM, supra note 7. The resolution calls on European states to “pursue, prosecute and punish” any resident who has “committed the crime of FGM” even if the procedure is performed in nonmember states. Id. art. AA(11). Further, EU states are held responsible for improving asylum policies for noncitizens. Id. art. Z (“Whereas in the context of a common European immigration and asylum policy, the Commission and Council should consider the aspect that those whose asylum application fails may face a threat of genital mutilation.”).

85 End FGM Campaign Launched, supra note 82.

86 Id.

87 For a relatively current list of international treaties and conventions aimed at ending FGC, see STATISTICAL EXPLORATION, supra note 41 (“There are many international treaties and conventions that call for an end to harmful traditional practices, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on the Rights and Welfare of the Child... [the] UN General Assembly Resolution 56/128 on Traditional or Customary Practices Affecting the Health of Women and Girls, and... [the] Maputo Protocol.”).

88 See Promoting Gender Equality: FAQs, supra note 6 (“[A]t least 3 million girls are at risk of undergoing the practice every year.”); see also Friedenthal supra note 44, at 141 (“[E]ven binding conventions proclaiming the importance of international intervention proved fruitless if plans were not created to implement them.”).

89 ELVIS PRESLEY, A Little Less Conversation, on ALMOST IN LOVE (RCA Records
be most effective in eradicating female circumcision and, more importantly, promoting human rights?90

In recent years, the United Nations has heard many pleas from the international community to create an official ban on female circumcision through a resolution.91 Beginning in 2010, these cries for a ban reached an unprecedented volume.92 At a two-day conference in Dakar, politicians from twenty-seven African countries officially called for the United Nations to “promote the adoption of a resolution that explicitly bans female genital mutilation as a practice that is contrary to human rights.”93 In November 2010, world leaders from forty-two countries published an appeal to the United Nations urging the adoption of a ban on female circumcision by the 65th Session of the General Assembly.94 During the 65th Session, many U.N. officials called for a “renewed” effort to end the practice in a joint statement.95 The United Nations, however, has not answered the call to arms with an official ban on FGC.96

It seems strange that an organization so openly committed to putting an end to FGC would hesitate to forbid the practice in a resolution.97 In 2007, the United Nations implemented a Joint

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90 See Friedenthal supra note 44, at 141 (“[E]ven binding conventions proclaiming the importance of international intervention proved fruitless if plans were not created to implement them.”).


93 Id.


95 Top UN Officials Call for Abolishing FGM, supra note 2.

96 Id.; see also Resolutions: 66th Session, GENERAL ASSEMBLY OF THE UNITED NATIONS (Sept. 17, 2012), http://www.un.org/en/ga/66/resolutions.shtml (indicating that the UNGA’s 66th Session was no more an answer to these activists’ prayers than the 65th).

97 See, e.g., C.S.W. Report, supra note 77, at 16-20 (showing the United Nations uses language such as “encourages” and “requests” instead of more absolute language).
Programme to end female circumcision in eight African countries where the practice was prevalent. The UNFPA openly decries female circumcision as a “persistent violation of the basic human rights of girls and women in one generation.” Yet when the time comes to make U.N. condemnation official through a resolution, the General Assembly just cannot take the leap.

So why has the United Nations failed to follow the EU’s lead and enact a resolution banning FGC? This comment argues that the U.N. General Assembly correctly concluded that a resolution banning female circumcision would be moot at best and counterproductive at worst. First, the majority of the countries in which female circumcision is prevalent have already passed legislation banning the practice. This makes a U.N. ban somewhat repetitive. Second, countries that have official bans have had significant difficulty enforcing the legislation. The United Nations, with no executive body whatsoever, will not likely have better results. Third, experience indicates that legislation categorically banning FGC, void of cultural considerations, creates a backlash and is actually counterproductive to promoting development and human rights.
Finally, a culturally impervious ban of female circumcision, regardless of a woman’s choice to undergo the procedure, undermines a woman’s right to choose what to do with her body.\textsuperscript{106} For the aforementioned reasons, the General Assembly’s decision to leave an FGM resolution off of the agenda for the 66th Session was a wise one.

\textit{A. Foreign Domestic Legislation}

Female circumcision is prevalent in twenty-eight African, Asian, and Arab countries.\textsuperscript{107} Most of these countries have already prohibited the practice,\textsuperscript{108} including sixteen African nations.\textsuperscript{109} The consequences of practicing a criminalized form of FGC range from six months in prison to a life sentence.\textsuperscript{110} Some countries also include fines in the punishment.\textsuperscript{111} The European Union passed a resolution in 2001 forbidding the practice even if committed outside the European Union.\textsuperscript{112} While a U.N. ban would cover the remaining twelve countries with no legal barrier to female circumcision,\textsuperscript{113} it would be redundant for many of the
most affected nations and is certainly not the only legislative tool available.

**B. Enforcement**

Supposing the General Assembly had passed a resolution forbidding female circumcision in the 65th Session, the United Nations would not likely be able to enforce such a ban. Though sixteen African nations have legislation banning female circumcision, enacting laws is, at best, only half of the battle. Most African nations with anti-FGC laws have failed to successfully charge a single individual with the practice. True, a perfect parallel does not exist between potential enforcement of a U.N. ban and domestic prohibitions; however, it is fair to assume that a governmental body with an executive branch of its own will likely have better results than one which depends upon other nations to volunteer their already over-utilized military. Therefore, an inquiry into how well these African nations have been able to enforce their FGC bans will be useful in determining the United Nations practical ability to combat female circumcision.

Of the sixteen countries that ban FGC, few have successfully enforced their legislation. Only five of those countries—Burkina Faso, Cote d’Ivoire, Egypt, Niger, and Senegal—have successfully prosecuted charges against individuals. However, this is not a
definitive indication of accomplishment. Even though authorities in Cote d'Ivoire were able to make some FGC-related arrests in 2010, "practitioners were rarely charged." In Senegal, "many persons still practiced FGC openly and with impunity." Other countries with anti-FGC legislation, such as Ghana and the Central African Republic, have seen a decrease in the practice, but this decline is not attributed to successful enforcement. Despite whatever success they have had, none of these countries has completely eradicated the practice.

The remaining countries with anti-FGC legislation have experienced great difficulty in bringing victims of FGC to justice. In 2010 alone, Uganda saw thousands of girls undergo female circumcision. One newspaper reported that in December of that year, 820 girls were subjected to the procedure in the Kapchorwa, Bukwo, Kween, and Amudat districts. The U.S. Department of [hereinafter Burkina Faso Human Rights Report], available at http://www.state.gov/documents/organization/160110.pdf ("[S]ecurity forces and social workers . . . arrested several FGM practitioners."); U.S. Dep't of State, 2010 Human Rights Report: Cote d'Ivoire 36 (2011) [hereinafter Cote d'Ivoire Human Rights Report], available at http://www.state.gov/documents/organization/160454.pdf; U.S. Dep't of State, 2010 Human Rights Report: Niger 23 (2011) [hereinafter Niger Human Rights Report], available at http://www.state.gov/documents/organization/160137.pdf (detailing how a women's rights NGO brought complaints in 2010 against three practitioners who were eventually sentenced to eight months imprisonment each); Promoting Gender Equality: FAQs, supra note 6 (including Senegal and Egypt as countries in which "there have been prosecutions or arrests").


123 Uganda Human Rights Report, supra note 8, at 43.

124 Id.
State reports that, in Eritrean rural areas, 95% of females still undergo some form of FGC.125 Sudan has decreased female circumcision in educated urban families, but the prevalence of FGC in Darfur has increased.126 Because of the "code of silence" surrounding FGC which exists in all of these countries, the Beninese government has been "generally unsuccessful in preventing the practice."127 In Kenya, violence associated with female circumcision has actually increased since the legislative ban of the practice.128 Many countries were not even able to prosecute under their FGC legislation in 2010.129

Perhaps enforcement of anti-FGC legislation will improve with time. Most of the heavily affected nations are within their first decade of outlawing female circumcision.130 However, if

125 U.S. Dep’t of State, 2010 Human Rights Report: Eritrea 28 (2011), available at http://www.state.gov/documents/organization/160120.pdf. In the “lowlands” of Eritrea, infibulation, the most severe form of circumcision, is practiced. Id. But cf. Comfort Momoh, Female Genital Mutilation 17 (Comfort Momoh ed., 2005) (“Eritrea’s government has recognized women’s role in society, evidenced by the fact that there are a number of women occupying high government posts.”).


128 See, e.g., Ethiopia Human Rights Report, supra note 8, at 45 (stating that “no criminal charges have ever been brought for FGM” since the enactment of the ban of FGM in 2007).


130 Of the countries previously discussed, the following have enacted official government action that can be construed as outlawing FGC since 2002: Benin, Central African Republic, Chad, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Mali, Mauritania, Niger, Somalia, and Sudan. The UN Secretary-General’s Database on Violence Against Women, U.N. Women, http://sgdatabase.unwomen.org/advancedSearch.action (last visited Oct. 25, 2012).
these governments, with actual executive branches, cannot successfully enforce a ban on female circumcision, the United Nations is not likely up for the task. Without an effective enforcement mechanism, a ban would do little—if anything—to quell female circumcision. Such a ban also has the potential to increase FGC practices in response to what indigenous peoples may interpret as Western imperialism.

C. Cultural Insensitivity: Bad for Development

Without a reasonable guarantee of enforcement, a ban on female circumcision would likely have a negative net effect on development. Members of communities that practice FGC would interpret a frank, black-and-white prohibition of their rite of passage as insensitive and something against which to rebel. If this rebellion becomes too zealous, there is a significant risk that girls and women who otherwise would not have undergone female circumcision will now do so. The culturally impervious approach to FGC, which a General Assembly resolution necessarily entails, is likely to backfire and undermine a nation’s social and economic development. This is, perhaps, one of the key reasons the General Assembly forewent enacting a resolution against FGC.

This subsection consists of a two-fold examination of how a culturally insensitive approach to human rights can impair development. First, it will review evidence that the U.N. General

131 See ZIMMERMAN, supra note 104, at 2 (discussing how many U.N. resolutions “are not legally binding” and that “there is no institutional body of mechanism to ensure [enforcement]”).

132 For example, the Mungiki gang of Kenya rejects Western culture and rebels by forcing many Kenyan women to undergo FGC. See e.g., The Mungiki: Cult, Street Gang, or Political Force?, SAFER ACCESS 6 (July 2007), http://humansecuritygateway.com/documents/SAFERACCESS_Mungiki_CultStreetGangPoliticalForce.pdf.

133 See, e.g., The Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948). This comment uses the term development to refer to human development: the level of protection each nation affords its citizens with regards to internationally recognized human rights.

134 Cf. Declaration, supra note 106, art. 8 (demonstrating that the United Nations recognizes the harm caused by forced assimilation of indigenous peoples).

135 Cf. Press Release, Cultural Sensitivity, supra note 11 (stating that a culturally insensitive approach could “impede . . . the realization of human rights”).
Assembly was cognizant of this fact when it declined to pass an anti-FGC resolution. Second, it will explore how recent events in Kenya exemplify the danger of taking an uncompromising, hardline to female circumcision.

1. Human Rights, Culture, and Development: The United Nations

The U.N. advocates for the perpetual respect of other cultures when forming human rights policy. In 2007, after much negotiation and drafting, the U.N. General Assembly passed the Declaration on Rights of Indigenous Peoples ("Declaration") with an overwhelming majority. The Declaration affords indigenous people "the right to promote, develop and maintain" their customs and traditions "in accordance with international human rights standards." It also asserts that "control by indigenous peoples over developments affecting them and their lands, territories and resources will . . . promote their development." This resolution is evidence that the United Nations and the larger international community acknowledge the value of rooting development of human rights (and general development) in culture and tradition. While the Declaration does not contain language that specifically addresses the female circumcision issue, it suggests that a constant inquiry into indigenous customs is crucial in implementing sustainable development.

One year following the enactment of the Declaration, the United Nations bolstered its development approach with a press release affirming the benefit of multicultural sensitivity. The
press release details the results of a UNFPA study indicating that “culture is a central component of successful development of poor countries, and must be integrated into development policy and programming.” The study emphasizes the need to work within a community’s views about women’s rights in particular, because doing so is “essential for effective cooperation.” Specifically, the report states that ending female circumcision requires careful consideration of all of the different cultural meanings behind the practice and “finding meaningful alternatives in close cooperation . . . with the community.” This is all to say that prior to the 66th Session of the General Assembly, the United Nations was well aware that eradicating FGC would be a discursive process.

A resolution that bans female circumcision does not facilitate discourse between those communities practicing FGC and the United Nations because a resolution prohibiting FGC does not account for the significance as a rite of passage that indigenous people associate with the practice. The General Assembly’s evidence—that a simple prohibition would do little to prevent the practice of FGC—likely factored into the body’s decision not to pass the resolution called for by so many members of the international community.

2. The Kenyan Example

Recent events in Kenya provide a useful example of how an uncompromising ban on female circumcision might actually have a retrogressive effect on human rights development. In 2001,
the Kenyan Parliament passed the Children Act, which banned female circumcision for children—defined as all individuals under eighteen. This subsection will discuss evidence that since the enactment of this legislation, Kenya’s social development has actually regressed. Then, it will explore the role outlawing female circumcision has played in this regression.

a. Female Circumcision in Kenya

Female circumcision “remains widespread” in Kenya despite the 2001 Children Act that banned the practice for girls under eighteen. As of 2001, forty-three percent of Kikuyu women aged fifteen to forty-nine had undergone FGC. Most sects that practice FGC—including Kenya’s largest ethnic group, the Kikuyu—consider the procedure a benefit for girls. Tribal members believe that “ancestors will curse girls who have not undergone the procedure.” The practice is said to “reduce female promiscuity, ensuring virginity at marriage and marital fidelity.”

The traditional ceremony for the Kikuyu tribe and the most common form of female circumcision in Kenya is excision, which involves the removal of the clitoris and the trimming of the labia minora. The operation is surrounded by much ceremonial introduction into the adult world of the tribe. During the

KENYA], available at http://www.unhcr.org/refworld/docid/4b20f48c.html (discussing the forcible circumcision of men committed by members of the Mungiki sect post-election).

150 The Kikuyu are the most predominant ethnic group in Kenya. Kenya Report on FGC, supra note 9.
151 Id.
154 Id.
155 Id.
156 Smith, supra note 20, at 2465.
157 See id. at 2461-69. For example, “initiates” learn “adult behavior and duties from the various songs in each ceremony”—ranging from “how to comport oneself in sexual relationships” to the laws, traditions, and religion of the tribe. Id. at 2468.
procedure, the young women are expected to remain stoic to represent the restraint they must be able to exercise as adults. Afterwards, the newly circumcised women are taken to a healing hut where they spend eight to twelve days recovering. This is about the amount of time it takes for the patients to be able to walk again. Once recovered, the young women are considered full members of the tribe and are given access to the responsibilities and benefits their new status entails.

b. Underdevelopment

In the past decade, Kenya has taken some great blows to its development. The nation has, overall, increased its citizens’ quality of life in the past thirty years. However, change has been slow and growth minimal. Kenya might technically improve its human development each year, but it is still well below the international average.

Evidently, the Kenyan government is rife with flaws. NGOs, political parties, and the press have exposed much corruption in the Kenyan government. However, attempts to extricate this corruption have been feeble. The Kenyan police were identified as the most corrupt institution in East Africa by the 2009 East African Bribery Index, followed by the Kenyan Ministry of Defence and the Kenyan judiciary. Despite the mountain of evidence of crookedness in the government, the Kenya Anti-Corruption Commission has achieved only fifty-one convictions.
since 2003. Though Kenya has grown somewhat in human development, the country clearly still has many problems to overcome.

A great deal of Kenya's corruption likely stems from the recent overthrow of Kenya's single-party regime. From the time Kenya gained independence in 1963, the Kenyan African National Union was the sole political power for nearly forty years. In 2002, the first opposition party candidate, Mwai Kibaki, was elected president. His reelection in December 2007 raised a host of "credible" voting fraud allegations. This controversy eventually culminated in weeks of post-election violence. Over 1500 people were killed and 300,000 displaced. This violence included cases of rape. Evidence suggests Kenyan police committed the greatest number of offenses against women. Clearly, this violent uproar is attributable to the 2007 election, more so than 2001 anti-FGC legislation. However, the postelection violence, especially as it concerns women, is a strong indicator that despite the prohibition against female circumcision, Kenya has not seen improvement in its human rights development.

Nor has the Kenyan government been able to bring the perpetrators of the post-election violence to justice. On March 31, 2010, the International Criminal Court (ICC) voted to grant the Prosecutor's "request to investigate alleged crimes against humanity committed" after the 2007 Kenyan elections. The ICC

168 Id.
169 Id.
170 Id.
171 FREEDOM HOUSE, supra note 165.
172 Id.
173 Id.
174 Id.
175 Id. ("60 percent of the charges stemming from the 2008 postelection violence involved cases of rape . . . ").
176 Id.
takeover is significant because it is a "court of last resort."\textsuperscript{179} In other words, the case would not be admissible "unless the state [was] unwilling or unable genuinely to carry out the investigation or prosecution."\textsuperscript{180} That Kenya is not able or willing to put forth a sufficient effort to prosecute these crimes is a clear indication that the government is not sufficiently developed.

Since the 2001 anti-FGC legislation, Kenya has seen little, if any, development. While other factors, like inequitable laws\textsuperscript{181} and corruption,\textsuperscript{182} are undeniably at work, the Kenyan example still demonstrates little to no net benefit from enacting such legislation—at least in the short term.\textsuperscript{183} This is not an argument that Kenya should retract its anti-FGC law. It does serve, however, as a meaningful test case for what effect a U.N. resolution would have in countries most affected by female circumcision—little, at best.

c. The Effect of FGC Bans on Social Development in Kenya and Elsewhere

The backlash to the anti-FGC legislation in Kenya is a prime example of how an apparently insensitive prohibition against a culturally ingrained practice can actually compromise development. Though Kenya has seen a decrease in FGC practice over the past few years,\textsuperscript{184} violence associated with the practice

\textsuperscript{181} Women are still denied equal property and marriage rights in Kenya. See FREEDOM HOUSE, supra note 165.
\textsuperscript{182} Kenya’s aforementioned poor performance on the 2009 East African Bribery Index demonstrates the country’s continued struggle with corruption. See id.
\textsuperscript{183} See UNITED NATIONS DEVELOPMENT PROGRAMME, supra note 162 (including a "Trends" graph depicting little growth in human development levels from 2011 to present).
\textsuperscript{184} According to the Kenya Demographic and Health Surveys, “FGM has been decreasing over the last decade.” HABIL OLOO, MONICA WANJIRU & KATY NEWEWILL-JONES, FEMALE GENITAL MUTILATION PRACTICES IN KENYA: THE ROLE OF ALTERNATIVE RITES OF PASSAGE 4 (2011); see also CHARLOTTE FELDMAN-JACOBS & DONNA CLIFTON, FEMALE GENITAL MUTILATION/CUTTING: DATA AND TRENDS 3 (2004) (showing that the prevalence of FGC is substantially lower in younger Kenyan women (aged fifteen to nineteen) than in older women (aged thirty-five to thirty-nine)).
has increased.\textsuperscript{185} The prevalent Mungiki gang is largely responsible for these grave offenses against women.\textsuperscript{186}

The Mungiki gang is a subset of the Kenyan Kikuyu tribe.\textsuperscript{157} The group assembled in the 1980s as a "self-defence force" for the Kikuyu.\textsuperscript{188} The Mungiki cult is a "quasi-religious, part gang, part mafia-like group that engages in criminal activity and violent intimidation."\textsuperscript{189} Mungiki leadership openly claims that many of its millions of members have infiltrated the Kenyan government and armed forces.\textsuperscript{190} Though the Kenyan government banned the sect in 2002 for its involvement in extortion and protection rackets,\textsuperscript{191} the Mungiki resurfaced after President Kibaki’s reelection.\textsuperscript{192} The gang became violent shortly after when the Mungiki attacked two Kenyan towns, killing women and children in addition to members of other gangs.\textsuperscript{193}

Though the Mungiki remain very secretive in nature, former leaders of the gang have revealed "they reject modern Western culture."\textsuperscript{194} As a result of this rejection, gang members have publicly called for "the circumcision of Kikuyu women, and have

\begin{itemize}
\item See SAFER ACCESS, supra note 132 ("[The Mungiki] have been known to intimidate people into adopting their cultural norms . . . by forcibly imposing female circumcision.").
\item See FREEDOM HOUSE, supra note 165.
\item IRBC KENYA, supra note 147.
\item Id.
\item Id.
\item Though the government attempted to quash such conduct, the Mungiki are still able to charge "protection fees" from Kenyan citizens. Id. To this day, members of the sect "extort, engage in fraud, robbery, murder and even kidnap their victims." Id.
\item See IRBC KENYA, supra note 147; see also FREEDOM HOUSE, supra note 165 ("The Mungiki sect of mainly Kikuyu youth has been associated with postelection and other criminal violence."); Geoffrey Clarfield, From Mau Mau to Mungiki: 50 Years Later, Kenya is Still a Bloody Mess, NAT’L POST (Feb. 5, 2008), http://www.kalenjin.net/newssite/index.php?option=com_content&view=article&id=1055:from-mau-mau-to-mungiki-50-years-later-kenya-is-still-a-bloody-&catid=52:perspectives&Itemid=242 ("In the nine months leading up to the recent spasm of election-related violence, it is estimated that the Mungiki were responsible for the murder of more than 43 people.").
\item IRBC KENYA, supra note 147.
\item Clarfield, supra note 192.
\end{itemize}
forced many to undergo this rite."\textsuperscript{195} Members of the gang have begun "grabbing women from the streets and 'forcibly' circumcising them."\textsuperscript{196} Though it is difficult to know the motivations behind the actions of such a secretive group, this recent surge of violence—beginning around the time the legislation was proposed and then enacted\textsuperscript{197}—appears to be the actions of a threatened tribal group.

The Mungiki rebellion is not the first time Kenya has seen resistance to anti-FGC policy. Responding to a 1956 ban on female circumcision in Meru, Kenya, young girls protested by circumcising each other.\textsuperscript{198} Because the girls were not circumcised against their wills, this scenario may be considered less of a human rights problem than the Mungiki attacks. Cultural relativists would even argue this behavior is not problematic at all because women have the right to choose what to do with their bodies.\textsuperscript{199} The point remains, if the international community is dedicated to the worldwide eradication of female circumcision, experience has borne out that "legislation is a poor tool for evoking behavior change."\textsuperscript{200}

Lest the reader dismiss resistance as a uniquely Kenyan problem, there are many examples of rebellion elsewhere in the world. In Darfur, Arab militias sometimes force female circumcision on non-Arab victims before sexually attacking them.\textsuperscript{201} A 1989 effort by the Ugandan government and activists

\textsuperscript{195} Id.
\textsuperscript{197} The Immigration and Refugee Board of Canada reports that these attacks on women began in 2000. Id.
\textsuperscript{198} See, e.g., Hernlund & Shell-Duncan, supra note 10, at 36 (referencing Lynn Thomas's account of reactions to an earlier ban).
\textsuperscript{199} See, e.g., FUAMBAI AHMADU, Ain't I A Woman Too?, in TRANSCULTURAL BODIES, supra note 10, at 278 (arguing that female circumcision is not substantively different from certain vaginal surgeries now medically and legally accepted in the United States, and attributing the stigma circumcised women feel with the Western characterization of the practice as sexist and dehumanizing).
\textsuperscript{200} Herlund & Shell-Duncan, supra note 10, at 36.
\textsuperscript{201} In-Depth: Our Bodies - Their Battle Ground: Gender-Based Violence in
to ban female circumcision in Kapchorwa led to a backlash because residents "took offense at what they saw as attempts of 'outsiders' to judge their culture as barbaric." The late 1990s saw a substantial increase in women who accepted female circumcision as a "sign of resistance to outside interference." Thus, the backlash effect appears to be an international issue.

Passing a worldwide resolution against FGC will essentially mimic pre-existing legislation in individual countries, providing little extra coverage. However, it has the potential to enrage millions instead of thousands. Without effective enforcement, which the United Nations is unlikely to muster, the ban will be a mere symbol. Though the notion of any action combating human rights violations is inspiring, such a statement will do little to actually prevent female circumcision, will further polarize the two sides of the issue, and will likely engender more human rights violations.

D. Women's Empowerment

Parties disagree about whether the human rights violation lies within the female circumcision practice itself or merely in its coercive nature. However, most would agree that the ultimate goal in any approach to FGC is to empower women and ensure

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202 Press Release, Round-Table, supra note 10.

203 Id.

204 See supra note 104 and accompanying text.

205 Members of communities that traditionally perform FGC will take likely offense and probably continue the practice. Press Release, Round-Table, supra note 10.

206 Promoting Gender Equality: Working Together, supra note 30 (referring to female circumcision as a "persistent violation of the basic human rights of girls and women"); see also Elvin Hatch, The Good Side of Relativism, 53 J. ANTHROPOLOGIC RES. 371, 372 (1997) (describing female circumcision as a situation "in which ethical relativism is untenable").

207 "Third wave" multicultural feminists argue that female circumcision is hardly different from some widely accepted cosmetic surgeries in the United States. See Carolyn Pedwell, 'Western' Body Modifications: A Critique of the Continuum and Analogue Approaches, 86 FEMINIST REV. 45, 57 (2007) (examining the relationship between FGC and breast augmentation, gender reassignment surgery, and hysterectomy); Hernlund & Shell-Duncan, supra note 10, at 19 (comparing FGC to other female genital cosmetic surgeries).
they retain their fundamental rights. A General Assembly resolution would symbolically wrest the right to choose from the woman’s grasp, leaving them as much discretion about female circumcision as they would have under the control of the Kenyan Mungiki. There are far more effective and respectful ways to approach FGC—discussed in a subsequent section of this comment—than to declare an almost patriarchal ban on the practice.

This section will examine what values women associate with female circumcision. There are two significant benefits to this inquiry. First, it will demonstrate that in eradicating female circumcision—whether through community-based programs or a U.N. resolution—we are in fact forbidding a culturally meaningful rite. Specifically, many tribe members from around the world articulate sincere justifications for the practice unrelated to male domination. Second, knowing what values are at stake better enables the international community to supplant them with practices it considers more in keeping with universal human rights.

1. The Rendille Women

The Rendille tribe of Northern Africa exemplifies how female circumcision is not always used as a tool to suppress women’s sexuality. The group traditionally practices excision on women on their wedding days. This “[c]ircumcision symbolically marks that the bride is no longer a girl (inam), but now a woman (aronto).” The bride also “mark[s] the transformation [by]
discard[ing] her father’s name and tak[ing] her new husband’s. 214 She is expected to keep a stoic face during the procedure, which the Rendille believe exemplifies the “bravery . . . self-control . . . [and] maturity” necessary to enter womanhood. 215 In this culture, the procedure serves as a meaningful turning point in a woman’s life, not an instrument of oppression.

Circumcision also improves a woman’s social standing, “recogniz[ing] her] as the female head of her new household.” 216 Curiously, before a female is circumcised in this culture, she is free to have sex with a “boyfriend” so long as she does not get pregnant. 217 Therefore, in Rendille culture, the circumcision marks the beginning of a period of sexual exclusivity of a woman, but it is not the product of an altogether misogynistic, oppressive culture. 218

The most powerful evidence that values associated with FGC do not lay solely within checking females’ liberty is the opinions of the women themselves. One married Rendille woman remarked, “[C]ircumcision is the only thing that separates us from animals.” 219 The aspects that the international community cites as reasons to disapprove of the practice 220 are the very same ones many Rendille women articulate as benefits of FGC. 221 One explained, “If you are circumcised, your emotions (sexual desires) are reduced, and you don’t have to sleep around and lose respect.” 222 While the notion that a woman with many past sexual partners deserves less respect than one with fewer sexual partners is problematic, it is not unique to communities that practice

214 Id.
215 See id.
216 Id. In celebration of this occasion, the woman “is allocated livestock, and most important, she is now allowed to bear children.” Id. at 117.
217 Shell-Duncan et al., supra note 211, at 118.
218 See id. at 117-18. “If an unmarried girl becomes pregnant, both she and her boyfriend are disgraced . . . .” Id. The children that result from such unions “are outcasts or can be killed.” Id.
219 Id. at 115.
220 See END FGM, supra note 51, at 3, 6 (providing a European perspective on purposes and effects of FGM).
221 See Shell-Duncan et al., supra note 211, at 118.
222 Id.
Interestingly, several women claim their sexual pleasure actually increased after circumcision. However you choose to look at it, many Rendille women consider the consequences of female circumcision beneficial. Taking from women the decision to participate in this rite of passage with a U.N. resolution will not empower them, rather it will rob them of an important part of their cultural and sexual values.

2. Other Parts of the World

The Rendille tribe is not the only one to put forth meaningful reasons for practicing FGC. The Somali practice female circumcision because they believe it is necessary to "humanize and feminize" women. Somali, Maasai, and Barabaig people believe that circumcision of women and men makes them "moral individuals." The Kikuyu of Kenya consider female circumcision to be "crucial to the maintenance of the Kikuyu as a separate, distinct tribal entity." In fact, some scholars contend the Kikuyu's identity "would probably disappear without the circumcision ceremony."

Again, these are explanations of the meaning behind an important cultural practice. A U.N. resolution banning female circumcision would callously cast these values aside and leave these communities bereft of an important ceremony.

IV. Alternatives to a Resolution

Much of this discussion is devoted to why a U.N. resolution is not the most suitable remedy to the problems FGC presents. This
section will suggest possible alternatives and discuss their merits relative to those of a U.N. resolution. First, it will evaluate the United Nations current approach to female circumcision. Next, it will review retraining programs for FGC practitioners. Then, it will examine the very recent debate in the U.S. regarding a surgical compromise. Finally, it will explore the possibility that truly free and independent women should have a right to choose FGC.

A. The U.N. Approach, One Community at a Time

The success the United Nations has had in combating female circumcision is a result of cultural sensitivity, not bright line rules. In 2008, the United Nations set up a joint initiative between the Population Fund and the Children’s Fund to begin the process of eradicating FGC worldwide. The program “is aimed at encouraging communities to collectively abandon the practice using a culturally sensitive approach,” known as the “Tostan model”, taken from an NGO of the same name. “Tostan” means “breakthrough” in the Wolof language.

Tostan first implemented its current model in 1999 to accompany the Senegalese Government’s recent legal prohibition of female circumcision. However, the NGO’s work in Senegal began eleven years before that, taking the form of “an experimental program of nonformal education in 20 villages within the Kolda region.” Interestingly, this holistic approach seems, in its earlier forms, entirely unrelated to Tostan’s relatively new goal of eliminating FGC.

Despite the NGO’s evolution over time, its primary tenet has endured: education as an integrative process. In other words,

229 See Deen, supra note 11.
230 Id.
231 See Friedenthal, supra note 44, at 146.
233 See id. at 307-09.
234 Id. at 308.
235 See id.
236 See, e.g., id. (“The use of innovative pedagogical techniques inspired by African traditions and local knowledge has contributed to making the sessions relevant, lively,
Tostan’s participants are participants in their own education.\textsuperscript{237} The Tostan program emphasizes the importance of learning in a familiar atmosphere, so “[g]ames, small group discussions, flipcharts, theater, [and] dancing” are just as crucial to the learning process as what Westerners would call “the lecture portion.”\textsuperscript{238}

At any rate, the United Nations has adopted this tack, explaining that elimination of such a deep-rooted tradition requires a cultural shift, which legal overhaul rarely yields.\textsuperscript{239} Specifically, Tostan at least addresses the problem that foregoing circumcision “is perceived as bringing more harm than benefit to a family,” where a ban would remain silent on the subject.\textsuperscript{240}

Reportedly, it takes communities three years from the time the Tostan program begins to decide to end the practice.\textsuperscript{241} Effective strategies specific to the goal of ending FGC involve immersion into the communities and an understanding of the traditional values.\textsuperscript{242} The curriculum emphasizes four modules: (1) human rights; (2) the problem-solving process; (3) basic hygiene; and (4) women’s health.\textsuperscript{243} Each module is geared toward “preparing learners for active participation in social, political, economic, and cultural decisions related to the development of their community.”\textsuperscript{244} The program culminates in “media campaigns, community debates, garnering the support of stakeholders (especially professional associations, religious leaders, parliamentarians, civil society, and NGOs), encouraging group commitments to abandonment, and legal measures.”\textsuperscript{245} When a group committed to ending female circumcision within the community becomes large enough to safeguard its members, “the

\begin{itemize}
\item \textsuperscript{237} See id.
\item \textsuperscript{238} Diop & Askew, supra note 232, at 307.
\item \textsuperscript{239} See Press Release, Cultural Sensitivity, supra note 11.
\item \textsuperscript{240} Diop & Askew, supra note 232, at 309; see also INNOCENTI RESEARCH CENTRE, CHANGING A HARMFUL SOCIAL CONVENTION: FEMALE GENITAL MUTILATION/CUTTING 16 (UNICEF ed., 2005).
\item \textsuperscript{241} Friedenthal, supra note 44, at 146.
\item \textsuperscript{242} See INNOCENTI RESEARCH CENTRE, supra note 240, at 1, 25.
\item \textsuperscript{243} See Diop & Askew, supra note 232, at 308. For a more thorough description of each module, see id.
\item \textsuperscript{244} Id.
\item \textsuperscript{245} Promoting Gender Equality: Working Together, supra note 30.
\end{itemize}
abandonment becomes self-sustainable [sic].”

In addition to its use of the Tostan Model, the U.N. joint program takes a leaf from Uganda’s Reproductive, Education and Community Health Programme’s (REACH) book. REACH was established in 1996 as a project dedicated to ending FGC in the country. REACH successfully “ended the practice in the eastern district of Kapchorwa, just two years after [the program’s] launching in 1996.” The project manager attributes the success to “separating FGM from the cultural values it was supposed to serve, proposing alternative activities to sustain those ideals, and reaching out to the custodians of community ethics.” Essentially an effective approach is community-based, not resolution-based.

In short, experience suggests that international goals of eradicating FGC are better reached with “local education and awareness campaigns, the dedication of NGOs, and subsequent grass-roots movements within the affected countries.” Reading between the lines of the upbeat and often patronizing descriptions of the Tostan Model, it is clear that its success is not rooted in the United Nations integration of each community’s customs. Rather, the models work because that integration belies a level of communication other approaches have left out. The most effective aspect of the United Nations culture-based program is the agency it gives to citizens in communities that value this practice. While the U.N. approach clearly has an agenda, it

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246 Id.
247 See Press Release, Round-Table, supra note 10.
248 Id.
249 Id.
250 But see Sarah McCulloch, Community Development Approaches: A Case for Female Genital Mutilation (FGM), FEMALE GENITAL MUTILATION 119, 121 (Comfort Momoh ed., 2005) (“Community development approaches have been criticised... for not challenging inequalities based on ethnicity or gender and for creating class formation in deprived areas, which extends and deepens the patterns of inequality ...”).
251 Friedenthal, supra note 44, at 145 (emphasis added).
252 See, e.g., Diop & Askew, supra note 232, at 308 (listing the modules for the Tostan model, among them “basic hygiene”).
253 See, id. at 308 (describing the cooperative learning process of the Tostan model).
254 See, e.g., id. at 308-09 (explaining the community’s role in the Tostan program).
does make room for an individual’s right to choose. This consideration probably makes the community-based program the best alternative to a resolution.

## B. Retraining Practitioners

Retraining of circumcisers is one aspect of the aforementioned community-based U.N. approach that has not been altogether successful. Traditional practitioners—as opposed to healthcare providers\(^{256}\)—still perform most female circumcisions today.\(^{257}\) These practitioners are considered skilled professionals in their community.\(^{258}\) Criminalizing FGC disenfranchises these women, who likely have no other way to earn a living.\(^{259}\) Not surprisingly, a legislative ban would probably not dissuade these women from practicing the same ritual they have done for many years.\(^{260}\)

Acknowledging that “[l]aws alone... are not enough to end the practice,”\(^ {261}\) the UNFPA community-based programs work with ex-circumcisers to help them find alternate employment.\(^ {262}\) For example, UNFPA-supported initiatives in Uganda “provided

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\(^{255}\) The Tostan model contemplates a single outcome, which is to eliminate FGC. See Friedenthal, *supra* note 44, at 146-47 (noting the relatively short period of time it takes for a Tostan program to spur a community’s elimination of FGC, suggesting that this is the goal of the model).

\(^{256}\) See Sarah Windle, Chuks Kamanu, Ebere Anyanwu & John E. Ehiri, *Harmful Traditional Practices and Women’s Health: Female Genital Mutilation*, in *MATERNAL AND CHILD HEALTH: GLOBAL CHALLENGES, PROGRAMS AND POLICIES* 167, 180 (John Ehiri ed., 2009). *But see Statistical Exploration, supra* note 87, at 14 (“Significant changes can be observed in the type of FGM/C practitioner from mothers to daughters... The most significant shift is the substantial increase in the level of medicalization between generations... using trained health practitioners.”). In most countries, however, over 70% of circumcisions are performed by traditional practitioners. *Id.*

\(^{257}\) See Windle et al., *supra* note 256, at 180.

\(^{258}\) *Id.*

\(^{259}\) See *id.* (“Without offering retraining to circumcisers, the women would have no way to financially support themselves and it would be unlikely that they would stop practicing their trade.”).

\(^{260}\) See *id.* at 180, 186.


\(^{262}\) HASHI & SHARAFI, *supra* note 33.
[FGC practitioners] with education and training in other types of employment." In fact, retraining FGC practitioners is included under the United Nations umbrella of "[o]ffering traditionally acceptable alternatives" to female circumcision.

But herein lies the problem: retraining practitioners just does not seem to work. For one thing, "FGC practitioner" is considered a respectable profession, one not easily replaced with a job arguably as dull and difficult to learn as seamstress, for example. As it turns out, persuading a practitioner to leave the circumcising profession is a "hard sell." The income that comes along with the respect also proves a difficult comfort to abandon; even when circumcisers do leave the practice, the monetary yields mean that the position "do[es] not stay vacant for long." Perhaps phrasing it in economic terms undermines the issue. The fact is, teaching old practitioners new tricks is not easy, especially when those new tricks are supposed to provide an independent livelihood comparable to circumcising.

While retraining circumcisers is fundamentally necessary to eradicating FGC, it is fairly ineffective when other safeguards are not executed properly. For example, a woman who leaves the profession based on information she receives from the UNFPA will immediately be replaced by another FGC practitioner unless education programs are widespread throughout the community.

C. Surgical Compromise

In fact, it seems that most profession-focused adjustments hold little promise for effectively addressing female circumcision. This remains true for licensed medical professionals as well. In the medical community, there is a growing concern that the U.S. ban

263 'Id.
264 Id. at 11.
265 See, e.g., Training FGC Practitioners, supra note 34 (describing a "once-well respected" FGC practitioner); Friedenthal, supra note 44, at 147 (emphasizing the importance of "[t]he opportunity for these women to gain respectable, alternate employment" (emphasis added)).
266 Training FGC Practitioners, supra note 34.
267 See id.
268 See, e.g., id. (noting that an ex-circumciser who made up to $440 USD per day now makes $1.10 per day in her alternate career as a pastry chef).
269 See id.
on FGC forces families to take more drastic and dangerous measures to circumcise their girls.\textsuperscript{270} Responding to this fear, the American Academy of Pediatrics (AAP) suggested something of a surgical compromise in April 2010.\textsuperscript{271} The idea is that doctors may perform a “prick or nick” under safe circumstances to “satisfy cultural requirements.”\textsuperscript{272} This nick would be “as benign as getting a girl’s ears pierced.”\textsuperscript{273}

The proposal was met with much hostility.\textsuperscript{274} Many, including New York Congressman Joseph Crowley, believed a compromise would “only create confusion about whether [female circumcision] is acceptable,”\textsuperscript{275} not to mention the proposal violated a federal law forbidding licensed doctors to perform any form of female circumcision absent specific compelling health concerns.\textsuperscript{276} Positive mental health aspects that scholars have associated with undergoing the procedure—including “a sense of belonging to a culture and participating in a tradition”—are not likely considered sufficient health concerns.\textsuperscript{277} In the face of such opposition, it took only a month or so for the AAP to retract the statement and

\begin{itemize}
  \item \textsuperscript{270} See Belluck, supra note 23 (“If we just told parents, ‘No, this is wrong,’ our concern is they may take their daughters back to their home countries, where the procedure may be more extensive cutting and may even be done without anesthesia, with unsterilized knives or even glass . . . . A just-say-no policy may end up alienating these families, who are going to then find an alternative that will do more harm than good.”).
  \item \textsuperscript{271} See id.
  \item \textsuperscript{272} Chen, supra note 38.
  \item \textsuperscript{273} Belluck, supra note 23.
  \item \textsuperscript{274} See Chen, supra note 38.
  \item \textsuperscript{275} Belluck, supra note 23.
  \item \textsuperscript{276} Federal Prohibition of Female Genital Mutilation Act of 1995, 18 U.S.C. § 116 (2006). Subsection (a) of the statute makes all forms of female circumcision of a minor a crime punishable by up to 5 years in prison. \textit{Id.} § 116(a) (2006). Subsection (b) provides an exception for “[a] surgical operation” that is:
    \begin{enumerate}
      \item necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or
      \item performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.
    \end{enumerate}
    \textit{Id.} § 116(b) (2006).
  \item \textsuperscript{277} Friedenthal, supra note 44, at 124 (implying that “Western cultural ideals” may obstruct the view of “benefits” that do flow to “females . . . undergoing the procedure”).
\end{itemize}
apologize for suggesting it.\textsuperscript{278}

Though in theory, a surgical compromise seems a fair suggestion, in practice, it does not make anyone happy. FGC activists are outraged at the "utter slippery slope... physicians [would be] on."\textsuperscript{279} They argue that FGC is "rightfully banned in the U.S." because it "serves no medical purpose."\textsuperscript{280} Further, while some families might accept this alternative, a sterile surgery hardly replaces the values most cultures associate with the rite of passage.\textsuperscript{281} The physicians who introduced the surgical compromise were well intentioned, but in many regards, this alternative is lose-lose.

\textit{D. Pro-Choice}

Arguably, the most disconcerting aspect of the surgical compromise is that it fails to solve the consent issues associated with FGC, as most of the subjects of this procedure would be minors.\textsuperscript{282} This section contends that female circumcision itself is not a human rights violation. In fact, it is rather similar to a sex change,\textsuperscript{283} a procedure on which international organizations remain relatively silent.\textsuperscript{284} The problematic aspects of FGC all boil down to one issue: consent. Ironically, most approaches (both international and national) to female circumcision wrest the decision from the affected women. Western culture decries the practice of female circumcision as demeaning to women, but simultaneously disempowers women by deciding the matter for them.\textsuperscript{285} In the meantime, however, a hands-off response to FGC

\textsuperscript{278} See Chen, supra note 38, ¶¶ 1-5, 16.
\textsuperscript{279} Belluck, supra note 23.
\textsuperscript{280} Id.
\textsuperscript{281} See Smith, supra note 20, at 2453-60 (explaining the nature and importance of rites of passage, including female circumcision).
\textsuperscript{282} See, e.g., Belluck, supra note 23.
\textsuperscript{283} See infra note 312 and accompanying text.
\textsuperscript{284} See Health Topics, WORLD HEALTH ORG., http://www.who.int/topics/en (last visited Oct. 30, 2012) (listing “female genital mutilation” as a topic, but not listing sex reassignment or transgender topics); Search Results, INTRAHEALTH INTERNATIONAL, http://www.intrahealth.org/search/results?phrase=%22gender+reassignment%22+%22sex+reassignment%22+%22sex+change%22+%22%22reassignment%22+%22sex+change+&x=0&y=0&order=relevance (last visited Oct. 30, 2012) (showing a search for “sex change procedures” and other related terms returns no results).
\textsuperscript{285} See infra note 340 and accompanying text.
would actually undermine a young woman’s right to choose. An eradication approach to FGC is necessary in at least the short term because the culture and tradition surrounding it are so inextricably tied to circumstances in which “consent might not easily be refused.”

1. A Right to Choose

Promoting women’s empowerment and gender equality means letting women choose for themselves whether or not to get circumcised. The same U.N. press release that pointedly excludes FGC from the category of practices that require cultural sensitivity also emphasizes women’s rights. The United Nations stresses protecting “whatever progress women have made towards gender equality” shortly after explaining in patronizing amazement that women who support FGC “actually believe” the practice protects them and their children. The press release promotes women’s personhood and demeans it in almost the same breath, impliedly dismissing any support for FGC as delusional.

Anthropologist Dr. Fuambai Ahmadu makes it difficult to brush aside female advocates of FGC as misguided. She was

286 See supra notes 19-24 and accompanying text; see also INNOCENTI RESEARCH CENTRE, supra note 240, at 16 (“In the majority of cases, FGM/C is performed on a girl against her will.”).


289 See id.

290 Id.

291 See id.; see also Mansura Dopico, Infibulation and the Orgasm Puzzle: Sexual Experiences of Infibulated Eritrean Women in Rural Eritrea and Melbourne, Australia, in TRANSCULTURAL BODIES, supra note 10, at 224 (noting that when circumcised women report achieving orgasm, “Western anti-FGM activists [dismiss them] claiming they are in utter denial about their experiences and that they are somehow pretending to enjoy sex and orgasms when in fact they are suffering in silence”); Ahmadu, supra note 199, at 282 (explaining that if assertions of sexual dysfunction resulting from female circumcision are to be believed, then she and her Sierra Leonean cousins “must be victims of ‘false consciousness’... and ‘prisoners of ritual’”). Given her extensive education, it is rather unlikely that Dr. Ahmadu suffers from false consciousness concerning her sexuality. See Tierney, supra note 17.

292 See id.; see also Tierney, supra note 17 (questioning whether critics of FGC are “justified in
raised in the United States and is now a post-doctoral fellow at the University of Chicago.\textsuperscript{294} By all accounts, she is the antithesis of the stereotypical ill-informed tribal woman who, as the United Nations believes, does not know what is best for her.\textsuperscript{295} Yet as an adult, she chose to undergo FGC.\textsuperscript{296} She rejects the Western hemisphere’s “zero tolerance approach,” explaining that it undermines “unique and powerful cultural heritage.”\textsuperscript{297} Dr. Ahmadu even questions the widely proffered assertion that female circumcision robs women of sexual sensation.\textsuperscript{298} In one of her essays, she attributes whatever emptiness—including sexual dysfunction\textsuperscript{299}—that women who have undergone FGC feel to the Western rejection of the practice.\textsuperscript{300}

In other words, there might be more to the practice than oppression of women. Perhaps in forming an approach to ending FGC or ameliorating the more problematic aspects of the practice, the international community should consider its own advice: “[u]nderstanding cultural realities can reveal the most effective ways to challenge these harmful cultural practices and strengthen beneficial ones.”\textsuperscript{301}

\textsuperscript{294} See id.
\textsuperscript{295} See generally Press Release, Cultural Sensitivity, supra note 11 (describing foreign women’s support for circumcision).
\textsuperscript{296} See Tierney, supra note 17.
\textsuperscript{297} Id.
\textsuperscript{298} For example, Dr. Ahmadu notes that her infibulated Sierra Leonean cousins “seemed as obsessed with dating, boyfriends, and sex” as other American women. Ahmadu, supra note 199, at 281. She recounts an outing in a nightclub where her cousin told her about the multiple orgasms she had experienced with one of her boyfriends. Id.; see also Dopico, supra note 292, at 235 (explaining the “problematic” use of the “Western definition of sexual satisfaction” as a measure for non-Western women, “as behaviors that are considered normal within one culture may be defined as deviant in another.”). Dopico also points out that the assumption that “the experience of orgasm necessarily leads to a sense of sexual pleasure and gratification” is flawed. Id.
\textsuperscript{299} Dr. Ahmadu asserts that the younger generation of circumcised women “are beginning to associate feelings of sexual dysfunction or inadequacy with experiences of circumcision.” Ahmadu, supra note 199, at 282. She points to negative FGM campaigns as the source of this unease, describing them as “psychosocial[ly] damag[ing].” Id. at 281.
\textsuperscript{300} See id., at 281-85 (noting that the “realities of daily living and getting older” could also be the source of a circumcised woman’s “lack of sexual response.”).
\textsuperscript{301} Press Release, Cultural Sensitivity, supra note 11.
2. *At Issue: Consent*

Dr. Ahmadu proves a unique case. Due to a number of factors, including her U.S. upbringing and her doctorate,\(^3\) it is easier to accept that she freely chose to undergo female circumcision. The question becomes: “If a woman truly elects to have herself circumcised, is it still a human rights violation?” According to UNICEF’s own description of why FGC is a human rights violation—which includes concerns about health, coercion, and sex discrimination—\(^3\) consent determines the issue.\(^3\)

The arguments UNICEF sets forth about the individual’s right to bodily integrity and the “highest attainable standard of health”\(^3\) are not persuasive in terms of eradicating FGC. A surgical compromise like the AAP proposed would easily alleviate these concerns.\(^3\) If a qualified physician performs the circumcision, the health concerns resulting therefrom are no more problematic than in cases of medically accepted labial cosmetic surgery such as reduction\(^3\) or a sex reassignment.\(^3\)Though the international community’s health concerns are significant—and certainly reason to make changes to common FGC practices—they do not provide a basis for eliminating female circumcision entirely.

Next, UNICEF describes FGC as “an extreme example of

\(^{302}\) See Tierney, *supra* note 17.

\(^{303}\) See STATISTICAL EXPLORATION, *supra* note 41, at 1.

\(^{304}\) See id.

\(^{305}\) Id.

\(^{306}\) See Belluck, *supra* note 23.


discrimination based on sex." At the root of this discrimination is a lack of consent. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines sex discrimination as "any distinction . . . made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms." At the foundation of sex discrimination associated with FGC is the fundamental right to one’s own body. The United Nations defines FGC as a form of sex discrimination because of—not in addition to—the issues of consent.

3. Coercion and FGC

Coercion and imperfect consent are, for the moment, deeply intertwined with common female circumcision practices. An international approach passively accepting the choice of the woman would not effectively promote women’s empowerment. It would leave many girls without alternatives to FGC.

In most cultural contexts, female circumcision is not a take-it-or-leave it procedure like piercing one’s ears or dying one’s hair. Refusal of the practice often results in severe, almost unbearable social condemnation. The ritual represents acceptance into a community. This implies that if a woman is not circumcised, the community will not accept her. The Kikuyu believe circumcision is crucial to maintaining their identity in an ever-changing, occasionally imperialistic world. Even pacifist members of the tribe would likely view a non-circumcised woman

309 STATISTICAL EXPLORATION, supra note 41, at 1.
311 In fact, one could argue that legislation banning FGC for women who have reached majority is discriminatory under this definition because it deprives them of the fundamental freedom to choose what to do with their bodies without government interference.
312 See STATISTICAL EXPLORATION, supra note 41, at 1 (discussing “consent” and inequality of the sexes in cultures in which the practice occurs).
313 See infra notes 316-317 and accompanying text.
314 See FGM Fact Sheet, supra note 47.
315 See Smith, supra note 20, at 2470.
as a traitor to her heritage. This threatened rejection is coercive because most women who undergo the procedure are not economically independent and have not reached adulthood. They are in no position to be completely ostracized.

Not only does an uncircumcised woman betray her heritage, but she also betrays her romantic prospects. In most cultures, female circumcision is supposed to ensure virginity before marriage. Circumcision is typically a prerequisite to marriage. If a young woman hopes to eventually create a home and a family, she must be circumcised. Generally in these communities, if a woman is without a husband, she is without a livelihood. Certainly, such social and economic pressures impair a woman’s freedom to choose.

Adding stress to an already precarious social situation, traditional female circumcision practices are associated with the transition into adulthood. This means many of the individuals at

316 As mentioned earlier, many Kenyans believe that ancestors curse uncircumcised girls. Kenya Report on FGC, supra note 9. It is not a great leap to argue that, if ancestors curse, contemporaries will likely shun.

317 See, e.g., Smith, supra note 20, at 2460 (explaining the ritual is performed on young girls on the brink of adulthood).

318 See Friedenthal, supra note 44, at 118. But see Shell-Duncan et al., supra note 211, at 118 (explaining that Rendille women of Uganda are free to have sexual encounters with boyfriends before they undergo female circumcision).

319 See Friedenthal, supra note 44, at 118; Shell-Duncan et al., supra note 211, at 115 (explaining that the Rendille tribe’s circumcision is generally a pre-ceremony to a wedding).

320 See Shell-Duncan et al., supra note 211, at 117 (referring to a commonly held belief that a woman cannot be head of a household until she is circumcised).

321 See, e.g., FREEDOM HOUSE, supra note 165 (describing the legal system in Kenya, in which women are still denied equal property and marriage rights, which puts them at a greater risk of poverty, disease, violence, and homelessness); see also U.S. DEP’T OF STATE, 2008 HUMAN RIGHTS REPORT: KENYA § 5 (Feb. 25, 2009), available at http://www.state.gov/g/drl/rls/hrrpt/2008/af/19007.htm (reporting that women in Kenya “experienced a wide range of discrimination in matrimonial rights, property ownership, and inheritance rights”). Though women in Kenya constituted seventy-five percent of the agricultural workforce and were active in small businesses, their monthly income was two-thirds that of men in the same field. Id. Women hold only six percent of land titles in Kenya. Id.

322 See, e.g., Smith, supra note 20, at 2468 (describing how Kikuyu initiates must learn songs about adulthood and the responsibility of sexual restraint before they are ready to undergo the circumcision). In the Rendille tribe, the circumcision ritual is associated with the adopting of adult responsibilities like bravery, self-control, and
risk for coercion are minors. By definition, this admittedly important cultural practice compromises consent and a young woman's right to make decisions about her own body because it is traditionally performed—if only just—before she reaches adulthood.

Even if all the socioeconomic pressures fail, a young woman still risks a forced, more painful circumcision. Unfortunately, this is the reality for many African women who live more modern lifestyles. For example, in 2008, militia groups in Kenya began enforcing a "dress code" on women. Women who dare to roam Nakuru, Naivasha, or Limuru in pants or mini-skirts are "humiliated, robbed and beaten" for their fashion choices. Too often, this humiliation will involve forced circumcision. For many women, there is no escape from circumcision, just varying degrees of pain and sanitation.

Circumstances that undermine free consent are deeply rooted in traditional female circumcision. The traditional FGC ritual is performed on girls before they reach adulthood. Moreover, the social, economic, and occasionally physical forces at play in the maturation of a woman. See Shell-Duncan et al., supra note 211, at 118.

See FGM Fact Sheet, supra note 47 (indicating that because the practice is a ritual signifying acceptance of a young woman into adult society, the subjects are often minors).

See supra note 317 and accompanying text.


Id.

Id.

See, e.g., Kenyan Gangs Use Genital Mutilation as Weapon in Post-Election Violence, FOX NEWS, Jan. 15, 2008, http://www.foxnews.com/story/0,2933,323005,00.html (detailing how a gang in Kenya forcefully circumcises men and women to degrade them); IRBC UPDATE, supra note 46 (explaining that gang members "threaten women [between the ages of 13 and 65] to either submit willingly or be 'forcibly' circumcised").

In many areas, a woman must choose between circumcision by a practitioner, or risking forcible, painful, and public circumcision. See IRBC UPDATE, supra note 46 ("Submit willingly or be 'forcibly' circumcised.").

See, e.g., Smith, supra note 20, at 2460 (describing a ritual which precipitates, not corresponds with, adulthood).

See Friedenthal, supra note 44, at 118-20.
many communities do not permit a woman’s free choice. While an approach that recognizes a woman’s free choice is ideal, one that assumes free choice does not promote human rights. For these reasons, the current U.N. approach is the best practical way to address the significantly problematic aspects of female circumcision.

This comment accepts that the United Nations must strive to eradicate FGC and offer alternatives. However, is there a less patronizing way to deal with women who elect to undergo the procedure themselves? Political correctness need not trump human rights, but what about respecting important decisions a woman makes about her body? This sort of latitude is certainly associated more with women’s rights than women’s oppression in most contexts. Why not here? Perhaps the United Nations and the international community in general should consider what measures will preserve a woman’s liberty and her culture simultaneously. At the very least, the language of future U.N. press releases would do well to avoid making conflicting statements that celebrate women’s rights while undermining their ability to make legitimate choices about their bodies.

332 Again, uncircumcised women are considered ineligible for marriage. Id. Without a husband, these women face a legal system which undermines their economic interests at every turn. See, e.g., FREEDOM HOUSE, supra note 165.

333 See IRBC UPDATE, supra note 46.

334 See, e.g., CEDAW, supra note 310, art. 16(1)(b) (setting out a woman’s right to choose her spouse); id. art. 11(1)(c) (promoting “free choice of profession”); Roe v. Wade, 410 U.S. 113 (1973) (holding a woman’s right to choose whether to have an abortion is protected by a fundamental right to privacy).

335 For example, an age requirement could be coupled with regulations on where and by whom the procedure can be performed. These regulations could take a form similar to the safeguards in place in cases of sex reassignment. Such a compromise should first ensure that no person who would not consent to the procedure absent duress will undergo it, and, second, should work to account for health concerns and respect cultural values. Interestingly, much legislation at the national level bans FGC only for individuals under the age of eighteen. See, e.g., Federal Prohibition of Female Genital Mutilation Act of 1995, 18 U.S.C. § 116 (2006); The Children Act (2001), Part II, ¶ 14 (Kenya).

336 See Press Release, Cultural Sensitivity, supra note 11 (emphasizing the promotion of “women’s empowerment” while condescendingly remarking that “women may even support [FGC], believing that [it] protect[s] their children and themselves”).
IV. Conclusion

Based on the above evidence, the members of the U.N. General Assembly were right not to pass a resolution banning female circumcision in the 66th Session. Such a ban would have little practical benefit because it merely echoes laws that national legislatures have already put into place.337 Further, the private nature of most female circumcision ceremonies makes it difficult, if not impossible, for the United Nations, with no enforcement body of its own, to hold individuals accountable to the ban.338

Moreover, a one-dimensional, culturally impervious ban will undoubtedly offend many who belong to communities in which female circumcision is an important cultural aspect.339 The nature of a resolution in this case is to create strict, uncompromising boundaries to preserve human rights.340 However, when a practice like FGC is so deeply rooted in culture, such an approach is ineffective if not negative. Many will likely balk at the Western (or international) imperialism of such a resolution. In light of the Kenyan experience, and others around the world, a resolution banning FGC could create a backlash that results in more female circumcision and more grievous human rights violations, such as forcible public circumcision.341

Finally, a practically ineffective solution does nothing to empower women. Because the United Nations is not likely capable of enforcing any ban, women will not be much safer from

337 See Promoting Gender Equality: FAQs, supra note 6.
338 See Rymer & Momoh, supra note 8, at 21 (referring to the “covert nature” of female circumcision).
339 See, e.g., Hernlund & Shell-Duncan, supra note 10, at 36 (recalling a 1956 ban on circumcision which prompted a number of young Kenyan girls to perform the procedure on themselves in protest); Press Release, Round-Table, supra note 10 (discussing the offense Ugandan citizens took to a 1989 effort by the government to ban FGC).
340 See Top UN Officials Call for Abolishing FGM, supra note 2. For model language, see EU Resolution on FGM, supra note 7 (“[R]egard any form of female genital mutilation as a specific crime, irrespective of whether or not the woman concerned has given any form of consent, and to punish anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or girl.”).
341 See generally Smith, supra note 20 (describing the many values of adulthood the circumcision ceremony holds).
342 See Clarfield, supra note 192.
the health concerns and human rights violations associated with female circumcision.\textsuperscript{343} Moreover, a resolution against female circumcision takes away a woman's bodily autonomy. It is easy to dismiss women who still claim to want the procedure as brainwashed; it is more difficult to value their choice. In short, a resolution would have an overall negative impact on women.

This leaves the United Nations and the international community with a few alternatives. The U.N. Joint Programme to end female circumcision has a good, community-based strategy.\textsuperscript{344} U.N. representatives actually attempt to understand the unique values behind female circumcision in each culture and accommodate them with less problematic substitutes.\textsuperscript{345} So far, this approach has seen more success in eradicating FGC than any other of which this author knows.\textsuperscript{346}

An important component of any community-based approach will be retraining the actual circumcisers.\textsuperscript{347} Unfortunately, training alone is not a viable remedy. Learning a new profession that still allows the practitioner to support herself is difficult.\textsuperscript{348} Further, because of the income that female circumcision provides, many women willingly fill the vacant position.\textsuperscript{349} Without thorough educative measures, this approach will have a negligible effect on the prevalence of circumcision.\textsuperscript{350}

The AAP's proposed surgical "compromise" represents another alternative.\textsuperscript{351} A ritual nick would prevent families from

\textsuperscript{343} See supra notes 131-132 and accompanying text.
\textsuperscript{344} See Deen, supra note 11.
\textsuperscript{345} See Press Release, Round-Table, supra note 10 (describing the program's method as "separating FGM from the cultural values it was supposed to serve, proposing alternatives to sustain those ideals, and reaching out to the custodians of community ethics").
\textsuperscript{346} See, e.g., id. (describing a community-based program, REACH, that successfully ended FGC two years after launching the program in the community).
\textsuperscript{347} See, e.g., Training FGC Practitioners, supra note 34.
\textsuperscript{348} See, e.g., id. (recounting the story of one woman who went from making $22 USD per girl as a circumciser to $1.10 per day as a baker).
\textsuperscript{349} See id. ("[T]he high income of the practitioners often means their positions within the community do not stay vacant for long.").
\textsuperscript{350} See, e.g., id. (referencing a story of one ex-circumciser who only dissuaded two of her thirty formerly scheduled clients from having the procedure).
\textsuperscript{351} See Belluck, supra note 23.
taking their daughters to less experienced practitioners who might do more extensive cutting.\textsuperscript{352} However, the very idea of compromising on what international communities have explicitly labeled a human rights violation does not sit well with the public.\textsuperscript{353} Based on the outcry at the suggestion, this option does not seem feasible.

The last alternative is to take a more tailored approach to creating an official ban—one that promotes the decision-making power of women.\textsuperscript{354} This approach presupposes that communities have a right to reasonable FGC rituals. Not many hold this belief, probably because its practicable value is low. Female circumcision is significantly related to a rite of passage for young women.\textsuperscript{355} Because these young women are, by definition of the ritual, still minors,\textsuperscript{356} issues of consent arise from the very nature of the cultural tradition. Though promotion of the woman’s choice is an ideal approach, it will be premature until the international community can guarantee consent and the absence of coercion.

In sum, promotion of human rights and empowerment of women are the ultimate goals in addressing female circumcision. Whether one is anti-FGM or pro-FGC, this is a sensitive topic with impassioned individuals on either side of the debate. Thus, whatever approach the United Nations and other international bodies adopt should be narrowly tailored with an emphasis on the aforementioned objectives. At present, community-based efforts are the best way to ensure the security and cultural identity of every woman at risk of undergoing female circumcision.

\textsuperscript{352} See id.

\textsuperscript{353} See id.

\textsuperscript{354} Though in theory this alternative is not a compromise on human rights, but rather the very promotion of them, it is likely that the international community will perceive it the same way as the surgical option. Practically, this strategy appears to choose regulation of a harmful practice in order to mitigate the damage, not eradicate it entirely. The surgical compromise rested on similar logic. See id. Based on the public's reaction to that suggestion, it is unlikely this approach will foster much public support.

\textsuperscript{355} See, e.g., Tiemey, supra note 17 (noting that Dr. Ahmadu has described female circumcision as part of a "unique and powerful cultural heritage").

\textsuperscript{356} See, e.g., Smith, supra note 20, at 2460 (exploring the many ways that the Kikuyu FGC ritual marks the passage from childhood to adulthood).